



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2539 OF 1997

GEORGE MUKURU MUCHAI PLAINTIFF

VERSUS

THE STANDARD LIMITED DEFENDANT

J U D G E M E N T

In a suit dated 10th September, 1997 and filed in court on 9th October, 1997 the plaintiff sought the following prayers from the court; namely:-

- (a) the disclosure of names, identities and particulars of “The concerned Residents” (by the defendant) and/or in the alternative payment of damages;
- (b) General damages,
- (c) Costs of this suit,
- (d) Interest on (a), (b) and (c) at the court rates.
- (e) Any other relief this honourable court deems fit to grant. This suit arose from a Sunday Standard Newspaper report of 13th April, 1997 which was in the following terms:

“NAIL THIS GRABBER”

We write on behalf of the silent suffering residents of Ruai to demand for action against the private developer who has targeted the open spaces and public utility plots in this area.

A private developer, who is a Government official has fenced off open spaces L.R. 126/025 at Ngundu and Nursery school plots blocking the existing access road to the helpless residents and to a police post. We appeal to the authorities to save us from this greedy land grabber who has no respect to the existing land boundaries. Concerned residents, Nairobi”.

The plaintiff thought this report had targeted him but since he had bought the plot in dispute lawfully, was not a land grabber, a developer or a Government official, it offended him by imputing what he stated in paragraph 7 of the plaint.

He must have got in touch with the defendant concerned to withdraw the report but when they did not, he filed the suit to claim the prayers I have already stipulated herein before.

He thought by virtue of the report, his credit, character and reputation had been impeached/injured.

A defence filed by the defendant on 5th November, 1997 denied the contents' of the plaint and in particular that it did not write that report and/or that it did not publish it maliciously.

On the hearing of the case on 5th June, 2001, only the plaintiff appeared and testified in support of his claim. Though the defendant did not appear, it was, nevertheless represented by counsel who cross examined the plaintiff and also made submissions.

In his testimony the plaintiff reiterated that he was not a land grabber, a developer or a government official but that he was the lawful owner of L.R No. NAIROBI BLOCK 126/25 after having bought it in 1994 from one Simon Kungu Mwaura.

He produced all the relevant documents enabling him to own the suit land legally including the certificate of title thereto and said with the on going issue of land grabbing in the country he felt the security of his land was put at risk by the publication.

In cross examination, he agreed that the report arose from a letter to the editor and that those were not the views of the defendant. In submission counsel for the plaintiff stated that as the defendant has a wide circulation the reputation of the plaintiff was tarnished and that the defendant should have provided the identity of the persons who wrote the letter.

Counsel for the defendant stated that the evidence of the plaintiff alone in such a case was not enough to prove defamation. That the defendant could not tender an apology because the views expressed in the letter were not its own.

According to her the issue of land grabbing in Kenya is a matter of public interest – hence the publication of the letter was normal.

The plaintiff's counsel referred to various authorities of this court in which the defamatory matters were actually written and published by the defendants.

In this case, however, the alleged defamatory matter was in form of a letter to the editor and signed by "concerned residents". These residents only referred to plot number 126/025 and a private developer, government official and land grabber. I am not sure this plot number is the same as L.R. No. 126/25!

The plaintiff says he is not a private developer, government official or land grabber.

Of course the word "land grabber" have become sensitive in this country as it has come to be associated with a few well connected greedy individuals who have stopped at nothing to acquire any land or plots within their reach, including residential houses and plots meant for public utilities, and that people view them with a lot of disdain and contempt.

But in respect to the letter to the editor, it would have meant taking a lot of time to go to the land Registry to dig out plot number 126/025 or 126/25 to know who the owner is to associate the plaintiff with land grabbing to associate it with a malicious, and deliberate publication of the alleged defamatory article by the defendant against the plaintiff.

Moreover, in the "letters to the Editor column, in any newspaper including the defendant, there is usually this disclaimer notice

"The views expressed on this page are not those of the editor or staff....."

In defamation cases, a defamatory matter is or must be written or spoken by one person against the other and that it must be desparaging in the eyes and minds of right thinking members of society generally.

In this case, where only the plaintiff testified, where is evidence that right thinking members of society

generally shunned or looked down upon the plaintiff?

And take it that the writers of the article signed it only as “concerned residents”, how was the defendant to ascertain their identity? And why? And as publishers of the report there has to be malice accompanied by this publication imputed on the defendants and that they knew who the plaintiff was but were merely bent on smearing and soiling his name as a land grabber.

But no evidence to establish malice was ever adduced. Or that the defendants knew who the plaintiff or how innocent he was in this matter. I am persuaded by the remarks by Judges of Appeal Omolo, Owuor and Keiwua in Daniel N. Ngunia vs KGGCU Limited, Civil Appeal No.281 of 1998. to this effect:

“Leaving aside any questions of privilege upon which learned Judge dismissed that aspect of the appellants’ claim, we note from the record that the appellant was the only person who testified in support of his claim. In those circumstances, we cannot see how a claim based on defamation could have possibly succeeded even in the absence of the defence of qualified privilege”.

In my view the most important ingredient in a defamation case is the effect of the spoken or written words in the mind of third parties about the complaint and not how he/she himself/herself feels the words portray about him/her.

This ingredient has not been established in the plaintiff’s case herein on a balance of probabilities and I would dismiss this suit with costs which I hereby do.

Delivered this 11th day of July, 2001.

D.K.S AGANYANYA

JUDGE