

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO 124 OF 1999

OTIENO.....PLAINTIFF

VERSUS

NATION NEWSPAPERS LIMITED.....DEFENDANT

RULING

At the commencement of the hearing of this suit Kagucia for the defendant raised a preliminary objection to it on points of law.

Mr Kagucia contended that the suit is misconceived, incompetent and bad in law and that the hearing of it cannot start with these pleadings. It was Mr Kagucia's contention that as the suit depends on alleged malice of the defendant and as the defendant in its defence has advanced a fair comment and privileged occasion it was incumbent upon the plaintiff in terms of order VI rule 6A(3) of the CPR to give particulars of facts and matters from which malice could be inferred. He submitted that as the plaintiff to comply with the provision of that rule the plaint and the reply to the defence should be struck out.

Mr Oloo for the plaintiff in response to that submission contended that the plaintiff had given the necessary particulars in paragraph 2 of the reply to defence of the facts and matters from malice of the defendant could be inferred and that his client had fully complied with provision of the said rule.

It is true that the defendant in paragraph 13 of its statement of defence advanced fair comment and privileged occasion. In terms of order VI rule 6A (3) the plaintiff was bound to give full particulars of facts and matters which would lead to inference of malice on the part of the defendant. It is necessary that this paragraph be closely looked at so as to establish whether or not the said rule has in fact been complied with as claimed.

In paragraph 2(a) of the reply to defence the plaintiff did not give particulars of any facts but he alleged that the publication complained of gave a distortion of the Court proceedings. It was necessary to particularize such distortions.

Under paragraph 2(b) of that reply the plaintiff contended that the defendant did not purport to express an opinion at all. This paragraph in my view did not comply with the law.

In paragraph 2(c) the plaintiff claimed that the fact that the defendant failed to offer a remedy showed that the printing and the publication of the words were not bona fide. In my view that is not giving of the particulars of facts or matters which would lead to the inference of malice.

In paragraph 2(d) the plaintiff averred that the fact that he was not an accused nor was he adversely mentioned in the Court proceedings would be sufficient to infer malice on the part of the defendant. In this paragraph I find that the plaintiff made an attempt to give particulars but it was necessary to fully do as what was stated is not sufficient.

It is also true that in paragraph 6 of the plaint the plaintiff pleaded in the alternative an innuendo, and thereafter tried to give the meaning of the words in his view. Order VI rule 6A (1) of the CPR does not appear to have been complied with and the plaintiff's counsel did to respond to his complaint.

I agree with Mr Kagucia that as these rules appear to be mandatory a failure to comply with them would

render the plaintiff's suit defective and invalid, and as there is no prayer for amendment of the plaint I have no option but to strike out the plaint as prayed, which I proceed to do. The defendant will have the costs of this suit and the application.

Dated and delivered at Kisumu this 1st day of October, 2002

B.K TANUI

JUDGE