

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 12 OF 2000

NEWMAN NJEMA MGELE APPELLANT
=VERSUS=
ANASTACIA NZIGHE MWAKUJA RESPONDENT

JUDGEMENT

Appellant was alleged liable in damages for defaming the Respondent. It was alleged that he called the Respondent a witch who had killed people. There was evidence that he uttered these words and that they were defamatory of in that by uttering those words the Appellant meant to convey that the Respondent was a killer.

The 12 grounds of appeal preferred by the appellant were not in most part really relevant except ground 2 and 11 where he say, there was no cause of action and that the defamatory words was not pleaded. The latter complains is not true since as a matter of fair the plains quoted the offending words verbatim and effected their translation thereof.

The other point to ask is whether the words were defamatory and if so if they were actionable since plaintiff has not claimed any special damages. Looking at the plaint it is clear there was no special damage pleaded. My understanding of the law is that where plea of special damage is not pleaded or alleged in a plaint for defamation the damages are only a solarium for injured feelings.

Having looked at the pleading and heard the appellant and Mr. Mulumzya for the Respondent, I dismiss the appeal except on damages where I think Kshs. 30,000/- was not properly awarded. What is required here was just a solarium and so I would interfere with the discretion of Trial Court and reduce the damages to Kshs. 8,000/- being solarium payment only.

Delivered in open court this 23rd July, 2001

A. I. HAYANGA
JUDGE