

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 578 of 2002

GITHU MUIGAI PLAINTIFF

VERSUS

BEDAN MBUGUA, & ANOTHERDEFENDANTS

RULING

By his application of the 7.10.2002 the Applicant applies under O VI Rule 13(1)(b) of the Civil Procedure Rules to strike out the defence filed herein and that judgment be entered in favour of the Plaintiff

The application is based on the ground that the defence is scandalous, frivolous and vexatious.

The plaint alleges that the Applicant was defamed in an article printed in the People on Sunday by its editor and publisher.

The defence filed admits that the article was published and referred to the plaintiff. It alleges that the words written were fair comment on a matter of public interest. In the alternative it was alleged the words were published on an occasion of qualified privilege in respect of which particulars were set out.

The Defendants denied malice and that the words printed were not capable of bearing the meanings ascribed to them. It was also denied that the words defamed the Plaintiff in his character, credit and reputation.

The Applicant submitted that there were no particulars of fair comment as required by O 6 rule 6(a) (2).

The Respondent was required by the rule to give these particulars. However, he has not as yet done so although it appears that the pleadings are not yet closed. I say that because a request for particulars was made in respect of the matters raised in paragraph 5A of the defence, which have not as yet been delivered nor has a reply to defence been filed.

The absence of particulars of fair comment cannot disentitle the Respondent to rely on the defence. Under O 6 rule 8(2) the court may order a party to serve on or any other party particulars of any claim, defence or other matter stated in their pleadings on such terms as may be just. The plaintiff is entitled to apply for such particulars by an order of the court.

In a similar application in the case of ***George Joshua Okungu vs Tom Mshindi and The Standard Ltd. HCCC.348 of 2005*** I made the following comments:-

“The applicant referred to the case of J.P Machira t/a Machira & Co. v Wangethi Mwangi & another. C.A No. 179 of 1997. I have read the judgment in that case and nowhere do I see that the learned Judges of Appeal held that the defences of privilege and fair comment do not exist. The decision was made on the special facts in that case and do not in my view lay down any special principle of law with regard to privilege fair comment and the question of malice”.

I am of the view that the defence filed shows a reasonable cause of defence and as such dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 11th day of October, 2005.

P.J RANSLEY

JUDGE