



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 1300 of 2004

KIHORO CERERE PLAINTIFF

VERSUS

MWANGI GORO 1ST DEFENDANT

SAMSON N. MUTURI 2ND DEFENDANT

JOSEPHAT G. GACHUGU 3RD DEFENDANT

MUTURA NJUHI 4TH DEFENDANT

SAMUEL NJUGUNA KARIUKI 5TH DEFENDANT

MACHARIA WANDERI 6TH DEFENDANT/DECEASED

MWANGI CHUTHA 7TH DEFENDANT

JUDGMENT

The Plaintiff in his plaint dated 16th November, 2004 filed this suit against seven defendants praying for

“(a) An injunction restraining the defendants and each of them by themselves their agents or servants or otherwise howsoever publishing any such libel of and concerning the Plaintiff.

(b) General damages.

(c) Exemplary damages.

(d) Interests on (a) and (b) hereof at court rates.

(e) Costs of this suit.”

On the hearing date before me, the Plaintiff’s case against the 6th Defendant, Macharia Wanderi, was by consent withdrawn because he is now deceased.

At the material time the Plaintiff as well as the Defendants were all tea farmers and members of

Githambo Tea Factory where the Plaintiff was a Director, an elective position.

Otherwise, the Plaintiff was an advocate of the High Court of Kenya

icing as such in the name and style of Cerere Mwangi & Company Advocates. A former Parliamentary aspirant in Kiharu constituency Muranga District.

The Plaintiff told the court that sometimes in May, 2004 the Defendants jointly wrote and published of and concerning the Plaintiff a vicious, malicious and libelous statement in which the Defendants imputed the Plaintiff as dishonest and untrustworthy person, and one incapable of holding any leadership position. The letter addressed to the District Commissioner, Muranga with copy to the Honourable Kembi Gitura the member of Parliament for Kiharu constituency was in the following words.

“THE DISTRICT COMMISSIONER,

MURANGA DISTRICT

P.O. BOX 7, MURANGA.

TEA FARMERS - GITHAMBO TEA FACTORY

51 tea buying centers are the ones who stand for Githombo Tea Factory with 8,200 farmers.

Farmers rejected the elections held on 6th April, 2004 on the ground that Mr. Kihoro Cerere cannot be their director in Githambo Tea Factory due to the following facts: -

- (i) He has sued Githambo Tea Factory claiming to be paid Kshs. 13,000,000/= (Thirteen Million). Case No. Civil Suit 2612 of 1996.**
- (ii) He has also sued the directors that they have refused to withdraw from their seats. Case No. Civil Suit No. 279 of 2003.**

Due to the fact that Mr. Kihoro Cerere have sued the farmers, they have decided that he cannot be their leader nor became the custodian of their properties for he has proved that he can take away all the benefits from their work by force.

Regarding the above we appeal for the government to intervene in the matter urgently.

- 1. Mwangi Goro ID/0525263**
- 2. Samson N. Muturi ID/7191425**
- 3. Josephat G. Gachugu ID/3703422**
- 4. Mutura Njuhi ID/5917316**
- 5. Samuel Njuguna Kariuki ID/2005827**
- 6. Macharia Wanderi ID/3686234**
- 7. Mwangi Chutha ID/1383465**

cc.

Hon. Kembi Gitura

M.P. – Kiharu Constituency.”

The words complained of were also circulated to Tea Farmers and the general populace of Githambo Tea Factory and Kiharu constituency in Muranga District.

The Plaintiff's case adds that the words complained of meant that the Plaintiff is a swindler, a dictator, has no integrity. He said those words were highly defamatory of the Plaintiff, were published by the Defendants with the aim of assassinating the character of the Plaintiff and undermining the Plaintiff's appointment as a Director of Githambo Tea Factory and his leadership at the local constituency level. The Plaintiff is full of repetitions trying to use all synonyms of each adjective employed.

The Defendants filed a joint statement of defence denying publication of the words complained of adding that their names including identity card number were information easily available at Githambo Tea Factory by any numbers of the factory especially director. The Defendants also dispute the Plaintiff's claim that the words complained of were defamatory or bore the meanings the plaintiff attributes to them.

Three witnesses, including the Plaintiff, gave evidence on the side of the Plaintiff while on the side of the Defendant only one witness gave evidence, the Defendants and their Advocate, for reasons not appreciated by the court, having decided to disobey control of proceedings by the court, as they wanted to dictate to and control the court and therefore failed to appear following adjournment at the conclusion of the evidence by D.W.1 Samuel Njuguna Kariuki. Their Advocate was Mr. L. M. Kinuthia while Mr. Kabue represented the Plaintiff and the later complied with court orders.

But looking at the evidence as a whole the Defendants deny that they published the words complained of and there has been no clear evidence on the part of the Plaintiff, proving who the author or authors of the words complained of actually is or are. The evidence the court has is that the words having been written by people whose identity is in dispute, were scattered in various places where they were seen and read by anyone who happened to go where the publication were. Some individuals therefore obtained copies and some of those copies were passed over to other individuals who had either not obtained copies earlier or were seeing the copies for the first time as the alleged libel spread in the Githambo Tea Factory area. Otherwise names and identity cards of Githambo Tea factory members could easily be obtained at the Tea factory Office. Some of the members alleged to have given another member or other members a copy or two of the publication therefore have been included in this case as defendants; and that is on the basis of evidence which does not go beyond the said alleged supply of the publication, the supplying itself being in dispute. The person mostly associated with the alleged supply of the publication is the first Defendant so that the rest of the defendants are merely included because their names are mentioned in the publication as the writers. But as I have said earlier, there is no clear and sufficient evidence proving the identity of the author of the words complained of.

Moving a step further, it may be pointed out that there is no evidence of actual loss by the Plaintiff on account of the publication which was aimed at preventing him from being confirmed as one of the directors of Githambo Tea Factory. He had already been elected by the electorate in his area as a director, but, according to the evidence, that directorship was subject to confirmation at the Githambo Tea Factory Annual General Meeting (AGM) which was to be held after the words complained of were published. When the said AGM was held, the Plaintiff's directorship was confirmed.

From the Defendant's case therefore, although they initially may all have been in the team which was opposed to the Plaintiff's election as a director prior to the election which took place on 6th April, 2004, after that election some of them may have continued to be against the Plaintiff hoping they would prevent his confirmation at the subsequent AGM, while some of those who opposed him as at 6th April, 2004, now changed and supported his confirmation. He was therefore confirmed as a director.

True the defamation being alleged in this case is libel actionable per se. But even if there were libel, the parties have failed to address the issue of the election. The words complained of were election or confirmation campaign statements where rival groups hurl nasty statements against each other in order to get their candidate win the day. These are people given by the constitution of this country freedom of

association, freedom of assembly, freedom of expression including freedom to elect their leaders. When words otherwise defamatory are uttered during the campaign, how are they to be treated?

That question was not addressed by the parties to show how a court of law should treat the matter in view of the constitutional freedoms the electorate enjoy in this democratic country. Otherwise how will the successful candidate lead the electorate if he has to engage, those who campaigned against him, in defamatory litigation demanding court orders for injunctions, general, exemplary and punitive damages; and in addition interest and costs? Where do we draw the line? This court was not addressed on those lines. But has learned the Plaintiff decided to abandon his elective position and is now some where overseas and can afford to deal with some electorate the way he is handling them in this suit.

From the totality of what I am saying therefore, I am not persuaded to accept that the Plaintiff has succeeded in proving libel against the Defendants in this suit. I do hereby dismiss this suit with costs to the Defendants.

Dated delivered and signed at Nairobi this 3rd day of May, 2007

J.M. KHAMONI

JUDGE