



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

Civil Case 1404 of 2002

PAUL GIKONYO MUYA.....PLAINTIFF

VERSUS

NATION MEDIA GROUP.....DEFENDANT

JUDGMENT

The Plaintiff brought this suit against the Defendant for defamation and sought general damages with costs. The facts which gave rise to this claim are briefly as follows: The Plaintiff was the Member of Parliament for Tetu Constituency and he was elected on a Democratic Party of Kenya

t but he did not hold any elective post at the branch. The party treasurer of the branch left the country and his post was to be filled and elections were called for 3rd September 2001. Although he was the area member of parliament he was not involved in the election arrangement. He was informed about the said elections on 31st August 2001 by PW2 James Githinji during the burial of the Plaintiff's mother in law. The Plaintiff attended the elections and had shown his interest to contest the post. He was given a chance to address the delegates but when he assessed the mood of the delegates, he decided to withdraw his candidature. When he informed the delegates, those who were not for him were happy with the decision but his supporters were not pleased and did not take it well. One of the other candidates by the name Nyamu while addressing the delegates happened to mention KANU a party which was not popular in the area and he was called a KANU MOLE and was booed. The Plaintiff immediately left the venue. On the 5th September 2001 the Daily Nation, the Defendant herein printed and published or caused to be printed and published the following defamatory words of the Plaintiff:

DP MP BOOED OVER KANU MOLE CLAIM.

More than 200 delegates booed Tetu MP Gikonyo Muya during a Democratic Party Sub branch election on Monday. This forced the DP Legislator to withdraw from vying for the treasurer's post which was won by his rival Mr. Wanjuki Muchemi. The MP's claim that some contestants were KANU MOLES had angered the delegates.

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

- (a) that the Plaintiff as a public figure is so incompetent as not to hold a public office.
- (b) That the Plaintiff cannot be entrusted with public duties and responsibilities and as such is not worthy of such office

(c) That the Plaintiff is a coward.

The Plaintiff in his evidence told the court that the said publication was malicious and was intended to interfere with his campaigns as the Parliamentary elections were near and the other contestants were also aspirants for the parliamentary seat at the coming elections and in fact that defamatory publication caused him to lose his parliamentary seat. The Plaintiff called one witness James Githinji (PW2) who was present at the elections. He testified that he was the one who informed the Plaintiff about the intended branch elections and the Plaintiff looked shocked as being the area member of parliament he expected to be made aware of the same. He further told the court that at the venue of the elections, the Plaintiff was given the first chance to address the delegates but when he assessed the mood of the delegates he sensed defeat and decided to withdraw his candidature but he was not booed.

The Defendant though had filed a defence did not call any evidence.

The Defendants admit to have printed and published the alleged defamatory statement but denies that the same was defamatory of the Plaintiff in their natural and ordinary meaning.

A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling.

The statement which the Plaintiff complained of as mentioned earlier were read as follows -

“DP MP BOOED OVER KANU MOLE CLAIM”

More than 200 delegates booed Tetu MP Gikonyo Muya during a Democratic Party sub branch election on Monday. This forced the DP Legislator to withdraw from vying for treasurer's post which was won by his rival Mr. Wanjuki Muchemi. The MP's claim that some contestants were KANU MOLES had angered the delegates.

The Plaintiff claims that the above statement defamed him and caused him lose his parliamentary seat.

The Plaintiff was the area Member of Parliament who is well known to his constituents and was addressing delegates from his sub branch. The question that arises is whether the said statement could bring him to hatred, ridicule or contempt or could cause him to be shunned or avoided by his constituents. As a politician, the Plaintiff is supposed to have strong shock absorbers to be able to withstand such statements at political rallies. The Plaintiff has not adduced any evidence to prove that the said statement caused right thinking members of society to shun him or avoid him and loss of his parliamentary seat was not caused by the alleged statement by his opponents as in public political meetings, blame is the order of the day even to the highest office.

The said statement was not capable of causing the Plaintiff considerable distress anxiety and embarrassment as contended by him.

In the result the Plaintiff's suit is dismissed with costs.

Dated and delivered at Nairobi this 19th day of October 2007.

J.L.A. OSIEMO

JUDGE