



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1184 OF 2000

DR. RICHARD S. KIMANZI..... PLAINTIFF

V E R S U S

NATION NEWSPAPERS LTD..... DEFENDANT

J U D G M E N T

The Plaintiff's case herein was heard by Osiemo, J before he was transferred from Nairobi to another station. The learned Judge has since retired.

On 15th October, 2009 the case was placed before me for directions on how to proceed. With the consent of the learned counsels for the parties, I directed that hearing do proceed from where Osiemo, J had reached with the matter. Further hearing was fixed for 9th February, 2010. On that date learned counsel for the Defendant, citing difficulties in locating the Defendant's witness who was said to have re-located to Tanzania, closed the Defendant's case without calling any witness.

Parties agreed to put in written submissions. As I was then proceeding on transfer to Machakos, the case was fixed for mention at Machakos on the 11th March, 2010 with a view to taking a date for judgment.

As it happened, the file was not forwarded to Machakos, and it was not until April, 2011 that it was traced at Nairobi. I had in the meantime been transferred back to Nairobi.

The court record shows that the Plaintiff filed his submissions on 10th March, 2010; the Defendants did not file theirs until 4th May, 2011. I have considered those submissions, including the cases cited. I have also perused the testimony of the Plaintiff and his one witness as recorded by Osiemo, J.

The Plaintiff's case as set out in his plaint dated 13th July, 2000 is in defamation. He has pleaded that in the ***Business Weekly*** section of the ***Daily Nation*** newspapers of 18th August, 1999 and 2nd November, 1999 the Defendant published stories which were libellous of him.

The first story was titled ***Cattle may be absent at Key Show***. The substance of this story was that there may not be livestock at the ***Nairobi International Show*** of that year because many parts of the City of Nairobi, including the veterinary laboratories at Kabete and the ***Central Artificial Insemination Centre*** were quarantined due to an outbreak of *foot-and-mouth* disease. The story further said that this outbreak was blamed upon, *inter alia*, the Director of Veterinary Services, one "Doctor Kimanzi".

The second story published on 2nd November, 1999 was titled *Senior Livestock Officers sacked*. The Plaintiff has pleaded that this story alleged a number of things, including:

- (1) That the livestock industry had been jolted by the removal of two senior officers in the industry in the last one month on account of the spread of foot-and-mouth disease in Nairobi.
- (2) That livestock farmers had boycotted the recently concluded Nairobi International Show because of the disease at the show ground.
- (3) That it was this fiasco that had led to the removal of the two senior officers, one of whom was the Director of Veterinary Services, a Doctor Kimanzi.
- (4) That Doctor Kimanzi, who had been due to retire in the course of the year, had been granted a year's extension, which extension was later rescinded.

The Plaintiff further pleaded that the article implied that he and the other officer had taken too long to discover that there was no vaccine for the particular strain of the *foot-and-mouth* disease which was said to have been rampant in the country; that he and the other officer had plunged the sector into confusion by issuing conflicting reports; and that all this eventually led to the rampant spread of the disease.

It is the Plaintiff's case that the words published by the Defendant were spiteful, false, and defamatory of him. He has also pleaded that the publications were prompted by malice as particularised in paragraph 5 of the plaint.

The Plaintiff also pleaded that as a result of the same publications, he was injured in his character and reputation as set out in paragraph 6.

The Plaintiff therefore sought general damages for libel, costs of the suit and interest at court rates.

The Defendant duly entered appearance and filed defence dated 4th October, 2000. It admitted publication of the stories complained of but denied that the stories were false, or that they were prompted by malice, or that they were defamatory of the Plaintiff in any way. The particulars of malice pleaded in the plaint were denied. The Defendant also denied the particulars of innuendo pleaded in paragraph 6 of the plaint.

The Defendant further pleaded that the words complained of were published under a sense of public duty and without malice, and in the honest belief that the facts contained in the stories were true.

The Defendant also pleaded that the publications were done on a privileged occasion for the benefit of the public. It sought to rely on the provisions of **section 7(1) and (2)** of the **Defamation Act, Cap 36** and the **schedule** thereto.

In a reply to defence dated 16th October, 2000, the Plaintiff joined issue with the Defendant upon its statement of defence.

The Plaintiff testified as PW1. He was employed in the Ministry of Agriculture and Livestock Development in 1970 as a Veterinary Officer Grade 2. He rose through the ranks until he became the Director of Veterinary Services in Kenya in 1994. He served in that position until 1st of October, 1999 when he retired from the Civil Service after attaining the retirement age of 55 years. He produced in evidence his retirement notice dated 15th June, 1999. He stated that he retired honourably after working for the country for 29½ years.

The Plaintiff then narrated how he came to learn of the stories published by the Defendant. He denied that he had been dismissed from employment as implied by the articles published by the Defendant. He asserted that he retired upon attaining the compulsory retirement age. He further denied

the negligence, incompetence and dereliction of duty stated and implied in the articles, reasons for which he was allegedly dismissed.

As already pointed out, the Defendant admitted publication of the two articles complained of. The articles are reproduced in paragraph 4 of the plaint, and were produced in evidence as **Exhibit P3**.

It is necessary to set out the two articles in the material portions. The article of 18th August, 1999 read as follows:-

“There may not be livestock at the Nairobi International show this year as many parts of the city including the scientific centres as such as the Veterinary Laboratories, Kabete and the Central Artificial Insemination Centre are quarantined due to an outbreak of Foot and Mouth Disease.

Sources close to the department of veterinary services blames this on wrong decisions made by the Provincial Director of Veterinary Services in Nairobi, Dr. J.K Marete, supported by the Director of veterinary services Dr. Kimanzi.

Late last year, said the source, the provincial director’s office, which is deemed an administrative office, reviewed and re-allocated duties and in the process usurped the powers of the district veterinary officer leaving the whole division in confusion”.

The second article of 2nd November, 1999 read as follows:-

“The Livestock industry has been jolted by the removal of two senior officers in the industry in the last one month.

Informed sources say that the move is related to the spread of foot and mouth disease in Nairobi. Livestock farmers boycotted the recently-concluded Nairobi International show, citing the outbreak of the disease at the show ground.

It is this fiasco that has led to the removal of both the managing director of the Kenya Veterinary Vaccine Production Institute.....the director of veterinary services, Dr. Kimanzi.

.....Dr. Kimanzi has been replaced by his deputy, Dr. Kajume.

Sources informed Business-Week that Dr. Kimanzi, who was due to retire this year, had been granted a year’s extension which was later rescinded.

They added that it took the two officers too long to discover there was no vaccine for the strain of foot and mouth disease which was rampant in the country. The vaccine in stock was for a different strain from the one that afflicted the livestock, they said.

The two had also plunged the sector into confusion by issuing conflicting reports. Business-Week highlighted the spread of the disease in August saying that there may not be livestock at the Nairobi International Show.

The reports were hotly-disputed by the provincial director of veterinary services in Nairobi, Dr. J.K. Marete, who denied that there was an outbreak.

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Caught flat-footed, the two officer shield away from the Nairobi Show, leaving the then Agriculture Minister, Mr. Chris Obure and the director, Prof. Wilfred Mwangi, both new in the Ministry, to take the flak from Livestock farmers led by Dr. Grammaticas, who chairs the Jersey Livestock Society of Kenya.”

There are a number of allegations of fact which have been made in two articles, and which may be summarised as follows:-

1. That the Plaintiff and another senior veterinary officer, due to their negligence and dereliction of duty, failed to control an outbreak of *foot-and-mouth* disease in the Nairobi area which led to the absence of livestock in the *Nairobi International Show* of the year 1999.

2. That the Plaintiff failed to accompany the Minister and Permanent Secretary of his Ministry to the said show.
3. That due to the above stated shortcomings the Plaintiff was dismissed from employment as Director of Veterinary Services.
4. That having been awarded a contract of service after leaving service, the said contract was later rescinded for the same reasons that led to his dismissal.

It was the Plaintiff's testimony that there was never at the material time any outbreak of *foot-and-mouth* disease in the Nairobi area. He also testified that he attended the Nairobi International Show for five of the days it ran, Monday to Friday, and livestock were on display. He said that he was one of the people who conducted the President of the Republic around the show on the day he attended.

The Plaintiff further testified that he was never dismissed from employment; he retired upon attaining the then retirement age of 55 years. He produced in evidence his retirement notice (**Exhibit P2**). He said that he retired on the Saturday of the week of the show. He further said that he was never awarded any contract of service beyond retirement which was rescinded as alleged.

The Plaintiff's testimony was unchallenged. The Defendant never led any evidence nor did it call any witness. It did not offer any evidence to show that there was an outbreak of *foot-and-mouth* disease in the Nairobi area at the material time, or that the Plaintiff was guilty of negligence or dereliction of his duty as Director of Veterinary Services in regard thereto.

Nor did the Defendant tender any evidence to the effect that the Plaintiff was dismissed from employment on account of the alleged negligence or dereliction of duty, or that he had been offered a contract of service after his retirement which contract was allegedly rescinded on account of the alleged dereliction of duty.

I accept the Plaintiff's testimony that there was never any outbreak of *foot-and-mouth* disease in the Nairobi area as alleged in the two articles, and further that he was not negligent or guilty of dereliction of duty as Director of Veterinary Services as alleged. The articles complained of were thus patently false in regard to the two matters.

The articles were also false in the allegation that the Plaintiff was dismissed from employment on account of dereliction of duty. I accept his testimony and other evidence produced that he in fact retired upon attaining retirement age and was not dismissed.

I also accept that no contract of service beyond retirement had been offered to the Plaintiff and subsequently rescinded on account of the alleged dereliction of duty.

All allegations of fact in the articles in respect to the Plaintiff were thus not true or substantially true. The articles did not contain any comment in good faith regarding the Plaintiff. The Defendant did not bother to check and verify the factual basis of the two articles so that they may found a fair comment without malice upon a matter of public importance. The Defendant therefore cannot find refuge under **section 7(1) and (2) of the Defamation Act** and the **Schedule** thereto.

The main issue to be decided now is whether the two articles were defamatory of the Plaintiff.

The Plaintiff was at the material time a long-serving senior civil servant who had risen through the ranks to the pinnacle of his department. He was just about to retire. To allege that he was negligence in his duties as the Director of Veterinary Services and failed to control an outbreak of the highly contagious and destructive *foot-and-mouth* disease was indeed defamatory of the Plaintiff. To further allege that he was dismissed from employment on account of that alleged dereliction of duty when in fact he retired in the normal course upon attaining the age of retirement was to add insult to injury.

I am thus satisfied on a balance of probabilities that the two articles tended to lower the personal and professional reputation of the Plaintiff in the eyes of his professional colleagues and reasonable members of the public. One such member of the public was PW2. The Plaintiff was injured in his character and reputation. He was brought into ridicule, contempt, hatred and public odium as a result of the publications complained of.

I must now consider whether the publications complained of were prompted by malice.

There was no attempt by the Defendant to verify before publication the truthfulness of the allegation he made in respect to the Plaintiff. No attempt was made to contact him for his comments in regard to the allegations of negligence and dereliction of duty. Even a subsequent demand for correction and apology (**Exhibit P4**) did not elicit any response from the Defendant.

One must therefore ask why the stories were carried in the first place? No shred of evidence of the alleged outbreak of *foot-and-mouth* disease in the Nairobi area has been placed before the court. There is also no evidence of the Plaintiff's alleged failure to attend the Nairobi International Show of 1999 in the course of his duty. Finally, there is no evidence that the Plaintiff was dismissed from employment for whatever reason.

On the contrary, the evidence before court is to the effect that the Plaintiff honourably retired after attaining retirement age. He faithfully attended the show in the course of his duties nearly the whole duration thereof.

So, what prompted the story if not malice? I find that the publications complained of were actuated by malice.

Regarding damages, libel is **actionable per se**. But quantum will normally depend on the actual harm done to the plaintiff by the libel. I note that the defamation took place in the year 1999, nearly 11 years ago. The Plaintiff was a senior civil servant, and there was absolutely no reason for the false stories carried about him. As I have already held the stories were actuated by malice.

But I have noted that immediately upon retirement the Plaintiff went into private practice and business. By his own words, both were doing well and were successful businesses. He has complained that he was unable to get "contracts" on account of defamation but he proffered no evidence on this.

Doing the best that I can, I will award the Plaintiff damages of KShs.800,000/00 (all inclusive). This sum will attract interest at court rates from the date of judgment until payment in full.

The Plaintiff will also have costs of the suit plus interest thereon at court rates from the date of filing suit until payment in full.

Those will be the orders of the court.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF
JUNE, 2011**

**H.P.G. WAWERU
JUDGE**