



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 860 OF 2003

LUCY NDEGI.....PLAINTIFF

VERSUS

JAMES KIBE.....DEFENDANT

JUDGMENT

This case was initiated by Plaintiff dated 14th August, 2003 and filed on 18th August, 2003. On file there is an affidavit of service, by George Muraya who is a Court process server, dated 8th September, 2003 and filed in court on 19th September, 2003. Mr. Muraya depones that on 28th August, 2003 he received copies of summons to enter appearance, Plaintiff and Verifying Affidavit from M/s G.E.O Olouch & Co Advocates with instructions to effect service upon the Defendant, Mr. James Kibe. On 29th August, 2003 he proceeded to Kirasha Shopping Center, in Kiambu District, where the Defendant operates a kiosk, and there met the Defendant and served the documents upon him at 2.30 p.m. The Defendant accepted service by retaining copies of suit documents, but declined to endorse an acknowledgment on the principal copy.

The defendant, in the event, failed to enter appearance or file a Defence; and on 18th September, 2003 the Plaintiff, by virtue of Order IXA rule 5 of the Civil Procedure Rules, filed a request for judgment to be entered against the Defendant.

On 30th September, 2003 the Deputy Registrar entered interlocutory judgment in favour of the Plaintiff, in the following terms:

“The Defendant herein, James Kibe, having been duly served with summons to enter appearance and having failed to enter appearance within the prescribed period, and on application by the Plaintiff’s Advocate dated 16 th September, 2003, I enter interlocutory judgment as prayed in the Plaintiff.”

The award of costs was left to await judgment when the suit would be set down for assessment of damages.

At the hearing on 14th January, 2004 the Plaintiff had two witnesses who were sworn and gave evidence under examination-in-chief. The Plaintiff, Lucy Ndegi, gave evidence that she was a married woman living with her husband, and had four children aged 13, 8, 7 and 4 respectively. She said she lived well with the husband, Mr. Hezekiah Kinyanjui who was also in Court. She said she had been a trader at a local market in Kiambu, selling beans, maize and green groceries.

The cause of suit arose on 10th March, 2003. The witness stated that when she arrived home from work

on that day, at about 3.00 p.m. she found that her children had obtained on credit from the neighbouring home of the Defendant items that were required for domestic use, namely charcoal for fuel, and flour of cooking. The value of these borrowed items was Kshs 39/-. It is precisely this debt that brought grief to the Plaintiff, on the following day. On that occasion the Plaintiff was walking over to the stall of a friend, by the name Lucy Wanjiku, for the purpose of purchasing mangoes. She was, while on the way, accosted by the wife of the defendant, who demanded immediate repayment of the debt of Kshs 39/-. As she hesitated and was making the promise to find the money and repay it right away, the Defendant confronted her in a vulgar manner and denounced her as a prostitute. Testimony was given that the Defendant declaimed his remarks, inter alia, to the effect that:

- (i) the plaintiff had been divorced by her husband on grounds of her prostitution;
- (ii) the Plaintiff who was once of substantial bodily stature, had now lost weight and thinned down to inconsequential size owing to her bad conduct.

The Plaintiff testified that when she was denounced by the Defendant as a prostitute, she understood it to mean that she was of loose sexual morals; and when she was told that she had slimmed from her original larger bodily appearance, she understood it to mean that she was a victim of HIV/AIDS infection which had caused her to slim down.

The Plaintiff gave evidence that the offensive words were hurled at her in full view and hearing of others at the market place. She gave examples of people who certainly witnessed the confrontation and who did hear the declamations; she gave the examples of one Lucy Wanjiku and one Lucy Nyambura. The Plaintiff said that following the Defendant's denunciation of her and in view of the content of the Defendant's negative and offending declamations, many people have shunned the Plaintiff, and that this has hurt her social as well as business life. She said she has had to close down her sales business, as potential customers say they do not want to buy goods and supplies from an AIDS patient. The witness said she used to make profit, but that she is no longer able to conduct her grocery business, following the Defendant's slanderous denunciation of her. She stated that she used to earn from her business as much as Kshs 2000/- per week, but this is no more. She believes this misfortune fell upon her simply because of the small sum of Kshs 39/- which she had owed the family of the Defendant; and she says she paid it off immediately after being defamed and insulted by the Defendant. The witness said that since she incurred major business losses in the aftermath of the slander by the Defendant, she has not been able to bond very well with her husband, in the domestic arena.

The Plaintiff produced a letter (Marked Exhibit 1) which she had sent to the Defendant making a demand for recompense, just before filing suit. She said the defendant did not respond to the letter. The Plaintiff prayed for damages for defamation, and for costs with interest.

The second witness for the Plaintiff was Lucy Nyambura, a lady aged 29. She said she was in the business of selling vegetables at Kirasha, Kiambu where the Plaintiff had also been doing business. She knew the Plaintiff and regarded her as a friend. The witness said that on 11th March, 2003 she was going to the stall of one Lucy Wanjiku, also a trader at Kirasha, Kiambu. As she was passing by the Defendant's shop, she witnessed the altercation between the Defendant and the Plaintiff. She gave evidence that the cause of the misunderstanding was some Kshs 39/- allegedly owed by the Plaintiff to the Defendant's family. The witness said that the Defendant, on the occasion, had an altercation with the Plaintiff and denounced the plaintiff as a prostitute, declaiming that the Plaintiff had been fat and healthy-looking once upon a time when she used to be in Nairobi, but was now emaciated. The witness said her understanding from the Defendant's declamations, was that the Plaintiff was a woman of easy virtue, and also that the Plaintiff had contracted HIV/AIDS. The witness said she had known the Plaintiff for long and that the Plaintiff had been good to her, and in her reckoning the Plaintiff was in good health. The witness identified the Plaintiff's husband by his nickname, Baba Wambui, and said that he was indeed present in Court. The witness said she and the Plaintiff's family lived in the same neighbourhood; there were four children in the Plaintiff's family; and she the witness did not like the nasty remarks made by the Defendant about the Plaintiff. The witness testified that the Plaintiff had previously had a fairly good business, but that she had lost this following the Defendant's slanderous assault on her. The witness testified that, in her perception,

many people in the Kirasha community have these days held negative views about the Plaintiff, following the Defendant's declamations against the Plaintiff on 11th March, 2003.

Counsel for the Plaintiff submitted that as interlocutory judgment had been lawfully entered, no issue of liability was left outstanding, and the only question now due for consideration was quantum of damages. He submitted that damages awarded should be exemplary. He submitted that the Plaintiff had suffered considerable harm to her reputation and had lost socially and commercially.

I take the position that this is a case in which undue harm has been caused to a peace-loving citizen, in character, and with serious implications for her normal and economic life. The harm has been caused through flagrant defamation mindlessly or even recklessly perpetrated. The fundamental principle underlying the judicial process is that peace should prevail among people, to provide them with a stable social infrastructure for pursuing their vocations of life. Therefore, if the villain of the piece who violates that peace can be identified and successfully accused under the law, it will be the duty of this Court to award the requisite sanctions.

Taking into account the entire process of this suit, the pleadings and the evidence adduced, I must take the position that the Plaintiff had been unjustifiably hurt in character and reputation by the Defendant, and that justice demands that appropriate redress be dispensed to the Plaintiff, a good Kenyan citizen striving to live her life and to make ends meet through small-scale business in a Kiambu village.

In her prayer the Plaintiff seeks:

- (i) general damages;
- (ii) exemplary damages;
- (iii) costs with interest

The Plaintiff is entitled to general damages. She was in business, with a turnover of some Kshs 2000 per week, even though evidence was given that she had not been able to conduct a professional accounting. For the last eleven months, since the Defendant violated her good name, she has lost her business life. For this I award Kshs 65,000/-. During that whole period she has lived as a rather shame-faced person in her community, following the depreciatory, slanderous declamations of her in full public view. For this social loss I award Kshs 20,000/-. I also award exemplary damages to discourage the Defendant and others from such reckless, abusive and defamatory assault on an innocent lady living her life in peace; and the amount granted is Kshs 5000/=. In summary this Court's award is as follows:

- (a) General damages Kshs 85,000/=
- (b) Exemplary damages Kshs 5,000/=
- (c) items (a) and (b) to carry interest at Court rates with effect from the date of this judgment;
- (d) costs of the suit, to carry interest from the date of filing suit.

Dated and delivered at Nairobi this 20th day of February, 2004

J. B. OJWANG

Ag JUDGE

