



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2552 OF 1993

JOHN GATURUHU PLAINTIFF

VERSUS

NAS AIRPORTS SERVICES LTD DEFENDANT

J U D G E M E N T

Although the plaintiff had in his plaint asked for salary for three years and ten months, having been unable to put in evidence what (if any) were the terms and conditions of service under his contract of employment, he has withdrawn and abandoned that claim. So it is no longer a live issue.

His only main claim now is for general damages for libel, said to have been carried in a letter retiring him from employment.

The letter of retirement referred the plaintiff to a meeting held between himself and the management on January 21, 1993, at which his retirement from employment effective January 31, 1993 had been discussed and agreed. It said, in part:

“This decision was deemed the best alternative in view of your inability to manage the equipment department where over the last one year, large quantities of airline equipment has been lost without any control measures being introduced by you.”

The company then recognized the services the plaintiff had rendered during the last 28 years and 10 months and exceptionally decided to pay him full retirement benefits tabulated in the letter. He was thanked for services rendered and was wished the best success in all his future endeavours.

The letter was copied to the chief accountant advising him to take the necessary action in consultation with the plaintiff, in respect of the retirement benefits stated in the letter. It was also copied to the group general manager of the company.

The plaintiff complains that those words quoted above herein, in their material and ordinary meaning meant and were understood to mean that he was incompetent, dishonest, corrupt and was accessory to or colluding in the loss of the first defendant’s property.

By reason thereof, it is complained, the plaintiff has been injured greatly in his credit, character and reputation, and in his office or occupation and has been brought into hatred, ridicule, and contempt. That is why the plaintiff seeks general damages for libel.

The way paragraph 7 of the plaint is worded, it appears that the plaintiff acknowledges that there had been loss of the defendant’s property. This is clear from his use of the definite article “the”, without suggesting

that the defendants were merely “alleging” loss. He said “the loss of the first defendant’s property” instead of saying “the alleged loss of the first defendant’s property”. The first clause means that indeed there was such a loss; the second clause means that there was a mere allegation which would require proof.

As the plaintiff chose to acknowledge that there was such a loss, the defendants did not have to prove that fact. It is not in issue.

Do the words complained of carry the meaning assigned to them and were they understood in the manner ascribed to them by the plaintiff?

No; they do not. Those words say and mean precisely what they say in their literal connotation. They do not carry any other meaning or imputation. They simply mean that the plaintiff had been unable to manage the equipment department where for the period of one year the losses were suffered without the plaintiff introducing any control measures.

“Inability” simply means lack of sufficient power or means; or some incapacity. It need not be symptomatic of incompetence, dishonesty, corruption or being accessory to or collusion in loss/or other wrongdoing. Such inability need not result in a person being brought into hatred, ridicule or contempt.

Similarly, a failure to introduce control measures in an organization or a system does not necessarily carry with it an automatic or a singular connotation of incompetence, dishonesty corruption or such-like wrongs.

In the context of retirement of the plaintiff, those words were meant to carry the reasons for retiring the plaintiff. He had only been unable to manage his department and had not introduced control measures, which led to the losses, complained of.

No ordinary person, looking at that letter, would understand it to be accusative of the plaintiff of incompetence, dishonesty, corruption or being accessory to or in collusion with anyone to lose the property of the first defendant.

The words complained of were not defamatory of the plaintiff. It would be a very strained meaning indeed, to put a libel tag on those words.

Yes; the letter was published, but it contained no libel.

The suit is dismissed.

In the special circumstances of this case, having regard for the otherwise generally good relations between the parties, and seeing that the suit was probably merely out of anger but not on the basis of any sound legal cause of action, each party shall bear its own costs.

It is so ordered ex tempore.

Signed, dated and delivered by me at Nairobi this very day of 28th October, 2002, in the presence of counsel for the respective parties.

R. KULOBA

**JUDGE
28.10.2002**

