



REPUBLIC OF KENYA

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

**Civil Case 2636 of 1979**

FIBI MUNENE.....PLAINTIFF

VERSUS

THE NATION NEWSPAPERS LTD.....1<sup>ST</sup> DEFENDANT

J. RODRIGUES .....2<sup>ND</sup> DEFENDANT

S.S. MAINA.....3<sup>RD</sup> DEFENDANT

**JUDGMENT**

The Plaintiff brought the suit by way of a plaint dated 15<sup>th</sup> August 1979 and filed the same on the date against the Defendants jointly and severally claiming damages for defamation. The plaint also sought costs of the suit and any further or other relief deemed fit by this honourable court.

The genesis of this suit is as a result of an article published on the Daily Nation of the 21<sup>st</sup> August 1978, under the heading “The Value of Prestige” the 3<sup>rd</sup> Defendant falsely and maliciously wrote and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants falsely and malicious printed and published or caused to be published of and concerning the Plaintiff and of her Profession as a journalist and in relation to her conduct therein the following words:

“**THE VALUE OF PRESTIGE**”. Some of your columnists have lost touch with reality or so it seems. This is proved more so by the “Last Word” of August 9 in which FIBI MUNENE threw a heap of rubbish at a mass of enlightened Kenyans and the International Community in Kenya. She wrote that she could not understand why so many Kenyans were obsessed with prestige. She quoted some Psychologists as having warned that an “**Obsession**” could drive one mad. I hope she is not mad already.

To begin with the famous Dr. Freud of Vienna one of the most distinguished Psychologists of the 20<sup>th</sup> century said that everything you do and I do springs from two motives: **the sex urge and the desire to be great.**

Professor John Dewey, America’s most profound Philosopher, said “**the deepest urge in human nature is to be important.**”

What FIBI does not understand is that the desire for a feeling of importance is one of the chief distinguishing difference between mankind and the animals. If our ancestors hadn’t had this flaming urge for a feeling of importance, civilization would have been impossible. And Fibi would not have been able

to write her nonsensical **Last word.** Without this feeling of importance, we should have been just about like the animals.

William James said: **Faith and the importance of feeling real, is one of the forces by which men live and the total absence of it means collapse.**

May I remind Fibi that it is that feeling of importance that drives her picture appear next to her article otherwise she should have been anything better than a street whore or farm maiden instead of being a journalist.

The Plaintiff claims that the said words in their natural and ordinary meaning meant and were understood to mean inter alia:

- (a) The Plaintiff is an incompetent journalist.
- (b) The Plaintiff is ignorant and uninformed about the subject she writes about.
- (c) The Plaintiff is unfit to be a journalist writing a national column.
- (d) The Plaintiff in her writing did not represent a point of view capable of being fairly held.
- (e) The Plaintiff's mental capacity and faculties are questionable.
- (f) The Plaintiff's capacity and ability as a journalist is questionable.
- (g) The Plaintiff's column habitually consists of nonsensical matter.
- (h) The Plaintiff has a proclivity towards being or becoming a street whore.
- (i) The Plaintiff is a person of immoral character.
- (j) The Plaintiff is a street whore.
- (k) The Plaintiff is a woman inclined towards loose morals and towards loose living of an immoral nature.
- (l) The Plaintiff is motivated in her profession solely by the false and unmeritorious desire for underserved importance.
- (m) The Plaintiff lacks the qualifications or skill to write a national weekly column.

The Defendants filed a defence in which it is admitted to have published the words complained of but denied that they were defamatory.

The Plaintiff gave evidence as to her illustrious background culminating in her being promoted to senior features writer and Women's Editor.

She graduated from the University of Nairobi with a Diploma in Journalism in 1972 and she was immediately employed by the 1<sup>st</sup> Defendant as a reporter. She exhibited exemplary conduct and she was promoted rapidly. In 1992 she travelled to Vienna, Austria to cover the Mayor of Nairobi Ms. Margaret Kenyatta. In 1973 she was sent to Israel by the 1<sup>st</sup> Defendant to attend a Writer's Conference. In 1974 she was sent to cover some activities in Germany. In 1975 she was chosen to cover the 1<sup>st</sup> United Nations Conference for Women. In 1976 she was 2<sup>nd</sup> runner up Journalist of the year and in the same year she won an International Award, the famous Dag Hammarskjold Memorial Scholarship Fund of the United Nations Correspondence Association which enabled her to travel to New York to cover

proceedings of the United Nations General Assembly. She also travelled Far East especially to cover events in Taipei Taiwan, for the 1<sup>st</sup> Defendant's News Paper Daily Nation.

The above notwithstanding, the Plaintiff used to write features with her by line i.e. Fibi Munene and which features were regularly published in the 1<sup>st</sup> Defendant's Newspaper, DAILY NATION. The Plaintiff also used to write a column called **The last Word** which was published on Wednesdays every week due to its popularity and readership.

The second Defendant is since deceased and the Plaintiff applied to withdraw the case against the 3<sup>rd</sup> Defendant and the 1<sup>st</sup> Defendant did not offer any evidence in these proceedings.

The issue to be decided is whether or not the alleged published article was defamatory of the Plaintiff. Defamation has been defined in many legal books in the following terms:-

According to **WINFIEND**:

**“Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.”**

According to SALMOND:

**“The wrong of defamation consists in the publication of a false and defamatory statement respecting another person without lawful justification or excuse. A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule or contempt on or has a tendency to injure him in his office, profession or calling.”**

The ingredients of defamation are:

- (i) the statement must be defamatory**
- (ii) the statement must refer to the Plaintiff**
- (iii) the statement must be published by the Defendant**
- (iv) the statement must be false.**

Firstly the statement must be defamatory. Good faith or ignorance of the defamatory nature of the statement is immaterial and is no defence. A statement is defamatory when reasonable men to whom the publication is made would be likely to understand it in a libelous sense. The statement must excite against the Plaintiff adverse opinions or feelings of others such as hatred ridicule or contempt.

Secondly the statement must refer to the Plaintiff. Even if there is no reference, if any person to whom the statement was published could have reasonably thought that the Plaintiff was the person referred to it is sufficient.

The reference may be under fictitious name or class.

Thirdly the statement must be published. Publication must be to a third person, may be an individual. It may be by word of mouth, letter, telegram or publication in a newspaper.

Lastly the statement must be false, that it is untrue. The burden is on the Defendant to prove that the statement is true if he wants to escape liability.

The Plaintiff has testified that the said article was defamatory, it referred to her, was published and was

untrue. The Defendant did not offer any defence to challenge the Plaintiff's evidence.

The Plaintiff called two witnesses – ROSENA KAINGANA NDONGA who testified that she read the article published in the Daily Nation and the same portrayed the Plaintiff as one who does not know what she is doing. She is hypocritical and of immoral character. And **ALFRED NJERU KIARIE** who is the cousin of the Plaintiff and lives in her rural home. He testified that he had read the publication in 1978 while he was at his rural home in Kiambu. He said the publication portrayed the Plaintiff as a person who was immoral and there was a lot of talk about the Plaintiff back at her rural home.

The evidence of the Plaintiff is not challenged. She has proved that she was defamed.

The next issue is the quantum of damages. Mr. Wanjohi for Plaintiff suggested a figure of Shs.20,000,000/= and cited some authorities while Miss Wanga for the Defendant suggested a figure of Shs.200,000/= and cited some authorities. Each case has to be considered on its own merit.

Having considered this case and having taken into account the damages awarded in the cited authorities, it is my considered opinion that a sum of Shs.7,000,000/= general damages would be adequate to compensate the Plaintiff for her injured reputation. I also award the Plaintiff's costs of this suit.

In the plaint the Plaintiff has sought:

- (a) Damages
- (b) Costs of the suit and
- (c) Any further or other relief deemed fit by this honourable court.

The Plaintiff was sent on unpaid leave until this suit was finalized through a letter dated 8<sup>th</sup> December 1978.

The letter read as follows:-

Miss Fibi Munene

Editorial Department

Nation House

NAIROBI.

Dear Madam,

**RE: LEAVE**

Further to our discussions in my office this afternoon, this is to confirm that in view of the claim you have filed against this company, and in accordance with accepted labour practice, it is not desirable or advisable that you continue working for a Nation Publication whilst the claim is pending and you should therefore proceed on leave from Monday 11<sup>th</sup> December 1978.

As at 11<sup>th</sup> December 1978 you will have earned 13 days leave entitlement and you will therefore be on paid leave up to 23<sup>rd</sup> December 1978. You will thereafter be on unpaid leave until the claim has been finalized.

The services of the Plaintiff were not terminated nor was she suspended. But she was sent on unpaid leave until this suit was finalized. Ordinarily a civil suit is expected to be finalized within 12 months or

so. But unfortunately this suit has been in court for about 29 years.

The Plaintiff has been on unpaid leave for the last 29 years. This is really a sad case. Since she had sought under Prayer (c) of the Plaint orders for any further or other relief deemed fit by this honourable court under this heading. I make the following order:

If the Defendant is not inclined to accept the Plaintiff to resume duty after 29 years of leave, it can pay her salary for the 29 years and thereafter she can be retired in accordance with the terms and conditions of her employment as desirable. The figures to be calculated but each party be at liberty to apply.

Dated and delivered at Nairobi this 28<sup>th</sup> day of June 2007.

**J.L.A. OSIEMO**

**JUDGE**