REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Case 102 of 2000

DANIEL MUSINGA t/a

MUSINGA & CO. ADVOCATES .....PLAINTIFF

VERSUS

NATION NEWSPAPERS LTD. .....DEFENDANT

J U D G M E N T

On 25th February 2000 the plaintiff then practicing as Musinga & Co. Advocates filed this suit against the Defendant. He was described a leading senior partner in the said firm. It has to be said that after full trial of this suit the Plaintiff was appointed to the constitutional office of a Judge of the High Court of Kenya and he is discharging the duties of such officer presently.

On or about 30/8/1999 the defendant wrote and published at page 7 column titled "The cutting edge" "Watchman" words quoted thus "Alexander Dindi was hit by a car in February 1992 and died of his injuries in August that year. His family's claim for damages was met by the driver's insurers who released the money through the car owner solicitors Musinga & Co. of Mombasa. that is where the money seems to have stayed.

In 1993, these solicitors offered 18% of the money offered by the insurers to the widow and although in desperation, she signed for it even this amount has not been received says Adalla".

The Plaintiff states that the defendant falsely and maliciously wrote and published of and concerning the plaintiff those words. And that in the natural and ordinary meaning the defendant meant and was understood to mean

a) that the plaintiff is dishonest in dealing with his clients.

b) That the Plaintiff was a shameless brute who could squander accident victim's money awarded as compensation.

c) That the plaintiff is untrustworthy.

d) That the plaintiff was guilty of professional misconduct and is criminally liable.

e) That the plaintiff is no keeper of professional ethics or descent in the legal practice as decent providers of legal services should be.

The plaintiff therefore pleads that he has been greatly injured in his credit and reputation and in the way

of his said profession, has been brought into public scandal odium and contempt and consequently demands damages.

The plaintiff sought an apology and gave notice of intention to sue the defendant but the defendant failed to respond. However, the plaintiff being eager to exonerate himself and his firm in the eyes of public, did on 31/8/99 the day after the publication the plaintiff write to the defendant a letter (exhibit 2) in which he made clarification that his firm was handling the case of Joyce Dindi the Plaintiff in High Court Civil Suit 596 of 1995.

That the defendant was insured by Geminia Insurance whose advocate was Ramesh Manek both of Nairobi. (These are Advocates of the owner of Motor vehicle). That a settlement was agreed upon and a payment voucher was signed by the claimant on 20/8/1998.

There were delays and by the date of publication of words complained of no money had been paid to plaintiff. “You should have called us to verify the correct position before you proceed to publish such defamatory material. We request you to publish in the same “Watchman column the true facts” demanded the plaintiff.

The Plaintiff being very disturbed by the matter wrote the statement he wished to be published by defendant by way of clarification and apology but the plaintiff was shocked when the defendant through its employee Njuguna rejected to publish the statement saying that it was for the editor of watchman to take such a decision.

Mr. Musinga decided to purchase advertiser’s space for Shs.22,856/25 to place the statement. The receipt is exhibited. Much later on 8/9/1999 the Defendant published an article purporting to set the facts right. See exhibit 5.

This is not an apology but a repeat of the libel. The defendant refused to offer an apology.

In his defence the defendant denied having knowledge of the extent of the plaintiff’s firm of advocates. The defendant admitted having published the words complained of but denied that the same were false, malicious or negligently published, alleging that words published were merely an inquiry as to payment of money which was answered by plaintiff himself in a paid up advertisement and that the defendant did on 8/9/99 publish the clarification in a more prominent position.

The defendant denies the meanings attached to the words – para 5 (a) to (e) above written Defendant maintains that the publication was innocent and completely without malice and that an offer of amends as required by Section 13 of Defamation Act was made which was accepted.

Consequently they pleaded the plaintiff case is barred under section 13 (1) (a). The defendant states that the words complained of are fair comments on a matter of public interest made in good faith without malice in good faith without negligence the particulars are given. There was a simple explanation given by plaintiff and was published.

On the issue of plaintiffs publication for which he paid Shs.22856.25 the defendant says it was not necessary as it was out of plaintiff’s own initiative and the costs should not be awarded. On the whole the defendant asks for the suit to be dismissed.

Both parties have submitted several authorities in support of their respective side of the story,

Firstly, an examination of defamation Act Cap 36 Laws of Kenya Section 13 & 13 (1)

(a) this deals with unintentional defamation. The defendant may make an offer for amends under the Section and in any such case if offer is accepted by plaintiff and is duly performed no proceedings for libel or slander shall be taken or continued by the plaintiff ...”

Section 13(1) (b) if offer not accepted, defendant has to prove that the words were published innocently and that the offer was made as soon as practicable after defendant received notice that they were or might be defamatory of the plaintiff and that the offer has not been withdraw.

Section 13 (2) an offer of amends under this section must be expressed to be made for the purpose of this section and must be accompanied by Affidavit made by defendant specifying the facts relied upon by him to show that the words in question were published by him innocently in relation to the plaintiff.

Upon perusing this record, I do not find that there was any offer of amends as required under section 13 (1). At the request of the Plaintiff the defendant rejected to publish clarification and the plaintiff had to purchase space to do so. On 8/9/99 there was no apology offered but a publication repeating aggravating the situation.

Section 13(3) sets out what is understood to be an offer of amends namely to publish or join in publication of a suitable correction of the words complained of and a sufficient apology to the plaintiff in respect of these words. Here the defendant said "we are happy to put the record right". This is not sufficient apology and where copies of a document or record containing such words have been distributed defendant to take steps on his part for notifying persons to whom copies have been distributed that the words are alleged to be defamatory. No evidence that such actions were taken by defendant. On the defence of fair comment Section 15 of the Act (Cap 36) provides "In respect of words consisting of partly allegation of facts and partly of expression of opinion a defence of fair comment shall not fail because the truth of every charge is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. This defence is not available therefore there was no truth in what was published.

The defendant has cited the Halisbury Laws of England Volume 24 on "Libel and Slander". Page 21 para. 42 states "statement imputting fraud or dishonesty". It is beyond question defamatory to charge another with fraudulent dishonest or dishonourable conduct or motives!! The whole of the article here was couched in such a way as to show the plaintiff as a dishonest person as a lawyer.

In his submission Mr. Mungatana stated citing "Winfred & Jalowicz on torts 12 Ed" the plaintiff must prove:

(1) The words must be defamatory of him

(2) The words must refer to him

(3) The words must be maliciously published

In this case the plaintiff has been depicted as a person who was holding money belonging to a complainant (his client). That the Plaintiff received that money – "that is where the money seems to have stayed".

Further to show the money was not released to the plaintiff – "the plaintiff offered 18% for the complainant" implied that the plaintiff retained 82% a large potion of damages and kept it for himself. The repetition in the article of the words widow and family was intended to create the impression that the plaintiff has no heart, he is merciless, even to the unfortunate members of society. The words "although in desperation she signed for it this money has not been received" are defamatory.

Secondly the words refer to the plaintiff. There is no other firm of lawyers except the plaintiffs specifically mentioned. The defendant tried to play with words "Solicitors". It is common knowledge that the legal practitioners in the country are know as advocates not solicitors.

On the third principle showing malice on the part of the Defendant the Counsel drew the attention of court to Winfred at page 352. "Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts, that may lead to an inference of Malice but the law

does not weigh in a hair balance and it does not follow merely because the words are excessive, there is therefore malice.

"Malice may also be inferred from the relations between the parties before or after publication or in the conduct of the defendant in the course of the proceedings". The man in the street has a very clear impression of what is happening that the defendant were not willing to publish any clarification for 8 days and that there was no need to clarify as defendant intended to stick to their story, he submitted. The evidence is that on 31/8/99 the Plaintiff wrote to defendant explaining everything, he visited the Mombasa Bureau Chief who was unwilling to act and directed the plaintiff to the Editor in Nairobi. Defendant refused to publish the explanation but suggested a paid advertisement would be published much faster and the plaintiff had to pay shs.22,856/25 for the advertisement.

Malice can be found in the publication itself. The language used in utterly beyond the facts. Any ordinary man would look for impressions here created that the plaintiff did not conduct himself professionally. The facts here were that:

- The money had not been released to the plaintiff

- Delay was caused by the complainants

- Lack of ID cards.

There was prompt payment when it was received. These facts are completely opposite of the words complained of and malice can be inferred. The defendant took information from complainants who were not well informed about civil litigation and who obviously had no idea what were the correct facts about the case. It was for the defendants to verify the facts from the plaintiff directly before rushing to the press. This they did not. The plaintiff in evidence said that previously when he handled news worthy cases the newspaper always consulted him before publication but in this case they seemed to be in a hurry. Defendant's witness stated on oath that he knew the plaintiff but he did not check with him on this story. The courts have said that failure to enquire is on its own malice see the case of **Godwin Wachira V. Okoth [1977] KLR, 24**

"failure to inquire into the true facts ..... is a fact from which inference of malice may properly be drawn".

Also the case **J.P. Machira vs. Wangethi Mwangi and Nation Newspapers HCC at Nairobi 1709/1996 at page 14. "**

Any evidence which shows that the defendant knows the statement was false or did not care whether it be true or false will be evidence of malice. Here there was carelessness as to whether the story was true or false. The defendant admitted that the letter that originated the complaint was destroyed. This is unbelievable as the complaint was laid so soon after publication such that the defendant was warned of the need to keep the document safely in case of suit. The defendant kept this vital evidence from the court.

The defendant puts forward a defence of public interest and fair comment. The evidence offered shows that this was a matter of client and advocate. The readers of the Nation Newspaper had no interest in the matter.

The defence of fair comment is available if facts are true and the matter is of public interest and the opinion is honestly held. In the present case the facts are not correct. The first witness for the defence David Njuguna testified that at the relevant time he was working for defendant in Mombasa region and among his duties were news gathering. He stated that in August 1999 he received information from one Adalla in form of a letter explaining how the family of Mr. Adalla were trying to understand the circumstances of delay in the payment of compensation to the family for their father's death was delayed. At the trial this important document was not produced the witness saying that the same was destroyed.

This is strange considering the complaints of this publication arose immediately after the publication.

Prudence would dictate the preservation of the document. All the same the letter was summarized and dispatched to Nairobi Headquarters for publication by a reporter of Defendant. It is to be noted here that the defendants agents never met the Mr. Adalla personally. It is clear then the words published "Alexander Dindi was hit by a car in February 1992 and died of his injuries in August that year. His family's claim for damages was met by the drivers insurers who released the money through the owner's solicitors Musinga & Co. of Mombasa" were written by the reporter.

Looking at the above it will be seen that "the money was released to owners solicitors" (In this country Lawyers are referred to as advocates not solicitors) were written by the defendants agent.

The plaintiff was not acting for the owners of the motor vehicle.

"Alas, reports Frederick Adalla son of the crash victim, that is where the money seems to have stayed". These words were written by agent of the defendant.

This clearly informs the public that the money was held by the plaintiff who was delaying payment. "In 1993 these solicitors offered 18 per cent of the money offered by insurers to the widow and "although in desperation she signed for it even this amount has not been received, says Adalla" written by Defendant's agents.

Then "there must be a simple and innocent explanation but what can it be?" these words were written by the Defendant.

This is not a newsworthy item. It was a private matter. The witness did not contact Mr. Musinga to verify the facts before sending the summary off to publication although he testified that they had a file on lawyers and they always contacted the lawyers for clarification. And he knew the plaintiff.

It is clear here that the defendant went out to deliberately defame the plaintiff in his professional capacity. The publication went out to expose the plaintiff as a dishonest lawyer in dealing with his clients, that he was a lawyer who could keep accidents victim's money from his client and he was untrustworthy. Worse still is that the plaintiff had committed professional misconduct and criminal offences. The conduct of the defendant after receiving complaint from the plaintiff goes along way to displace the defence of Malice.

The defendant did not apologize as his witness (DW1) testified and confirmed. Immediately on publication the plaintiff personally visited the offices of the defendant requesting for immediate publication of an apology. The defendant rejected his proposals and advised him to put up a paid advertisement of his explanation or clarification which the plaintiff did at the cost of shs.22,856.25. The defendant did not care that the effect of the defamation of such magnitude should be reduced immediately.

In the case of Wachira vs. Okoth above referred to on the facts the judge said "The tone of the publication is not that of an honest critic. The author published the article complained of without belief that it was just or true or with reckless indifference as to whether it was just or unjust". That court was dealing with libel published after a conviction of the plaintiff and before the outcome of the appeal which was successful resulting in the plaintiff's conviction being quashed. The defendant in that case did not care to check the court records to see that there was a appeal against the conviction and did not consider that the appeal might be successful.

In the case of John Patrick Machira vs. Wagethi Muregi & Nation Newspapers Ltd. HCC No. 1709 of 1996 the court was dealing with the case of defamation of an advocate. The court said that aggravated damages will be ordered against a defendant who acts out of improper motive for example where defendant insists on a flimsy defence. In this case the defendant pleaded flimsy and untrue defenses. In the judgment of Court of Appeal Civil Appeal No. 179/1997 J.P. Macharia v. Wangethi Muregi and

Nation Newspapers the court discussed at great length what amounted to a flimsy defence as defence which though a sufficient traverse to the allegations made in the plaint those defences could not possibly be sustained on the material placed before the court. See judgment of Omollo J.A. page 10. “For my part I have no hesitation whatsoever in agreeing with the appellant that even if the denials set up by the respondents where to be held to be a sufficient traverse of the allegations in the plaint the denials could not possibly be sustained were a trial on merits to be held ..... Surely it cannot require any evidence to prove that a lawyer would be hurt in his profession if it is alleged against him that he is being assaulted by his client over money”. The learned judge further said “Malice, as I have said can be inferred from a deliberate or reckless or even negligently ignoring of facts”.

Also cited before this court is **HCC No. 1876/1999 F.M. Ngulli V. Nation Newspapers and Printers Ltd**. where the facts were almost the same with the present case.

It is published that the advocate had not paid the client. The advocate had received money from the insurance company ending with a query “where is my money?”

The Nation did not publish an apology. The court found the defence having no merits and struck off the defence leaving the plaintiff free to assess the damages.

The learned judge found that “even though the legal profession has received notoriety, each and every case has its own facts and circumstances .... the reader and the nation had no reciprocity as no money has past and an unfortunate case should not be used to attack integrity of a member of profession” Said the Judge Kaplana Rawal.

In support of its defence the defendant cited Halsbury Laws of England Volume 24 on Libel and Slander Section 3 deals with Qualified privilege available under provisions of Section 7 of Defamation Act (Cap 36) Laws of Kenya, on grounds of public policy or the general welfare of society to persons who acting in good faith and without any malice or improper motive make statements about another which are in fact untrue and defamatory Paragraph 98 thereof – “the burden of proof of privilege and malice is on the defendant to prove the facts and circumstances which establish that the occasion was privileged”. In the present case the facts before the court show that the occasion was a private matter between advocate and client and not of public concern. The money claimed by the client had not been received by the advocate a fact the defendant would have verified by checking on the advocate. I have enumerated above the instances of malice in this case and I find the defence is not available to the defendant.

The old English case of the **Capital & Countries Bank Ltd. V George H. and Another H.L. 1882 Vol.VII, 741**. this case deals with the evidence of defamatory meaning. If in its primary meaning the publication is not libellous the plaintiff must give evidence of libellous meaning. In this present case the publication is clearly defamatory of the advocate/plaintiff to any ordinary person in the streets. It would be unjust to say that the words are harmless in themselves.

The defendant has also referred to:

Sad grove V. Hole [1901] KBD(CA) 1 in which case it was proved that the libellous matter was not shown as referring to the plaintiff.

This case is distinguishable in that the defendants here published the name of the plaintiff for all to see. That they referred to the firm as solicitors instead of the usual practice of referring to legal practitioners does not make any difference. I have already referred to the use of this expression elsewhere in this judgment.

Before proceeding further counsel for the defendant submitted that malice was not pleaded as required under Order 6A (3). The Plaintiff did not file a reply giving particulars of the facts from which malice is to be inferred. He pointed out para 7 & 8 of defence and asked the case to be dismissed. He also pointed out that the publishers of the Newspaper Nation is published by Nation Media Group Ltd. and not Nation

Newspapers Ltd. which was said not to exist any more. It is to be noted that this issue is not raised in defence. Indeed the defendant admits in the defence to being a party to the suit. In the Gazette Notice No. 280 2 dated 24//5/1999 the relevant Minister permitted the reorganization and consolidation of Nation Newspapers Ltd Nation Media Group and other two companies to operate as one corporate body. Submissions made by defendant's counsel in this respect are therefore unsustainable.

On the submission that the plaintiff failed to plead in reply malice and particulars thereof as under order 6 rule 6A(3) Civil procedure Rules, there is the case of **Odd jobs vs. Lubia** a Court of Appeal decision **Civil Appeal No. 49/1969 [1970] EA 476** which the plaintiff relies on for the proposition that:

> "a court may base its decision on unpleaded issue if it appears from the course followed at the trial that the issue was left to the court for decision".

In that case the court had taken evidence of unpleaded facts on which the court based its judgment. In the present case the plaintiff had pleaded malice in the plaint. The defence pleaded innocent publication without malice against the plaintiff. The defendants in the same breath alleged offer of amends as required under section 13 Defamation Act which was accepted. I have already said that no such offer was made or accepted and therefore this statement of defence is false. Evidence to this effect was given by the plaintiff. The defendant did not support its statement by evidence. Therefore before court was an untrue defence to the knowledge of the defendant and same cannot be sustained. It is a flimsy defence. The view of the court of Appeal above applies.

Again it does not lie in the mouth of the defendant to submit that there were numerous other complaints arising of similar issues, Justice K. Rawal said that such argument is not tenable each case has to be considered on its own.

It is to be noted also that in paragraph 3 of the statement of defence the defendant admits "words complained of amounted to a mere inquiry as to non receipt of money" the defendant concludes "that there the money seems to have stayed". Thes e are particulars of malice. In the "offices of Musinga & Co. Solicitors" why did the defendants not check with the plaintiff? This is evidence of malice. This is also evidence that the defendant did know very well that the matter was not of public concern but between complainant and his advocate. And it does not matte whether the plaintiff was acting for the "Owners" or the complainants, "money stayed with the plaintiff" they said.

There are some words added at the bottom of this article after an underline and spacing stating "There must be a simple and innocent explanation but what can it be" These words are together with another article following. The defendant has tried to show that this is part of the article and it clears any malice in the whole story. An observation of how the column is laid out clearly shows that any reader would see the Dindi story ending at "even this amount has not been received says Adalla"

Defendants argument therefore does not assist.

I have considered the above stated and the evidence on both sides. I am convinced and I hold that the publication complained of was libellous of the plaintiff and that the defendant was actuated by malice express and implied. The plaintiff was portrayed as an dishonest and untrustworthy advocate who was holding money of poor people. Hon. R S C Omollo JA in the appeal of J.P. Machira referred to above said "Surely, it cannot require any evidence to prove that a lawyer would be hurt in his profession if it is alleged against him that he is being assaulted by his client over money" I would say the same in the present case. It was alleged that the complainant was complaining over the nonpayment of her money which was with the plaintiff. The defendant has submitted that what it intended to portray was not defamatory of the plaintiff however what matters is what was portrayed to the public.

On the issue of damages, I have to consider the weight of the injury the plaintiff has suffered. The plaintiff testified that he commenced law practice in the year 1988 and set up his law firm in 1991. By 1999 August he had employed three advocates in his firm. He had acquired a wide range of clientele from Mombasa, Malindi and other areas in the country. His firm was acting for several banks, Insurance

companies and other bodies for example KCB, Kenya Savings and Loan, Kenya commercial Finance, Co-operative Bank, NIC Bank, Giro Bank, Standard Bank, UAE Provisional Insurance, Stallion Insurance, United Insurance and Apollo Insurance and individual clients.

The plaintiff testified that he was also in place of leadership of:-

- He was in Management Committee of Mombasa Parents Association

- He was a Deacon in Church – Mombasa Pentecostal Church

- Chairman of a Christian Lawyers Fellowship

- Secretary General of Full Gospel Business International

- Board member of a Secondary School up-country

- He was married to a lady lawyer and had 2 children

The publication was embarrassing to him both in his personal capacity and professionally. The defendant's publication is wide, on daily basis their publications are read by about 3.7 million persons. The Defendant has a website since 1997, highly visited and popular website both within and outside the country. The column "Watchman" is very popular. Many people want to know daily what "watchman" has to say. All this was in the testimony of DW1, Mr. David Njuguna. The evidence portrays the defendant publication "Daily Nation" as a widely circulated newspaper with readership worldwide. The court does not have any reason to doubt the defendants witness.

The principles governing the awarding of damages in libel cases are compensation to the plaintiff for injury to his reputation and the hurt to his feelings. In the case of **John V. M.G.N. Ltd [1996] 2 All ER 35** the Court of Appeal of England said "The successful Plaintiff in a defamation action is entitled to recover, as general compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for damage to his reputation, vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused" a passage quoted in the case of **Biwott Vs. Dr. Ian West & Another HCC 1067 of 1999**

The court has to look at the whole conduct of the parties before, action, after action and in compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputations vindicate his good name, and take account of the distress, hurt humiliation which defamatory publication has caused.

The award must cover injured feelings, the anxiety and uncertainty, undergone during court trial. Malicious and insulting conduct on the part of defendant will aggravate the damages to be awarded to compensate the plaintiff for the additional injury going beyond that which would have flowed from the words alone. In the present case the defendant refused to apologize immediately at the request of the plaintiff and caused the plaintiff to purchase advertiser's space to clarify the matter which plaintiff did at a cost of shs.22,856.25. The so called "clarification by the defendant" was published 8 days after the libel and it was not an apology really. The defendant insisted in pursuing defences which were not true and flimsy for instance defendant never complied with section 13 of defamation Act as the defence alleged. Also it is clear the defendant was actuated by malice express and implied. It is noteworthy that in publication complained of no other advocate was mentioned, the owner of motor vehicle was not mentioned, the insurance company was not named nor was their advocate. The whole publication was edited to portray the plaintiff as a dishonest lawyer. Again the defendants evidence was that at this time there were many complaints of members of public against their advocates regarding issues of non-payment of client money. Defendant was therefore acting on improper motives taking up the complainant's inquiry to the public knowing very well that the publication would hurt the plaintiff. The defendant behaved in a high handed malicious manner. These are all factors in this case that aggravate the injury and the court is entitled to go "to the top of the bracket award the largest sum that could fairly be

regarded as fair compensation”

In his submissions counsel for plaintiff proposed an award of Shs.25,000,000/- in line with the awards made by our courts on defamation of this nature. He pointed out the comments made by Visram J in the case of K.N. K. Biwott HCC No. 1067 of 1999 that the Kenyan Courts awards in defamation case are manifestly and inordinately low. In that case the learned judge made an award in the sum of 25 million. Counsel also pointed out the case of **Charles Kariuki t/a Charles Kariuki & Co. Advocates HCC No. 5 of 2000 at Meru High Court** where the award was Shs.20 Million (the counsel for defendant informed the court his judgment was under appeal).

On the question of quantum the defendant counsel submitted that as in the case of J.P. Machira above cited “There is no set formula in assessment of damages”. He invited the court to consider the assessment of damages in cases of personal injuries where awards are rarely in excess of Shs.1.5 million and proposed in this case an award if any of shillings 1.5 million only.

I do not accept this line of submissions. The only similarity is that in both cases damages are at large. Upon considering the range of awards hitherto made by the courts in this country which have been cited to me and the economic circumstances, I am convinced that an award of shillings ten million (10,000,000/-) is a reasonable compensation to the plaintiff for injuries suffered.

Judgment is entered against the defendant in the said sum together with interests at court rates from date of judgment.

Judgment is also entered for plaintiff in the sum of Shs.22,856.25 being a refund of the amount of money the defendants caused the plaintiff to spend in making a clarification which the defendant should have made at its expense.

The plaintiff was entitled to free apology immediately but the defendant declined to publish the same. The defendant was making business at the expense of the plaintiff.

The costs of this suit are awarded to the plaintiff.

Delivered and dated at Mombasa this 6th day of May 2005.

J. KHAMNIWA

J U D G E

6/5/05

Khaminwa ,J

Winnie – court clerk

Mr. Munyithia

Mr. Munyithia:

This matter was filed by Mr. Musinga when he was in private practice. He is no longer practicing but a Judge in Nakuru.

Mr. Mungatana & co. Advocates appear for plaintiff

Ndegwa for Defendant now in Court.

Judgement read.

KHAMINWA, J

Mr. Ndegwa:

1. I ask for certified copies of proceedings and judgment for appeal purposes.

2. I apply for temporary stay of execution under order 41 (4) (5) pending making a formal application for stay pending appeal I require 21 days.

Ms. Kayatta:

No objection to temporary stay as prayed.

Court:

Let the certified copies of proceedings and judgment be supplied upon payment of copying charges.

Temporary stay is hereby granted for a period of 21 days from today to enable the defendant to file a formal application for stay pending appeal.

KHAMINWA, J