



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 28 OF 2003

MURIUKI KARUE MURIUKI.....PLAINTIFF

VERSUS

**WACHIRA WARURU.....1ST
DEFENDANT**

**STANDARD LIMITED.....2ND
DEFENDANT**

JUDGMENT

On the 24th of December 2002, the 2nd defendant, The East African Standard published the following article at page 18 of its edition of that day:

“Narc men cross OL KALOU – Scores of Narc supporters have defected to the Kenya Peoples party. They took the move after their parliamentary candidate started campaigning for Ford People presidential torch bearer, Simon Nyachae.”

The plaintiff, Muriuki Murue Muriuki, was aggrieved by the said article as he was of the view that the said article referred to him. He filed suit against the newspaper and its editor. He contended that the said article was published maliciously and falsely as he had at no time, as the parliamentary candidate of the NARC party in Ol-kalou constituency, defected or campaigned for the Ford People party or its presidential candidate. The plaintiff claimed that the said publication in the natural and ordinary meaning of the words used, portrayed the plaintiff as a political acrobat and an opportunist migrating from one party to another with a view of winning a parliamentary seat; was a hypocrite who deliberately sought to contest a parliamentary seat in a NARC ticket whilst campaigning for another party; was a person who was untruthful and unreliable; was not principled; was unfit to hold a parliamentary seat and finally that the plaintiff was not a person of integrity and dignity. The plaintiff averred that the said article contained the innuendo stated in the foregoing paragraphs.

The plaintiff averred that as a result of the said publication, his reputation, credit and character had suffered and exposed to hatred, ridicule, scandal, odium and contempt in the eyes of the right thinking members of the society. The plaintiff therefore contended that because he had defamed by the defendants, they should be compelled to pay him general damages for libel. He also prayed for exemplary and punitive damages in the lieu of an apology.

The defendants filed a defence. They admitted publishing the said article but denied that it referred to the plaintiff. They further denied that the said article had the meaning or innuendo that the plaintiff had ascribed to it. The defendants urged the court to dismiss the suit filed by the plaintiff with costs.

At the hearing of this case, only one witness testified; the plaintiff. He testified that he was a member of parliament of Ol Kalou constituency, Nyandarua District and was serving his second term. He stated that he was elected to parliament under the NARC party ticket. President Mwai Kibaki was the presidential candidate of his party. During the general elections, the plaintiff campaigned for himself and for his presidential candidate. He denied that he had campaigned for any other presidential candidate or any other party, for that matter. As the NARC parliamentary candidate, he read the article published by the 2nd defendant on the 24th of December 2002. He testified that the said article was not true. He further stated that he was not consulted before the said article was published. The plaintiff testified that he was upset by the said article because the article was malicious and damaging his reputation. He instructed his advocate to write a demand notice to the defendants. A copy of the demand letter was produced as Plaintiff's Exhibit No. 1. The defendants did not respond to the said demand letter. Neither did they offer any apology to him.

The plaintiff said that the said article portrayed him as a political acrobat and an opportunist. It also portrayed him as a hypocrite, dishonest and unprincipled. It was his testimony that the said article was published maliciously because it was untrue. He stated that the defendants ought to have verified with him the truth of the matter before publishing the said article. According to him the contents of the article were sensational and were meant to increase the sales of the newspapers sold by the defendant. The plaintiff stated that on the 23rd of December 2002, he had called a press conference whereby he had denied that he had defected to another party from the NARC party. At the press conference which he called, he said a Mr Muthui and a Mr Kareithi, the representatives of the defendants were present. He reiterated that notwithstanding this denial, the defendants proceeded to publish the false information. The plaintiff urged the court to find that the article was defamatory. He prayed to be awarded damages and further for the defendants to be compelled to apologise to him. The newspaper article was produced as Plaintiff's Exhibit No. 2. He prayed to be awarded costs of the suit.

The plaintiff conceded that the article published appeared at page 18 of the newspaper in a far corner. He denied that the article was inconspicuous. He testified that prior to his nomination as the NARC torch bearer eight other candidates had stood for the said NARC nomination against him. He remembered his challengers as, a Mr Matoke, a Mr Waiganjo, a Mr Thiong'o, a Mr Ikama and a Mr Ndegwa. He testified that after his nomination by the NARC party, Mr Matoke defected and crossed over to the Kenya People's party and started campaigning against him. He conceded that the said Mr Matoke could have crossed over with some of his supporters. The plaintiff was not sure if Mr Matoke was campaigning for Mr Nyachae or not. He further conceded that the article did not mention the period which the people who defected allegedly crossed over. In his view, the period mentioned must have been the period after his nomination as the NARC candidate. It was his testimony that he was elected as a Member of Parliament in 1997 on a Democratic Party ticket. Before the elections of the year 2002 he became a member of NAK and later a member of NARC. He testified that if his constituents required that he changed parties, he would do so after consulting them. The plaintiff conceded that the article did not specifically mention his name, although he knew that the article referred to him. It was his evidence that the defendants had published the articles to increase the sale of their newspaper more so when they mentioned the name of a Member of Parliament.

The defendant did not call any witness. After the close of the case, the plaintiff and the defendants agreed by consent to present written submissions. Both the plaintiff and the defendants filed written submissions. I have considered the evidence that was adduced by the plaintiff in this case. I have also considered the written submissions made by the plaintiff and the defendant. The issues for determination by this court are as follows:

- (i) Did the article in question refer to the plaintiff?
- (ii) If the answer to (i) is yes, was the plaintiff defamed by the said article?

(iii) If the answer to(ii) is yes, what is the quantum of damages that should be awarded to the plaintiff?

The plaintiff and the defendant concede that for the plaintiff to be successful in his suit for defamation he must prove that there was a publication; that the materials published were defamatory and that the said materials published referred to the plaintiff. The plaintiff also has to establish that as a result of the said publication his reputation in the eyes of the right thinking members of the society was injured and subjected to hatred, contempt, ridicule and odium. In the instant case, the plaintiff testified that the article which was quoted at page 1 of this judgment referred to him and consequently defamed his reputation in the eyes of the right thinking members of the society.

Did the article in question refer to the plaintiff? The article states that “*scores of Narc supporters have defected to the Kenya Peoples Party*” after “*their parliamentary candidate started campaigning for the Ford People Presidential torch bearer, Simon Nyachae.*” The article did not mention the name of the plaintiff. However the plaintiff contends that as he was the NARC parliamentary candidate at the time, the article referred to him. The plaintiff concedes that during the nomination to determine who was going to be the NARC torch bearer for the Ol kalou parliamentary seat, eight people offered their candidature against him. He concedes that among the candidates who stood against him was one Mr Matoke, who upon being defeated by the plaintiff in the NARC nomination defected to the Kenya Peoples party. The plaintiff insists that the article referred to him.

On my evaluation of the evidence adduced, the article might as well have referred to the said Mr Matoke. Even if I were to give the benefit of doubt to the plaintiff and for a moment find that the said article referred to him, were the said words published defamatory? The plaintiff stated that the words published in the said article in their natural and ordinary meaning meant that he was unprincipled, dishonest, unreliable, and a hypocrite. He also said that the said article portrayed him as a person who was unfit to hold a parliamentary seat. It was his evidence that the said article portrayed him as a person lacking in integrity. I have read and re-read the said article. I cannot glean any meaning other than what the said article conveyed, that is, that scores of NARC supporters had cross over to the Kenya Peoples party after their parliamentary candidate started campaigning for the Ford People Presidential torch bearer.

If the said words are taken in the context in which they were made, it cannot be said to be defamatory. People in Kenya, and particularly the constituents of the plaintiff, are no longer surprised if it is stated that a certain politician has crossed over from one party to the other. In fact in the Kenya of today, it is becoming immaterial which political party a member of parliament belongs to; what with the confusion created by the plethora of parties claiming to be affiliated to the NARC party. The politician will profess to belong to NARC or “*their mother*” party if it suits the occasion or the political expediency of the particular moment. Now, coming back to this case, the plaintiff testified that in the span of one year (2002) he changed parties three times. At the beginning of the year, he was a member of the Democratic party, later he became a member of the NAK; At the time of the elections he was a member of NARC. Now if it said that the plaintiff had defected from one to another party, would it be defamatory of him? I do not think so. In fact in Kenya defecting from one party to another could be a smart career move as was shown by the example of the plaintiff himself. As was stated in Clerk & Lindsell on Tort, 17th Edition, London, Sweet & Maxwell 1995 at page 1018 (paragraph 21-13):

“whether the statement is defamatory or not depends not, as

has been pointed out already, upon the intention of the defendant,

but upon the probabilities of the case and upon the natural tendency

of the publication having regard to the surrounding circumstances.

If the words published have a defamatory tendency it will suffice even

though the imputation is not believed by the person to whom they are published. The mere intention to vex or annoy will not make language defamatory which is not so in its own nature. Words apparently defamatory may be proved by the evidence of the circumstances to have been understood in another and innocent meaning. On the other hand, language which upon its face is not defamatory may become so when the circumstances are taken into account, for example where within two months of the plaintiff's marriage, an editor inserted in his journal a notice of birth of a child."

On the facts of this case it cannot be said that the natural and ordinary meaning of the words published was defamatory to the plaintiff.

Having found that the article could not be said to specifically refer to the plaintiff and further having found that even if the said article referred to the plaintiff, the words could not be said to be defamatory, the plaintiff's suit has to fail. The same is dismissed with costs to the defendants.

If however, the finding of this court that the plaintiff was not defamed is overturned on appeal, the quantification of damages which I would have awarded to the plaintiff is the nominal sum of Kshs 100.00. This is because the defamation complained of did not specifically refer to the plaintiff nor did it touch on the person and reputation of the plaintiff.

It is so ordered.

DATED at NAKURU this 18th day of February 2005.

L. KIMARU

JUDGE