



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 1527 OF 1999

JOSEPH RADING WASAMBO PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF

KISUMU & ANOTHER DEFENDANT

RULING

This is the plaintiffs application under Order VI Rule 13(1), (b) (c) and (d) Civil Procedure Rules and S. 3A Civil Procedure Act for an order that the defendants defence be struck out as it is an abuse of the process of the court, scandalous, frivolous and vexatious.

Plaintiffs claims damages for libel contained in a letter dated 14.4.99 and reproduced in paragraph 5 of the plaint. That letter is written by 2nd defendant for Town Clerk – Kisumu Municipal Council and is addressed to the Commissioner of Lands. I reproduce the relevant part below:-

“ALIENATION ATION OF PARCEL NO. KSM MUNI. BLOCK 3/101”.

On 19th January 1999, we wrote to the District Land Registrar placing general restriction of caution on some of our property one amongst them KSM.MUNI BLOCK 3/101. This is our former slaughter house. We have been informed that the property was alienated and lease certificate issued on 28th January 1998 to Messrs Abdul Dhanji & Noorez Shamji.

Since the council still has interest on the property, and at no time in the past has there been a resolution to dispose of it, we shall be grateful to know. If any instrument, comment were ever produced from the council to enable the alienation. In the meantime we are placing by a copy of this letter a caution/restriction on the property pending further clarifications.

Plaintiff shows the natural and ordinary meaning of the words in para 7 of the plaint. He pleads in para 8 that the letter was false, malicious and defamatory and that defendants were actuated by malice and spite.

In para 3 of the defence defendant deny that the letter was false or malicious. They also deny that the letter was written of the plaintiff. Para 3 of the defence states further:

The defendants jointly and severally state that the total contend and substance of the said letter does not in any way refer to the plaintiff and does not in either its literal or implied meaning contain any defamatory words, phrases and or sentence as alleged or at all. The defendants jointly and severally state that the said letter similar sets out a set of facts on the basis of which they were making an official inquiry

and accordingly the contents are justified and factual”

From the supporting affidavit and applicant’s counsels submissions it appears that the application is mainly based on the ground that Plot No. KISUMU/MUNI/BLOCK 3/101 was initially owned by the Government and not Kisumu Municipal Council. That may be so but the 2nd respondent was asserting in the letter complained of that the plot housed the former slaughter house of the first respondent and that the plot was alienated without a resolution of the first respondent whether or not the plot originally belonged to the first respondent is a matter of evidence. In any case the suit is not about the ownership of the plot.

The real issue is whether the contents the letter dated 14.4.99 amount to a libel. The contents of the letter do not on the face of it amount to libel. The letter does not say the things contained complained of in para 7 of the plaint and does not on the face of it show any malice. It does not refer to plaintiff as the person to whom the plot had been allocated.

Plaintiff says in para 3 of the reply to the defence that the letter impliedly referred to plaintiff and was false and thick with innuendos. The burden of proofing that the letter is libelous: that it referred to the plaintiff and that it carries the innuendos attributed to it lies with the plaintiff. He can only prove the falsity of the letter and the innuendos at the hearing of the suit.

From the nature of the suit, I am convinced that the present application is grossly misconceived and should not have been filed. Defendants filed grounds of opposition though defendants counsel did not attend the hearing. The defendants are therefore entitled to costs over than the costs of attendance for hearing on 19.2.2001

For those reasons I dismiss the application with costs to the defendants other than the costs of 19.2.2001.

E.M GITHINJI

JUDGE

21.1.1001

Mr. Thangei for applicant present