



**REPUBLIC OF KENYA  
IN THE HIGH OF COURT  
AT NYERI**

**CIVIL CASE NUMBER 20 OF 2000**

**JEREMIAH WACHIRA ICHAURA.....1ST PLAINTIFF**

**PURITY WOTHAYA WACHIRA.....2ND PLAINTIFF**

**ELIZABETH WAMBUI WACHIRA.....3RD PLAINTIFF**

**JAMES ICHAURA WACHIRA.....4TH PLAINTIFF**

**PATRICK WAIGANJO (A minor suing through his father and next Friend**

**JEREMIAH ICHAURA) .....5TH PLAINTIFF**

**ALICE WANGUI MWANIKI.....6TH PLAINTIFF**

**SUSAN NGIMA NDUNGU.....7TH PLAINTIFF**

**ELIZABETH GATHONI NJAUGA.....8TH PLAINTIFF**

**BETH WANGARI MAINA.....9TH PLAINTIFF**

**VERSUS**

**NATION MEDIA GROUP.....DEFENDANT**

**J U D G M E N T**

The Plaintiffs in this suit are Jeremiah Wachira Ichaura (1st Plaintiff) his wife Purity Wothaya Wachira (2nd Plaintiff), his daughter Elizabeth Wambui Wachira (3rd Plaintiff), his two sons James Ichaura (4th Plaintiff) and Patrick Waiganjo Wachira (5th Plaintiff) and his 4 sisters Alice Wangui Mwaniki (6th Plaintiff), Susan Ngima (7th Plaintiff), Elizabeth Gathoni (8th Plaintiff) and Beth Wangare Maina (9th Plaintiff). They have all jointly brought this suit against the Defendant Nation Media Group Limited each seeking special and general damages arising from the negligence of the Defendant in publishing an article in the Daily Nation of 16th August 1999, alleging that the 1st Plaintiff had been shot dead by gangsters outside a Bar in Nanyuki town, an article which was false. The Plaintiffs contend that the Defendant was in breach of its duty of care to the Plaintiffs in publishing the false article having intended it to be read and relied upon by the Plaintiffs. As a result of the Defendant's breach, each of the Plaintiffs suffered nervous shock and mental anguish for which they claimed damages.

Each of the Plaintiffs testified as to their reaction when they read the false article published by the Defendant. It so happened that the 1st Plaintiff who was then the Branch Manager of Blue Shield

Insurance Nyeri Branch, had left his home in Othaya on 14th August 1999 to travel to Nairobi. He was due back on 15th August 1999, but travelled back from Nairobi on 16th August 1999 and went straight to his office. He got a rude shock as He was entering the Building where his office is when the caretaker informed him that He was supposed to be “dead”. The caretaker showed him an article on the back page of the Daily Nation of that day which reported that the 1st Plaintiff had been shot dead by thugs in Nanyuki. Each of the other Plaintiffs likewise either read or were informed of the newspaper article.

They all suffered severe nervous shock and mental anguish and had to undergo treatment. Medical reports and treatment notes were produced in evidence. The Defendant was immediately asked to correct the false information, but it was not until two days later when it corrected the report.

In its defence the Defendant admitted publishing the newspaper but maintained that it published information given to it by the police and cannot therefore be held liable. The Defendant pleaded that the Plaintiffs’ suit was frivolous vexatious and an abuse of the process of the court and therefore ought to be dismissed.

The Defendant testified through its reporter Gakuo Mathenge who was at the material time a news correspondent in Laikipia based in Nanyuki. He was on his way to a camel racing show in Nanyuki when He received information acting on which He proceeded to Makutano about a kilometer from Nanyuki Town. He found that there had been a shooting incident. He spoke to James Kobia a District Officer who was present at the scene. He also spoke to the area O.C.P.D. Mr. Nyarama. He thereafter filed a report with the Defendant wherein He identified the two victims of the shooting incident as the owner of a Bar and the Nyeri Branch Manager of Blue Shield Insurance Company. He maintained that He relied on information from Mr. Kobia and Mr. Nyarama which information He had no reason to doubt since Mr. Kobia was Chairman of the Security Committee in the area, and Nyarama the O.C.P.D. He did not therefore verify his information before forwarding the report for publication.

After the 1st Plaintiff complained, He checked the information and confirmed that the Manager who was shot was the Branch Manager of Pioneer Insurance Company and not Blue Shield Insurance. A correction and an apology to the 1st Plaintiff was subsequently published.

Written submissions were exchanged by the parties advocate and duly filed in court. For the Plaintiffs it was submitted that the defendant was in breach of a duty of care owed to the Plaintiffs in publishing the inaccurate report. For the 1st Plaintiff it was submitted that a sum of Kshs.3 million should be awarded as damages whilst to each of the other Plaintiffs various amounts ranging between Kshs.250,000/- and 2 million were proposed. Counsel for the Plaintiffs relied on English authorities reported in Kemp & Kemp, volume 4 on quantum of damages where awards ranging between the equivalent of Kshs.118,400/- to Kshs.407,000/- were awarded.

For the Defendant it was submitted that the publication was based on facts obtained during the briefing by the Nanyuki O.C.P.D. and the District Officer and therefore constituted accurate reporting. It was further submitted that the Plaintiffs action being based on negligence was not actionable per se and damages had therefore to be proved.

As regards the 2nd to 9th Plaintiffs it was submitted that no duty was owed to them by the Defendant, and that in any case the injuries alleged to have been suffered by them was too remote and their action must fail.

As regards the 1st Plaintiff it was submitted that He had only pleaded negligence and not malicious falsehood or libel and that in any case He did not suffer any substantial damage and it was submitted that a sum of Kshs.10,000/- would be adequate compensation to him.

The gist of the Plaintiffs’ claim against the Defendant is contained in paragraphs 12, 13, 14 and 15 of the plaint which states as follows:-

**12. “On or about 16th August, 1999 the Defendant published in the Daily Nation an**

**article detailing that the 1st Plaintiff had been shot dead by gangsters outside a bar in Nanyuki town in the Republic of Kenya which article was false.**

**13. At the time of publishing the said article, the Defendant intended and it very well knew or ought to have known that the article would be read by the Plaintiffs and that the Plaintiffs would rely on the said article.”**

**14. In the premises, the Defendant was under a duty to take care in the publishing of the said article.**

**15. In breach of the said duty, the Defendant is guilty of negligence in publishing the said article.”**

It is apparent from the above that the Plaintiffs’ suit was based on the tort of negligence and not the tort of defamation or malicious falsehood, or injuries falsehood.

The Plaintiffs had therefore to prove the 3 essential elements in the tort of negligence i.e.

- **That there was a duty of care owed to each of them by the Defendant.**
- **That there was breach of that duty of care.**
- **That as a result of the breach of the duty owed to each of the Plaintiffs, there was damage suffered by each of the Plaintiffs.**

The Defendant was in the business of publishing newspapers. No doubt it was under a general duty to all its readers to take reasonable care in ensuring that the information published in its newspaper was accurate. The Defendant’s witness maintained that He did not verify his information because He received it from the District Officer who was the Chairman of the area security committee and that He also talked to the area O.C.P.D. and therefore believed that the information was true. The Defendant did not however call the District Officer or the O.C.P.D. to testify. There was therefore only the word of the reporter as to the source of his information and the circumstances in which the information was given. This was not good enough as it was not sufficient to prove that the report published was exactly as per the information given. The Defendant has not shown that it took all reasonable steps to verify the truth of the information before publishing it. It is evident that the information published was false as it reflected that the Branch Manager of Blue Shield Insurance Company Nyeri had been shot dead in Nanyuki. Even though the report did not name the 1st Plaintiff. There was only one Branch Manager in Nyeri in that Company and it happened to be the Plaintiff who was not in Nanyuki and had in fact not been shot. The report published was therefore untrue.

Given that the Plaintiff’s report concerned the death of someone, the Defendant had a duty to ensure that this report was true as the report was not just likely to affect the ‘deceased’ person but even persons closely related to him. The duty of care was therefore not just owed to the 1st Plaintiff to whom the report related but also to other readers including the 1st Plaintiff’s family who were likely to be affected by the report. I find that the Defendant was in breach of this duty of care.

Each of the Plaintiffs adduced evidence showing that they suffered severe nervous shock and had to seek medical attention. Except for the 1st Plaintiff treatment notes and medical reports were produced in respect of the other Plaintiffs.

The question is whether the injury was caused by the Defendants conduct and whether the Defendant is liable. No local authority was cited to me and I have not on my own accord been able to identify any. Of persuasive value however, is the English case of **Mcloughlin v/s O’brian & another [1982] 2 All E R 298**. In which the Plaintiff’s husband and 3 children were involved in a road accident caused by the negligence of the defendant. She was informed of the accident and was taken to the hospital where she saw the injured members of her family, consequent to which she suffered severe and persistent nervous

shock. The House of Lords held that:-

**“The test of liability for damages for nervous shock was reasonable foreseeability of the Plaintiff being injured by nervous shock as a result of the defendant’s negligence. Applying that test, the Plaintiff was entitled to recover damages from the defendant because even though the Plaintiff was not at or near the scene of the accident at the time or shortly afterwards, the nervous shock suffered by her was a reasonably foreseeable consequence of the defendant’s negligence.”**

In the present case, it was foreseeable that the 1st Plaintiff and his immediate family were likely to read or be informed of the report published by the Defendant and that due to the nature of the report they were likely to have some severe nervous reaction to the news. Although in the African context family is much wider than the nuclear family, and some of the extended family members were also likely to be affected depending on the relationship that they may have had with the deceased, however an injury arising from such a relationship cannot be said to have been reasonably foreseeable. The Defendant cannot therefore be held liable in respect of any injury to the extended family. The 6th to 9th Plaintiffs were part of the 1st Plaintiff’s extended family. I would accordingly disallow the claim in respect of the 6th to 9th Plaintiff as being too remote.

As regards the 1st to 5th Plaintiffs they had the burden of proving that they did actually suffer the damage complained of, and that the damage was caused by the Defendant’s breach of duty of care. Although the 1st Plaintiff did not produce any medical reports or treatment note, it is obvious that He must have suffered psychological shock and nervous reaction upon learning of his own death from the caretaker and the Defendant’s publication. There is however no justification for the amount of Kshs.3 million claimed as damages. Indeed it appears to have been influenced by a misconception that the 1st Plaintiff’s claim included an element of damage to his reputation which claim could only have been entertained in a claim for defamation. In my considered view a sum of Kshs.100,000/- would be adequate compensation to him for the shock and mental anguish suffered by him.

As concerns the 2nd Plaintiff being wife of the 1st Plaintiff, it is understandable that she would have suffered shock from the misleading information published by the Defendant. The medical report however shows that her condition was not very serious as she stabilized upon medication. I would award her a sum of Kshs.50,000/= as general damages.

As concerns the 3rd, 4th and 5th Plaintiffs who were all children of the 1st Plaintiff each appears to have suffered a certain degree of shock upon learning or reading of the article and I would award each Kshs.30,000/- as general damages. I would allow the special damages of Kshs.4,000/- in respect of the medical reports for 2nd, 3rd , 4th and 5th Plaintiffs.

The upshot of the above is that I give judgment in favour of the 1st to 5th Plaintiffs as against the Defendant and award special damages of Kshs.4,000/- and general damages as follows :-

1st Plaintiff Kshs.100,000/-

2nd Plaintiff Kshs. 50,000/- 3rd Plaintiff Kshs. 30,000/-

4th Plaintiff Kshs 30,000/-

5th Plaintiff Kshs. 30,000/-

The 1st to 5th Plaintiffs shall further have costs of the suit and interest from the date of this judgment.

The suit in respect of 4th to 9th Plaintiff is dismissed.

**Dated, signed and delivered this 21st day of April 2005.**

**H. M. OKWENGU**

**JUDGE**