



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Appeal 137 of 2006

ONESMUS KABERIA APPELLANT

VERSUS

SILAS RWITO RESPONDENT

(An appeal from the judgment of D. Morara Resident Magistrate in 22nd day of November 2006 delivered in Law Court on 22.11.2006)

JUDGMENT

The respondent filed in the lower court an action claiming damages for defamation against the appellant. He was awarded by the lower court damages of Kshs. 50,000/=. The appellant was aggrieved by that judgment and filed this appeal bringing to this court the following grounds of appeal:-

- 1. That the learned resident magistrate erred in law and in fact in holding that the respondent had proved his case against the appellant on a balance of probability.***
- 2. The learned resident magistrate erred in law in failing to find that the respondent had not proved the mandatory ingredients for the tort of Libel.***
- 3. The learned resident magistrate erred in law in dismissing the appellant's defence without giving it due consideration.***
- 4. The learned resident magistrate erred in law in awarding the appellant damages without any basis at all.***
- 5. The judgment of the learned resident magistrate is against the law and the weight of the evidence before court.***

The respondent in evidence stated that the appellant was his neighbour. He said that he was a farmer and a committee member at Akirang'onde "A" Law Adjudication Committee. On 27th October 2004 at 10am whilst he was on his way to a committee meeting he met the chairman one, Julius Munge. The chairman told him that he had a letter for him from the appellant. On being given the letter, since he did not know how to read and write, he went with it home. His daughter, Stella Kinyua read it out to him. The letter stated that he was a corrupt man, greedy man, spoiler, dirty man, etc. He produced the letter in evidence. He said that the letter was malicious and it had spoiled his name in particular because he was an elected leader. On 29th October 2004, he said that the appellant had repeated those words in public at

a market place. He did not call any witnesses and after his evidence closed his case. The appellant in evidence stated that he was a retired teacher and a farmer. He said that the letter which had been produced by the respondent had not been copied to anyone else and that it was given to the respondent personally. He then stated that the letter was addressed to Rwito and that it was meant for another Rwito in the adjudication committee and not Rwito the respondent. He did not give details of the other name of Rwito. Even though the respondent had said that the appellant had repeated the defamatory words before other people, he failed to call those people to confirm the same. The appellant also did not call any other evidence to confirm that there was another Mr. Rwito in the adjudication committee. The learned magistrate on hearing that evidence stated that he found that the appellant was the author of the letter. He stated in his judgment thus:-

“The defendant (appellant) did not prove the existence of 2 other Rwito.”

As stated before, the learned magistrate entered judgment for the respondent for Kshs. 50,000 as damages. For defamation to be proved, there needs to be communication/publication of the words said to lead defamatory to a party. The respondent did not produce evidence to prove such communication to a third party. *Alastair Mullis & Ken Oliphant* in their book on Torts third edition stated:-

“In order for liability to arise libel or slander, a defamatory statement must be published about the claimant to a third person. Additionally, in the case of slander, actual injury must usually be proved.”

Here in our case, the respondent did not show publication nor did he prove injury. The respondent failed to prove his case on the required standard and the appeal therefore must succeed. The judgment of the court is as follows:-

- 1. The lower court judgment of 22nd November 2006 in Maua PMCC No. 172 of 2004 is hereby set aside and is substituted with an order dismissing that suit.***
- 2. The costs of the lower court and the costs of this appeal are awarded to the appellant.***

Dated and delivered at Meru this 7th day of May 2010.

MARY KASANGO
JUDGE