



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

Civil Case 186 of 2005

ANNA LELESIIT PLAINTIFF

VERSUS

PETER LENGES 1ST DEFENDANT

SILVIA MUHURA 2ND DEFENDANT

KENYA TIMES MEDIA TRUST 3RD DEFENDANT

JUDGMENT

Anna Lelesiit, the plaintiff, instituted this suit against the defendants, **Peter Lenges**, **Silvia Muhura** and **Kenya Times Media Trust**, the 1st, 2nd and 3rd defendants respectively. The plaintiff sought for

(a) **General and punitive damages for defamation.**

(b) **A permanent injunction restraining the defendants, jointly and severally, by themselves, their agents, servants, employees and/or any other persons claiming authority from them from printing, publishing, repeating, conveying and or circulating defamatory words of and/or concerning the plaintiff.**

The plaintiff also asked to be awarded costs and interest.

The facts that gave rise to this claim are that on Saturday, **23rd April 2005**, the 3rd defendant published the following words concerning the plaintiff: -

“Former Samburu West MP Peter Lenges wants the Constituency Development Fund (CDF) Committees disbanded The residents singled out Julius Lalampa, Mrs. Anna Lelesiit and Mrs. Loice Towon as the architects in the committee riding high with corruption.

“Looking into their respective previous organizations, it is unfortunate they have all collapsed due to corruption and nepotism all in a bundle, they all concurred.”

It was the plaintiff’s contention that the words used in the said publication were printed, published and circulated by the 3rd defendant, they were uttered and/or spoken by the 1st and 2nd defendant, and the said

words in their natural and ordinary meaning were understood to mean that:

- a) **The plaintiff is a corrupt individual.**
- b) **The plaintiff is a criminal.**
- c) **The plaintiff is unworthy to hold an office in the Community Development Fund Committee, or any other public office.**

The plaintiff further contended that the said publication was activated by malice and as a consequence the plaintiff's reputation has been seriously injured and her character and credit has been exposed to public scandal, odium and contempt.

During the hearing of this case, the plaintiff gave evidence and narrated how the newspaper article was brought to her attention. The plaintiff testified that she used to work with the Ministry of Health between 1974 – 1994 as a District Nutrition Officer. She took an early retirement. She worked with a Community Development Programme but she left when the programme reverted back to the Government of Kenya. She produced a letter dated 31st July 1996 to that effect. Thereafter, the plaintiff was employed by the Catholic Church Diocese of Marsabit where she worked from August 1996 to May 2002 as an Hospital Administrator and Coordinator of Women's Programme. Her services were terminated due to the closure of the programme.

Subsequently, the plaintiff said she started a community based organization for community mobilization as a programme manager. She told the court that after the publication of the said words she has suffered as some members of the groups started leaving her organization and she was removed as a member of the Constituency Development Fund. According to the plaintiff the writer of the article did not seek any clarification and even after the article was published, she demanded for an apology through her advocate and none was forthcoming. She therefore sought for punitive damages. The evidence of the plaintiff was also supported by **Wycliff Juma Otieno**. He works at Malalal town and knew he knew the plaintiff as a women's group leader but when he read the article that was published about the plaintiff, he was surprised that the plaintiff was described as a corrupt person although he knew her as an honest person.

The 2nd and 3rd defendants filed a statement of defence. The 1st defendant did not defend the suit at all, but the defendants did not attend the court during the hearing and therefore the evidence by the plaintiff was not controverted. Counsel for the plaintiff in their written submissions and urged this court to award **Kshs.10 million** to the plaintiff for the injuries and damages suffered. Several cases were put forward to wit **Mikidadi Vs Khalfan & Another [2004] 2 KLR 2196** where the plaintiff was awarded Kshs.3 million for publishing an article which *inter alia* implied that the plaintiff was not law abiding and should be arrested and charged.

Nakuru H.C.C.C No. 505 of 1998 Peter Baraza Rabadd Vs Nation Newspapers Ltd (unreported) where the plaintiff was awarded Kshs.2 million because the defendant had alleged that he was of unsound mind or a drug addict who believed in superstition. **Kalya & Another Vs Standard 110 [2002] KLR** where the plaintiff was awarded Kshs.9 Million because the defendant had alleged that the plaintiff had stolen money from his clients and participated in misusing the funds from Kenya Co-operative Creameries.

I have considered all the evidence and the submissions by Counsel for the plaintiff. It is obvious that the words published by the 3rd defendant which are attributed to the words spoken by the 1st and 2nd defendant were injuries to the plaintiff and I have no doubt her reputation has suffered. The fact that she was removed from the CDF and members of her women group started leaving is indicative that the plaintiff suffered injuries and her reputation was brought to ridicule.

According to a text book on *Libel Gatley on Libel and Slander 9th Edition at page 105* the learned author opins as follows;

“Words which impute to the plaintiff commission of a crime for which a person may be made to suffer corporally” i.e. physically by way of punishment are actionable without proof of special damages

the reason why such slander is actionable per se although one might support the rule that accusation of crime is actionable on ground that it exposes the plaintiff to jeopardy or prosecution’s

Under the **Defamation Act**, defamation is to mean:

“A publication without justification lawful excuse, which is calculated to injure reputable credit or ridicule,

Further under **Section 3** of the Act

“In any action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on him at time of publication it shall not necessary to allege or prove special damage, whether or no the words are spoken of the plaintiff in the way of his office profession, trade or business.”

I am satisfied that the words published by the 3rd defendant attacked the plaintiff’s honour of office as a member of Constituency Development Fund, it is therefore actionable. The article also was defamatory of the plaintiff and despite request for an apology, none was forthcoming and this now brings me to the issue of assessment of damages. Although the 2nd and 3rd defendants denied the words were defamatory, they did not offer any evidence.

Several cases have been decided and the guiding principles to be taken into account have been formulated by the Court of Appeal. I particularly wish to refer to the case of **Johnson Evan Gicheru Vs Andrew Morton & Another Civil Appeal No. 319 of 2000** where the Court of Appeal quoted with approval the case of **Broom Vs Cassel & Co. [1972] AC 1027**

“The house of Lords stated that in actions of defamation and in any other suit where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily and even higher subjective element. Such actions involve money award which may put the plaintiff a purely financially sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charges”

As **Windeyer J**, said in **Uren V John Fairfax & Sons PTY Ltd, 117 C.L.R 115, 150**

“It seems to me that, properly speaking, a man defamed does not get compensated for his damaged reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is a solatium rather than a monetary recompense for harm measurable in money.”

Further in the case of **Benet and others Vs Canadian Newspapers Limited [1997] EWCA CIV 815**

“Compensatory damages in a case in which they are at large, may include several different kinds of compensation to the injured plaintiff. They may include not only actual pecuniary loss and anticipated pecuniary loss or social disadvantages which may result, or may thought likely to result, from the wrong which has been done. They may also include the natural grief and distress which he may have felt at having been spoken of in a defamatory terms ...”

Taking the above guiding principle and the fact that the plaintiff suffered humiliation due to the article published, I hereby award the plaintiff **Kshs.600,000/-** as general damages and **Kshs.60,000/-** for punitive

damages as the defendants failed to offer an apology. The plaintiff shall also have the costs of this suit. The defendants are also restrained by way of a permanent injunction jointly and severally, either by themselves, their agents or servants or any persons claiming authority from them from printing, publishing, repeating or circulating defamatory words concerning the plaintiff.

It is so ordered.

Dated at Nakuru this 19th day of January 2007.

MARTHA KOOME

JUDGE