



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1358B of 1998

THE STANDARD LIMITED
PLAINTIFF

VERSUS

KALAMKA LIMITED DEFENDANT

JUDGMENT

The Plaintiff in this suit is, and was at the material time, the sole shareholder of Kenya Television Network Limited (hereinafter “KTN”) while the Defendant is, and was at the material time, the owner and publisher of a local weekly publication known as “The People”.

In its issue of May 8 – 14, 1998 of The People, the defendant published the following front-page and head-line story concerning the Plaintiff and KTN:

“KTN: A PLOY TO DUPE CREDITORS?”

When The Standard Group announced early in the week that they had put Kenya Television Network (KTN) in receivership, they appeared to be sending a signal that they had inherited a sickly organization and had perhaps after all, invested in hot air. Here now is the full story.

Impeccable sources say that the move to place the station under receivership was devised to evade paying the creditors, who include Cable News Network, the Kenya Revenue Authority and the National Hospital Insurance Fund and whose debts have shot up to Shs.500 million, a bill The Standard doesn't want to foot. And so they want to auction KTN to themselves on May 21, then launch a new company and station with a new logo, and leave the shell of KTN to scrap metal dealers.”

It is this publication that gave rise to this litigation. The defendant did indeed file a defence dated 10th August, 1998 through the law firm of Gathaiya & Associates, but failed to make discovery within the time prescribed, and accordingly its defence was struck out. An interlocutory Judgment was entered for the Plaintiff on 18th November, 2003.

This case, therefore, proceeded as a Formal Proof before this Court on 24th November, 2005. The defendant was represented by Mr Gathaiya Advocate, while Mr Nyamunga represented the Plaintiff.

Interlocutory Judgment having been entered for the Plaintiff, liability is not at issue here. This Court is

concerned only with the damages payable to the Plaintiff for injury to its reputation.

The Plaintiff's case is that the words in the offending publication, in their natural and ordinary meaning meant and were understood to mean as follows:

“(a) That the Plaintiff is immoral and had placed Kenya Television Network Limited under receivership solely as a means for it to avoid paying the creditors of the said company;

(b) That the Plaintiff's directors are incompetent persons who had made a poor investment in buying the Kenya Television Network Limited and/or had been incompetent in running it;

(c) That the Plaintiff seeks to cheat creditors of Kenya Television Network Limited out of money due to them;

(d) That the directors of the Plaintiff are cheats and conmen;

(e) That the Plaintiff's motives in placing Kenya Television Network Limited under receivership are dubious and dishonorable;

(f) That the Plaintiff was involved in illegal activities such as tax evasion and evasion of payment of other statutory payments;

(g) That the Plaintiff was involved in fraudulent activities and could not be trusted.”

The Plaintiff produced two witnesses – Mr Moses Onyango Ocholla, its Sales and Distribution Manager, and Ms Nelly Awori Matheka, Company Secretary to the Plaintiff.

Briefly, the evidence before the Court showed that the Plaintiff published two newspapers – the Standard, a daily newspaper, and the Sunday Standard. In January, 1998 the average circulation of the Standard was 56,136 copies per day, while the Sunday Standard's was 59,370. Mr Ocholla gave evidence that the circulation declined following the publication that is the subject of this litigation. He attributed the decline to the offending article in the People. The evidence led before the Court showed that KTN had been making losses in excess of Kshs.500 million at the material time, and owed its creditors huge amounts, all of which was the reason for it to be placed in receivership. The Plaintiff's first witness also stated that despite requests the Defendant failed to retract the offending publication, and to apologize for the same.

With regard to the quantum of damages, the Plaintiff, in its written submissions filed in Court on 31st July, 2006, urged the Court to award an all inclusive sum of Kshs.9 million based on the cases of ***Biwott vs Clays (2000) 2 EA 334*** and ***Machira vs Mwangi (2001) EA 110***.

The principles governing the award of damages in libel cases were discussed at length by this Court in the ***Biwott*** case (supra). I do not find it necessary to repeat the entire case law here. However, in the recent case of ***Johnson Evan Gicheru vs Andrew Morton (C A No. 314 of 2000, Nairobi)*** the Court of Appeal reviewed several previous cases and concluded that an award of Kshs.6 million was reasonable in the circumstances of the Plaintiff in that case, where the offending publication was in a book with international coverage. The Court applied the guidelines given in ***Jones vs Pollard (1997) EMLR 233***: regarding the quantum of damages in libel cases, as follows:

“1. The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition.

2. The subjective effect on the plaintiff's feelings not only from the prominence itself but from the defendant's conduct thereafter both up to and including the trial itself.

3. Matters tending to mitigate damages, such as the publication of an apology.

4. *Matters tending to reduce damages.*

5. *Vindication of the plaintiff's reputation past and future."*

Applying those principles, and based on the evidence before the court, and taking into account all the surrounding circumstances, including the fact that this was a one-time publication only, I believe a composite figure of Kshs.3,000,000/= would represent a fair and reasonable award to the Plaintiff for injury to its reputation caused by the Defendant's offending publication in the People. The Plaintiff will also have the costs of this suit. As no interest has been claimed, none is awarded. As prayer (a) in the Plaint regarding permanent injunction was abandoned, the same is not allowed. Those are the Orders of this Court.

Dated and delivered at Nairobi this 21st day of September, 2006.

ALNASHIR VISRAM

JUDGE