



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 244 OF 2016**

**ERIC OTIENO OGADA.....PLAINTIFF**

**-VERSUS-**

**THE STANDARD GROUP LTD.....DEFENDANT**

**JUDGMENT**

1) On 29<sup>th</sup> June 2016, the Standard Group Ltd, the Defendant herein, published in the Standard Daily an article titled: “**Senior County Official Linked to jobs scam probe report out today**”. The publication had a photograph and name of Eric Ogada beneath it. The Plaintiff claimed that the article was defamatory of him and hence he was prompted to file this suit to seek for damages. The Defendant filed a defence denying the Plaintiff’s claim.

2) When this suit came up for hearing, the Plaintiff testified and summoned one independent witness to testify in support of his case. The Defendant closed its case without summoning any witness.

3) Eric Otieno Ogada (PWI) the Plaintiff adopted the contents of his written witness statement as his evidence in chief. PWI told this court that on 29/6/2016 he was shocked to read the article published by the standard Newspaper which he claimed was to the effect that he was party to a scheme by officials of the Nakuru County Government allegedly involved in job scam in which it is alleged he brokered a deal to defraud job seekers.

4) He also averred that the story was false, malicious and orchestrated to malign his character thus lowering his reputation in the eyes of righty thinking members of society.

5) PWI stated that he played no role in convincing an alleged complainant by the name Patricia Nyakango that some money she allegedly paid as a bribe for the employment of her child would be refunded to make her not to go public on the alleged deal. The Plaintiff produced as exhibits in evidence a copy of the newspaper article and a copy of the County Assembly Ad hoc committee investigation report on the matter. PWI pointed out that his name did not feature in the committee’s investigation report and that he is not under any investigation.

6) The Plaintiff summoned one Zacharia Odak (PW2) to testify in support of his case. PW2 adopted the contents of his written witness statements as his evidence in chief. He (PW2) stated the Plaintiff (PWI) was his close friend. He said that he knew him as a honest and hardworking man.

7) PW2 further stated that he has known the Plaintiff to be a man of integrity but was shocked to read in the Standard of 29<sup>th</sup> June, 2016 which connected the Plaintiff as a party to a scheme by officials of the County Government of Nakuru involved in an alleged job scam in which the Plaintiff is alleged to have brokered a deal to defraud job seekers. PW2 said that the article significantly changed the perception he had for the Plaintiff to the negative. PW2 claimed that the reputation of PWI has been tainted.

8) At the close of evidence, parties were invited to file and exchange written submissions. Having considered the evidence presented together with the rival written submissions, the following issues commend themselves for determination.

**First** is whether the Article complained of is defamatory of the Plaintiff?

**Secondly**, whether the Plaintiff is entitled to the reliefs sought

9) On the first issue, the Plaintiff is of the submission that the article destroyed his reputation before right thinking members of the society.

10) On the other hand, the Defendant is of the submission that the Plaintiff did not discharge the burden of establishing the elements of libel. It was pointed out that the Plaintiff had failed to plead innuendo and its particulars. It was also pointed out that the article was in respect of an allegation against Gladys PKemei and not the Plaintiff.

11) The Defendant does not deny that it published the article complained of titled “ **senior county official linked to jobs scam, probe report out today**” It is apparent from the copy of the newspaper produced as an exhibit in evidence that the photographs of three persons namely **Gladys PKemei, Patricia Nyakango and Erick Ogada** were published alongside the article. The article in part states as follows

*“Eric Ogada, PKemei’s colleague working with the Ministry of Lands as an administrator, attempts to convince the businesswoman not to make the matter public as they were in the process of refunding her money. In a recorded telephone conversation, Ogada is heard telling the business woman to be patient as they look for funds to refund her..... Ogada said he was involved in the issue as a friend to the husband of Nyakango who had requested him to broker a deal on the matter. I came in as a good Samaritan to help sort the matter” he said when he visited The Standard Office in Nakuru.”*

12) The Plaintiff pleaded in Paragraph 6 of the plaint that the article in their material and ordinary meaning were intended to mean and were understood to mean by right thinking members of the society in general to mean that he was a fraudster, con artist, morally corrupt, opportunist, thief, untrustworthy and dishonest.

13) The Plaintiff also stated in his evidence while in cross-examination that one Gladys PKemei was his colleague. He also confirmed that the words fraudster and con artist was not used in reference to him in the article.

14) The Plaintiff further admitted that the particulars of Defamation specified in paragraph 6 of the plaint were not used in the article. It is therefore apparent that the Plaintiff is seeking to show that he was defamed by the article not expressly but by way of innuendo.

15) The Plaintiff has not pleaded innuendo and its particulars in the plaint. With respect, I agree with the Defendant’s submission that the failure by the Plaintiff to plead innuendo plus its particulars renders reliance of that plea unavailable. In my view, a plain reading of the article cannot in any way show that the Plaintiff was defamed. The words which were said to be defamatory of the Plaintiff have not been used in the article in reference to the plaintiff. The article does not expressly link the Plaintiff to the jobs scam.

16) The Plaintiff did not deny that he visited the Nakuru offices of the Defendant to give his side of the story which was published as part of the article. In the end I find that the Plaintiff has failed to discharge the burden of proof to establish the tort of libel on a balance of probabilities. The Plaintiff’s suit is ordered dismissed for lacking in merit.

17) The second issue is whether the Plaintiff is entitled to the reliefs sought. Having failed to establish liability against the Defendant he is not entitled to the reliefs sought of injunction, damages and costs.

18) However, had the Plaintiff proved his claim, I would have awarded him the claim for general damages and not the claim for exemplary damages. The claim for exemplary damages was not established hence it cannot be awarded.

19) The Plaintiff had pleaded to be awarded Ksh. 25,000,000/= for general damages. He relied on three cases. The first authority is the **case of Alnashir Visram Vs Standard Ltd [2016] eKLR** in which this court awarded a sum of ksh 18,000,000 /= for general damages.

20) The second case is that of **Chirau Ali Mwakwere Vs National Media Group & another [2009] eKLR** where this court awarded him a sum of ksh. 10,000,000/=.

21) The final authority is the **case of Sawuel Ndung’u Mukunya Vs Nation Media Group Ltd & Another [2015] eKLR** where this court awarded the Plaintiff a sum of Ksh. 15,000,000/= as general damages.

22) The cases, the Plaintiff cited and relied upon are in respect of Judges and a politician. The Plaintiff was a middle level civil servant working as a County Administrator for Lands, Nakuru County. He failed to present authorities in respect of persons serving in his cadre and level. I am convinced that a sum of ksh. 5,000,000/= would have been a reasonable and appropriate award.

23) In the end, I find no merit in the Plaintiff’s suit. The same is dismissed with costs being awarded to the Defendant.

**Dated, signed and delivered at Nairobi this 15<sup>th</sup> of January, 2020.**

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant