



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 189 OF 2019

PENTHOUSE GROUP LIMITED.....1ST PLAINTIFF

AGGREY MUHAMBI.....2ND PLAINTIFF

VERSUS

GLORIA ADISA DIFFU.....DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this case vide a Complaint dated 30/8/2019. The Plaintiffs' prayer for Judgment against the Defendant as follows: -

- a. An order compelling the Defendant to pull down all the defamatory posts on Facebook.
- b. An order directing the Defendant to issue an apology to the 1st and 2nd Plaintiff in the same group on Facebook.
- c. A permanent Injunction to restrain the Defendant whether by themselves, their respective servants, employees or agents from further publishing or posting the 1st and 2nd Plaintiff's name or image.
- d. General, exemplary and aggravated damages.
- e. Costs and Interest on (d) above.

2. The Plaintiffs' claim is that on or about the 22/9/2018, the Defendant posted a defamatory post concerning them on **Facebook** in a group called Builders and Co-Creators as follows;

“Hey Builders. Thank you very much for your support yesterday when Mortem K. Muhambi of PENTHOUSE was trending for not paying his sub-contractors. The post will not be deleted until he pays up.”

3. That on or about the 26th October, 2018, the Defendant sent a post on **Facebook** as follows;

“Wana BBmers, MEET Aggrey Muhambi. Owner of Penthouse Group Interior Designs. Telephone no. 0704910341.”

Early this year (in March) Aggrey approached me and he desperately needed me to supply and fix granite at the offices of Real People. E. A who are based at International House. We met at his office at around 9.00 and he gave me the measurements and we agreed that I supply the granite and then he will pay 50% and balance after completion. By 11.00 the granite was delivered and work began.

When it came to paying the 50% he started stories and only gave me half of it, so I stopped work until he pays me. The guy went behind my back called my people and my granite was installed and he refused to pay me. I wrote a letter to Real people – E.A but it was ignored

When I posted my story in another group, he threatened to take me to court. I had my lawyer write him a demand letter but

I know BBmers are the best in terms of demanding payment. Please help a sister

He owes me Ksh.30,000/=. Kindly assist me to remind him to pay up because I also need to pay my suppliers. He telephone number is 0704910341.”

4. It was the Plaintiffs’ contention that the said words in their ordinary meaning portrayed the 1st and 2nd Plaintiffs as unprofessional, dishonest, oppressive and malicious among other things.
5. The Defendant did not enter appearance and Interlocutory Judgment was entered. The case thereafter proceeded to formal proof.
6. Aggrey Muhambi (PW1) testified on behalf of the Plaintiffs. He described himself as a Consultant in Interior Design and adopted his witness statement as his evidence. In the witness statement he described himself as a Director of the 1st Plaintiff. He described the Company as one with a good reputation and received work from leading Corporations like Kenya Commercial Bank, Kempinski Hotel, Ochola and Ochola Advocates, Mr. Sandels Monsti, Felistus Nyangena, Jethalal Chambers & Tiles, etc.
7. Further evidence was adduced that the Defendant Company approached the Defendant to install granite at Real People Offices at the agreed fee of Kshs. 50,000. That upon commencing the work, the Defendant increased the quotation to Kshs. 75,000, an amount that the company found exorbitant and unjustified. That the company stood its ground and it is when the Defendant posted the publications complained of. That the said publications damaged the Company’s reputation and as a consequence the Company has suffered financial loss as the company carries out its work online and relies on referrals.
8. The witness produced a list and bundle of documents as exhibits. Among those documents is the publication in question, a demand letter, some payment transactions and some pictures of some of the works carried out by the Plaintiffs.
9. The Plaintiffs’ counsel in his written submissions stated that the Plaintiffs suffered in their reputation and also lost business and are entitled to damages. No figure was proposed.
10. The Plaintiffs’ uncontroverted evidence has established a case of defamation. The publication complained of was published. The publication concerned the Plaintiffs. The Plaintiffs’ evidence has also established malice on the Defendant’s side as their evidence is that the publication followed a dispute over some disputed payment and that the publications were made with the intention of damaging the Company’s reputation.
11. The Plaintiffs are entitled to general damages to compensate him for the harm caused to his reputation and the distress and humiliation caused by the defamatory publication (See for example **Ken Odondi & 2 others v James Okoth Omburah T/a Omburah & Co. advocates [2013] eKLR; Standard Ltd v G. N. Kagia T/a Kagia & Co. Advocates [2010] eKLR**)
12. The Plaintiffs have also prayed for aggravated or exemplary damages. As stated by the Court of Appeal in the case of **Miguna Miguna v The standard Group Ltd & 4 others [2017] eKLR** while quoting the case of **John v GM Limited [1993] QB 586**

“Aggravated damages will be ordered against a defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize.”
13. Exemplary damages go beyond compensation. They are meant to punish the wrongdoer and act as a deterrent from similar conduct in future (See for example **Ken Odondi & 2 others (supra)** and **Standard Ltd (supra)**).
14. In the case at hand, the demand letter dated 24th September, 2018 required the Defendant to pull down the publication, apologize and pay damages for the defamation was not responded to.
15. I assess damages for defamation at Kshs. 500,000/= and exemplary and aggravated damages at Kshs.200,000/=. The total comes to Ksh.700,000/=. (See for example **Mary Koli Kitonga v Ghetto Radio Limited [2020] eKLR**).
16. Judgment is hereby entered as prayed in the plaint in terms of prayer a – c thereof plus damages of Kshs.700,000/= and costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2021

B. THURANIRA JADEN

JUDGE