



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Civil Suit 2523 of 1998

MOSES K. NAILOLE PLAINTIFF

VERSUS

METEINE OLE KILELU & 19 OTHERS DEFENDANTS

JUDGMENT

By a Plaintiff filed in this Court on 16th November, 1998 the Plaintiff claimed general and exemplary damages for defamation of character, arising out of a libel published against him by the defendants.

At the material time, the Plaintiff was a civil servant, then serving as the Clerk to Kajiado Town Council. He complains that the 20 named defendants published to the Permanent Secretary, Ministry of Local Government, the District Commissioner, Kajiado and the Provincial Local Government Officer a letter dated 26th August as follows:

*“We would like to bring to your notice Sir, the problems and interferences which are caused by the above named who happen to be under you:-**(sic)**”*

(1) He is totally against the leadership of the area (location) this include Area chief, area councillor, K. A. N. U. Chairman, group ranch chairman, etc.

*(2) As the school patron of Olobelibel primary school has always engineered the early marriages of some school girls. (3) The security of this location is at risk as on every weekend he ferries a group of young men who goes on abusing people wherever they go. **(sic)***

*(4) The Provincial Administration are having difficulty in carrying their duties because he is dividing people e.g. on 21st July 1998 he retained some people at Olobelibel while they were to attend a D.O.’s baraza at Piliwa**(sic)**.*

(5) He is a barrier to development in that in 1992 he wanted to block the A.

S. A. L. assisted project on dams construction, currently he is interfering with the ASAL assisted project on land use. The project of Neighbours Initiative Alliances (NIA) could not start because of his interference.

(6) On 26th November, 1995 he retained some people and bought beer at his home to keep them from attending a nearby harambee where the area M.P. was the chief Guest of Honour.

(7) He is interfering with the women groups affair and at many times he is dividing them.

(8) Most of the civil servants who comes from this location are facing risk at work as this man uses is office to backbite them to their bosses (sic).

(9) This man seems to have a lot of free time despite being a civil servant of which he uses to distablise the unity of the location.

(10) Sir a lot of money has been poured into this location of which we question the sources. Sir, if this matter is not looked into seriously, we fear more worst things to follows.”

The Plaintiff states that the aforesaid words and statements in their natural and ordinary meaning and in the full context in which they were written and published by the defendants meant and were understood to mean, inter alia, that:

“(a) The Plaintiff is a person of corrupt nature and character.

(b) The Plaintiff has no respect for authority.

(c) The Plaintiff has no respect for government officials.

(d) The Plaintiff does not perform his duties as The Clerk, Kajiado Town Council. (e) The Plaintiff instead of performing his lawful duties as The Clerk, Kajiado Town Council spends public time interfering with the working of government and other public officials.

(f) The Plaintiff through his immoral character has been diving people along unstated lines.

(g) The Plaintiff is a believer of the unacceptable practice of marrying young girls to undeserving men of less than acceptable conduct.

(h) The Plaintiff is a security threat to the people of Kenya and should be charged with a criminal offence.

(i) The Plaintiff illegally detains members of the public and refuses them to attend public functions against their will.

(j) The Plaintiff has illegally interfered with named social projects.

(k) The Plaintiff instead of carrying out his lawful duties spends his time drinking alcoholic beverages and uses his wealth to buy the same to members of the public to induce them not to attend social functions.

(l) The Plaintiff has illegal political ambitions.

(m) The Plaintiff has illegally caused other public officials to wrongly lose their jobs.

(n) The Plaintiff has acquired wealth wrongfully, illegally and through corrupt means.

(o) The Plaintiff has used illegal wealth to threaten others and the security of the nation.

(p) The Plaintiff should be charged with criminal offences under The Prevention of Corruption Act.

(q) The Plaintiff should consequently be sacked from his office and should not hold any public office in Kenya.”

There were two witnesses who testified on behalf of the Plaintiff – the Plaintiff himself and Mr Joseph Naikuni, a teacher in Kajiado. None of the defendants testified. So, the only evidence available to this Court, is that of the Plaintiff. In his testimony before this Court, the Plaintiff said that at the material time in 1998 he was the Town Clerk of the Kajiado Town Council, earning a salary of Kshs.18,000/= per month. By then he had been with the civil service for 29 years. He is a married man, with five children, three boys and two girls. His youngest daughter is still at school.

Since 1983 he has been Patron of Olobeliben Primary School, and is also a member of the Board of Governors of Ol Kajiado High School and Masai Technical School.

The Plaintiff produced in Court the offending letter dated 26th August, 1998, saying that he received a copy from a school child. He testified that the said letter had been widely circulated among school children and in the market place. He denied all the allegations in the letter, and stated that, quite contrary to those allegations, he is a good Christian who has helped several young girls acquire education. He named Nkaayio Konina, Jpите Nailenya, Ntilake Sentero and Tomonik Nailenya as children for whom he had paid school fees. He complained that the offending letter injured his character and respect in the Community, and resulted in his demotion and transfer to the position of Administration Officer, at a reduced salary of Kshs.12,000/=.

The Plaintiff's evidence was corroborated by Joseph Naikuni, the 2nd witness. Mr Naikuni said he was presently a teacher at Impiro Primary School in Kajiado, and at the material time in 1988 he was the Headmaster of Oloibelibel Primary School.

Corroborating much of the Plaintiff's evidence, this witness said he knew the Plaintiff since 1955 as a man who donated books to the school and paid fees for several children.

He said he was given the offending letter by a member of the community, and realized later that it had been circulated among the parents, teachers and students. According to him, all the allegations in the letter were untrue, including the allegation that the Plaintiff arranged early marriages of young girls.

That was the Plaintiff's case. As I said before, the Defence called no witness, and the Plaintiff's evidence remains uncontroverted. In their defence filed in Court on 28th January, 1999, the defendants admitted publication of the offending letter dated 26th August, 1998, but denied that the words were false, libelous, or actuated by malice. Alternatively, the defendants state that the words were published as a fair comment on a matter of public interest. However, there was no such evidence before the Court.

From what was published about the Plaintiff, I am satisfied that the Plaintiff was wrongly portrayed as a dishonest corrupt person of no moral character who engaged in the unethical practice of marrying away young girls. The Plaintiff has clearly suffered damages to his reputation and standing in society, and was exposed to ridicule and contempt in the eyes of right thinking members of the society. As a direct result of this libel, he was demoted and transferred to another department, four notches below his previous rank, at a considerably reduced salary. He is clearly entitled to general damages. As the conduct of the defendants has been wanting – as they refused to apologize, and insisted that their allegations were true, the Plaintiff is also entitled to exemplary damages.

Now, what should be the measure of damages?

In "Libel and Slander" by Carter-Ruck (4th Edition, pg 166) the authors state:

"An action for defamation is essentially an action to compensate a person for the harm done to his reputation. In all actions for libel and in some actions for slander the Law presumes that the plaintiff has suffered harm and in these actions, usually described as being actionable per se the actual sum to be awarded – the damages – are said to be "at large". Although a person's reputation has no actual cash value the court is free to form its own estimate of the harm in the light of all the circumstances".

Considering that the Plaintiff was a man of good standing in his society, who held leadership positions on his school boards, a family man with five children, and a public servant in high position, the award of damages should be an appropriate “solatium” for his injured reputation. {See *Usero vs John Fairfax & Sons Ltd* (117 C. L. R. 115 at page 150)}.

I have taken into account the cases cited to me – *Joshua Kulei vs Kalamka Ltd* (HCCC 375 of 1997); *Eric Khasakhala vs Jeremiah Sura (HCCC 1709 of 1987)*; and others such as *George Oraro vs Barack Weston Mbaja (HCCC No. 85 of 1992)* and *Abraham Kiptanui vs Francis Mwaniki (HCCC No. 42 of 1997)*, and I have also considered the guidelines set out in Jones vs Pollard (1997) EMLR 233 as to quantum. Taking into account the fact that the Plaintiff is a respectable married man of standing in his community, that the libel here was in the form of a letter with limited circulation, and the defendants’ conduct and refusal to apologise, I am of the view that the appropriate award for general damages would be Kshs.2 million, and exemplary damages Kshs.300,000/=. Accordingly, and for reasons cited, I enter Judgment for the Plaintiff against the Defendants jointly and severally in the total amount of Kshs.2,300.000/= together with costs and interest at court rates.

Dated and delivered at Nairobi this 8th day of November, 2005.

ALNASHIR VISRAM

JUDGE