



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU  
Civil Case 120 of 2002**

**SAMUEL K. KAHIU & 4 OTHERS.....PLAINTIFFS**

**VERSUS**

**PYRETHRUM BOARD OF KENYA LTD & ANOR...  
DEFENDANTS**

**JUDGMENT**

On 24<sup>th</sup> July 2001, the 1<sup>st</sup> defendant published what it termed a “bulletin” to pyrethrum farmers. The bulletin was written on behalf of the 1<sup>st</sup> defendant by the 2<sup>nd</sup> defendant, Stephen O. Wangaji. He was at the material time, the Public Relations Officer of the 1<sup>st</sup> defendant. In the first paragraph, the bulletin stated thus;

*“Some self seekers have of late been releasing misleading reports about the pyrethrum industry to the mass media. These reports have been attributed to one Samuel Kihiu and his colleagues, Mssrs Justus Monda, Stanley Chepkwony, George Ole Sayagie and J. Mukiri.”*

The author of the said bulletin went further to give what was referred to as “*the history of these people and the ill-motives they have for the pyrethrum industry.*” As regard Justus Monda (the 5<sup>th</sup> plaintiff), it was stated that he “*had a turbulent experience with different banks and left under mysterious circumstances. One may want to find out from the bank why he is no longer in their employ*”. In respect of Stanley Chepkwony (the 2<sup>nd</sup> plaintiff), it was noted that he “*is a newly recruited lecturer at Moi University. Having left school just the other day, we wonder what he can offer to the pyrethrum industry with his limited knowledge and experience. We understand that he also intends to contest a parliamentary seat and is using PGA and pyrethrum farmers as a launching pad for his political experiments.*”

The bulletin went on to state that Joseph Mukiri (the 4<sup>th</sup> plaintiff) “*was once a member of the PBK Board. He took advantage of his position to loot money from the board which to-date we are chasing him to pay. We are consequently taking legal action against him and therefore he is very bitter with the board.*” As regard George Ole Sayagie (the 3<sup>rd</sup> plaintiff) it was stated that he “*also harbours political ambitions. He tried to be a councilor and failed miserably. What now makes him think that he will fair better in the pyrethrum industry?*” The concluding part of the said bulletin states the purpose of the bulletin was “*to let our farmers know the difference between activities that are organized by PBK for their benefit and the clandestine meetings called by these self-seekers. Our farmers should ignore these pretenders and avoid being misled by these liars, economic failures and political rejects. In PBK’s opinion these individuals are opportunists out to confuse, mislead and exploit pyrethrum farmers to the detriment of the industry*”.

The background to the apparent difference between the 1<sup>st</sup> defendant, Pyrethrum Board of Kenya

(PBK) and the plaintiffs (*who were at the material time officials of an organization known as Pyrethrum Growers Association (PGA) – a pyrethrum farmers’ lobby organization*) was in regard to the manner which the plaintiffs were agitating to what they termed as poor services and mismanagement of the pyrethrum industry by the 1<sup>st</sup> defendant. The plaintiffs, through PGA had lobbied the government through the Ministry of Agriculture, to liberalize the pyrethrum industry with a view to address shortcomings which they perceived were being perpetrated by the 1<sup>st</sup> defendant, the organization which, in law, had the sole mandate to promote and market pyrethrum. From the evidence adduced in court, it was evident that PGA as a lobby had succeeded in putting the agenda of the reform of the pyrethrum industry on the map.

A national newspaper i.e. “The People Daily” wrote an editorial on 31<sup>st</sup> May 2001 urging the 1<sup>st</sup> defendant to address the plight of the pyrethrum farmers as was raised by PGA. At the material time, 1<sup>st</sup> defendant was in the process of having the mandate of its directors renewed in elections held by the pyrethrum farmers. It was apparent from the evidence adduced that the plaintiffs, as official of PGA, had by the material time, shifted their lobby from advancing the pyrethrum farmers interest in other forums to seeking the mandate of the said pyrethrum farmers to be elected as directors of the 1<sup>st</sup> defendant. In the opinion of the 1<sup>st</sup> defendant, the plaintiffs were using legitimate grievances of pyrethrum farmers to advance their person interests. It was evident that the management of the 1<sup>st</sup> defendant was not prepared for the possibility of the fact that the plaintiffs, who they considered as trouble-makers, may influence the farmers to elect them as directors of the 1<sup>st</sup> defendant.

Although the 1<sup>st</sup> defendant’s witness, DW1 Stephen Otieno Wangaji (2<sup>nd</sup> defendant) testified that the 1<sup>st</sup> defendant had been prompted to issue the bulletin due to inaccurate statements that were at the time being peddled in the public domain by the plaintiffs, upon evaluation of the evidence adduced in this case, including documentary evidence, it was clear that the 1<sup>st</sup> defendant’s management published the said bulletin for the sole purpose of dissuading pyrethrum farmers from considering any of the plaintiffs’ bid to join the board of the 1<sup>st</sup> defendant by seeking to be elected as pyrethrum farmers’ representatives in the Board.

The plaintiffs were aggrieved by the said publication. They considered it defamatory. On 24<sup>th</sup> April 2002, the plaintiffs filed suit against the defendants seeking to be paid general damages, exemplary/agggravated damages and costs of the suit resulting from the publication of the said bulletin which they considered as disparaging to their character and further which exposed them to public odium and scandal in the eyes of the pyrethrum growers. In their defence to the plaintiffs’ claim, the defendants admitted publishing the bulletin but denied that they had defamed the plaintiffs or that the words in the said bulletin were defamatory. The defendants stated that the words, considered in their context, were justified and fair comment as the publication was in the interest of the 1<sup>st</sup> defendant’s farmers and therefore justified in the circumstances.

In their evidence before court, the plaintiffs produced their curriculum vitae (CV) to establish their respective levels of education. They further set forth their public service records as justification for their involvement in the agitation of pyrethrum farmers’ rights. They were aggrieved that the 1<sup>st</sup> defendant had published the said bulletin in a bid to portray them as thieves, liars, opportunists, pretenders and failures in society who could not possibly offer anything to advance the interest of pyrethrum farmers. In response to the plaintiffs’ evidence, the defendant adduced evidence in support of its assertion that it was justified to publish the bulletin in the interest of pyrethrum farmers and for the purpose of safeguarding the pyrethrum industry which at the time was being ruined by the plaintiffs’ spurious and unsubstantiated allegations against the 1<sup>st</sup> defendant.

The issues for determination by this court are twofold; whether the plaintiffs were defamed by the publication of the bulletin in question, and if so, what is quantum of damages, if any, should be paid to the plaintiffs. For the plaintiffs to succeed in their claim against the defendant for damages for defamation, they must establish that the words which they complain of are defamatory in character; that the defamatory statement or utterance was published by the defendant (*in this case publication in the*

*sense of defamation means that the defamatory statement was communicated to someone other than the person defamed*); that it was published maliciously, and finally in slander, subject to certain exceptions, that the plaintiff has suffered special damages. (See Kenya Tea Development Agency Limited vs. Benson Ondimu Masese T/a B.O. Masese & Company Advocates CA Civil Appeal No. 95 of 1996 (unreported)).

In the present case, the plaintiffs established (and it is not denied by the defendant) that the defendant published the said bulletin. The bulletin defamed the plaintiffs' character. Although the defendant pleaded justification in their defence, it was clear from the evidence adduced that the defendants published the said bulletin with a view to influencing pyrethrum farmers within the regions where the plaintiffs came from, (*and from which regions the plaintiffs sought to be elected or to influence the election of directors to the board of the 1<sup>st</sup> defendant*) so that the plaintiffs or the persons they supported could not be elected as directors. It was the defendants' case that the plaintiffs had disseminated information to the farmers, and to the members of the public, that was prejudicial to the 1<sup>st</sup> defendant and to the pyrethrum industry as a whole. Whereas the defendants may have been justified in answering some of the allegations disseminated by the plaintiffs to the public, and to the pyrethrum farmers specifically, through the organization which they had formed to lobby on behalf of the pyrethrum farmers, the manner in which the defendants sought to advance their case to the public was callous and defamatory to the plaintiffs.

By questioning the plaintiffs' academic credentials without any proof of such allegations of academic incompetence, clearly established that the defendants were not interested in publishing the truth concerning the plaintiffs. It was evident that the defendants attacked the characters of the plaintiffs with a view to mud sling them by making spurious and unsubstantiated statements about them. The 2<sup>nd</sup> defendant, on behalf of the 1<sup>st</sup> defendant, used choice words to achieve the purpose of painting or presenting the plaintiffs as "*self seekers*", "*liars, economic failures, political rejects*", "*opportunists out to confuse, mislead and exploit pyrethrum farmers to the detriment of the industry*". The defendants were so successful in defaming the characters of the plaintiffs that they achieved objectives of locking out the plaintiffs and their supporters, save for the 1<sup>st</sup> plaintiff, from being elected as directors of the 1<sup>st</sup> defendant.

It was clear that the allegations made by the defendants concerning the characters of the plaintiffs were not only false but malicious. It was made with the malicious intent of destroying the plaintiffs' characters and presenting them as persons who lacked credibility to offer any meaningful leadership to pyrethrum farmers. I therefore hold that the statement made in the bulletin to pyrethrum farmers was defamatory in character, and was widely published by the defendants when they distributed the said bulletin to the farmers. The bulletin was published maliciously because it was meant to assassinate the characters of the plaintiffs and discredit them in their bid to lobby on behalf of pyrethrum farmers for the improvement of the management of the 1<sup>st</sup> defendant. I therefore hold that the plaintiffs established, to the required standard of proof on a balance of probabilities, that they were defamed by the defendants. The plaintiffs are therefore entitled to be paid damages on account of the defamation of their characters by the defendants.

On quantum as to damages, the plaintiffs sought from the court the award of general damages and exemplary damages. In their submissions, each plaintiff sought to be awarded damages of KShs.5 million. They relied on two High Court decisions i.e. Nairobi HCCC No. 1067 of 1999 Kipyator Nicholas Kiprono Biwott vs. Clays Limited & 3 others (unreported) and Nairobi HCCC No. 792 of 2000 Pyramid Strategies Limited vs. Charles Shillanga (unreported). In their closing submissions, the defendants made no suggestions in regard to what damages that should be paid to the plaintiffs in the event their claim for defamation was successful. In the present case, I will apply the principles laid down by the Court of Appeal in Johnson Evan Gicheru vs. Andrew Morton & Anor [2005] eKLR in which Tunoi JA at page 7 of his judgment stated as follows:

*"In action of libel the trial court in assessing damages is entitled to look at the whole conduct of the defendant from the time libel was published down to the time the verdict is given. It may consider what his conduct has been before action, after action, and in court during the trial: PRAUD V. GRAHAM 24*

Q.B.D. 53, 55. In *Broom v. Cassell & Co.* [1972] A.C. 1027 the House of Lords stated that in actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong ...”

Tunoi JA went on at page 8 to set out five elements that should be considered by the court when determining damages that should be paid in defamation cases. The elements include, inter alia, the objective features of the libel itself such as its gravity, province, circulation of the medium in which it is published and if there was repetition; the subjective effect on the plaintiff’s feeling not only from the prominence itself but from the defendants’ conduct thereafter both up to and including the trial itself; matters tending to mitigate damages, such as the publication of an apology; matters tending to reduce damages and finally vindication of the plaintiff’s reputation, past and future.

In the present case, it was clear that the defendants published the bulletin in a wide area in the regions where the reputations of the plaintiffs would be damaged the most, especially among the pyrethrum farmers. The defendants were unapologetic when they were confronted with demand by the plaintiffs that an apology be offered. The publication itself not only cast aspersions on the plaintiffs’ academic credentials, but also their leadership abilities. This court will therefore make an award that will vindicate the plaintiffs’ reputation, past, present and in the future. The 1<sup>st</sup> plaintiff did not prosecute his claim in the present suit. Doing the best that I can in the circumstances, I will make an award to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> plaintiffs as against the 1<sup>st</sup> defendant, each of the sum of KShs.400,000/= as general damages. The 2<sup>nd</sup> defendant shall not be held personally liable since he was acting at the behest and as an agent of the 1<sup>st</sup> defendant. I found no ground to award the said plaintiffs exemplary damages. The plaintiffs shall have the costs of the suit.

DATED at NAKURU this 22<sup>ND</sup> day of MAY 2009.

**L. KIMARU**

**JUDGE**