



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

**Civil Case 82 of 2007**

**JOSIAH WANYIKA KARUGA**

**T/A TEWAN PLAZA HOTEL-OLKAOU.....PLAINTIFF**

**VERSUS**

**ROYAL MEDIA SERVICES LTD.....DEFENDANT**

**JUDGMENT**

Josiah Wanyika Karuga, t/a Tewan Plaza Hotel – Ol’kalou instituted this suit against Royal Media Services Limited. The defendant was duly served with the summons but failed to enter appearance or to file a defence. Interlocutory judgment was entered and the suit proceeded to hearing.

The plaintiff testified in support of the claim that on diverse dates, the defendant through its Citizen radio programme dubbed “*Wembe wa Citizen*” aired on 12<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 19<sup>th</sup> January 2007 at 6.45 a.m. falsely and maliciously broadcast that the plaintiff was selling to people rotten raw chicken. It was broadcast that the plaintiff did sell (3) chicken to a lady customer and whereof, one of the chicken was rotten. It was further broadcast that the public health personnel in the area were not doing anything about the rotten chicken.

The programme continued despite the plaintiff’s interventions through telephone calls and letters addressed to the defendant where the plaintiff sought to deny the allegations. The plaintiff produced a copy of letter he faxed to the defendant asking them to substantiate the allegations of sale of rotten chicken. The letter is dated 15<sup>th</sup> January 2007.

The programme continued, and on the 17<sup>th</sup> January 2007, the plaintiff instructed M/s Ndegwa Wahome & Co. Advocates to take up the matter. The Advocates, wrote a demand letter to the defendants and threatened to file a suit for damages. The plaintiff testified that his hotel is of high repute within Ol’Kalou town. It is fully inspected by the Public Health and such inspection was regularly carried out. He produced an inspection report dated 26<sup>th</sup> January 2007 which showed that the staff and kitchen facilities were in good condition.

The plaintiff contended that due to the broadcast which was based on false information, his business suffered losses. The plaintiff was also humiliated as people kept on enquiring why he was selling bad chicken. The hotel business slumped considerably, because customers who had booked the hotel for conferences cancelled the booking on account of the bad publicity especially the allegation that the plaintiff was selling bad food. The plaintiff testified that he had worked as an hotelier for 15 years to build his reputation; he received calls from many friends and relatives inquiring about the programme. He claimed that his good will was destroyed and despite his efforts to clarify or to get the names of the

woman he allegedly sold to the rotten chicken, that name was never given to him.

It was not until the 30<sup>th</sup> January 2007, the defendants started broadcasting an apology that the plaintiff's hotel was good but the plaintiff had already suffered the damage. Sebastian Kiembe Mumo, PW2 is employed as the manager of the plaintiff's hotel since 1994. He testified that since he joined the hotel, they never sold raw chicken. They only sold cooked food. The defendant broadcast that the plaintiff sold rotten chicken to a woman customer was without basis and a mere falsehood. This programme was aired several times and the business of the hotel was affected. People stopped buying food or booking the hotel. He produced the sales for the period which had considerably fallen. Some of the customers cancelled the bookings.

On 30<sup>th</sup>, 31<sup>st</sup> and 2<sup>nd</sup> February 2007 the defendant announced that they were sorry about the broadcast and affirmed that the plaintiff's hotel was the best in Ol'kalau, however the damage had been done and the good will was eroded.

The plaintiff's claim is for an order of permanent injunction restraining the defendant either by itself, its agents, employees and/or servants from uttering, disseminating publishing or in any way airing the words complained of or any of them or any similar words or at all.

The plaintiff also sought for general damages for libel and defamation.

Counsel for the plaintiff, in their written submissions urged this court to award the plaintiff a sum of Ksh 5,000,000/- as general damages and a sum of Kshs 1,000,000/- aggravated damages and Kshs 2,000,000/= as exemplary damages. He made reference to the cases of Kipyator Nicholas Kiprono Biwott vs. Clays Limited & 3 others where the plaintiff was awarded Kshs 30 million. He also referred the case of Kalya & Another vs. Standard Ltd. & 2 others [2002]2KLR where the plaintiffs were awarded Kshs 9,000,000/= and Kshs 4,000,000/= respectively.

In the present case, the plaintiff's claim did not include a prayer for aggravated and exemplary damages. It is trite law that a party is bound by their own pleadings. Moreover, an apology was published seven days later which in my opinion mitigated although did not quite reverse the damage. I will only dwell on the claim for general damages. The plaintiff was able to prove that the words published about his hotel were defamatory, his hotel business as well as his reputation as an hotelier was injured. The plaintiff is thus entitled to compensatory damages and as it was held in the case of John MGN Ltd [1996]2 All ER 35 at p.42, the court of appeal of England had this to say:-

*“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused.”*

Although the defendant published an apology seven (7) days later, the plaintiff was able to demonstrate that he suffered damages, the offending words published by the defendant were circulated widely, the broadcast was in Kiswahili language which covers a wide geographical area and has a large audience. In addition to the distress, humiliation and anxiety suffered by the plaintiff, his business also suffered, there was a slump in sales and he suffered loss of business.

Taking all the totality of the evidence I hereby award the plaintiffs a sum of Kshs 600,000/= as general damages for loss of business, reputation and suffering.

Accordingly judgment for the plaintiff in the following terms:

1.) A permanent injunction is hereby issued to restrain the defendant either by itself, its agents, employees and/or servants from uttering, disseminating, publishing or in any way airing the words complained of or any of them or any similar words or at all.

2.) *General damages assessed at Kshs 600,000/=.*

3.) *Costs of the suit and interest at court rates.*

It is so ordered.

**Judgment read and signed on 9<sup>th</sup> day of May 2008**

**M. KOOME**

**JUDGE**