



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 137 OF 2015

GEORGE MUHOHO.....PLAINTIFF

VERSUS

THE STAR NEWSPAPER.....1ST DEFENDANT

MKAMBURI MWAWASI.....2ND DEFENDANT

JUDGMENT

1. The Plaintiff instituted this case vide a plaint dated 10th April, 2015. The Plaintiff's contention is that the Defendants on 14th May, 2014 published the following defamatory article concerning him:

“The Company, managed by President Uhuru Kenyatta’s uncle George Muhoho, has dismissed claims that the squatters live on the land...He said the company has stopped his clients from tilling the land since the rainy season started, denying them their only source of livelihood... Mogaka said the company has hired police from Msambweni police station to man the land and keep his clients away”

2. It is pleaded that the said article disparaged the Plaintiff's reputation and caused him to be shunned by his peers, colleagues, business fraternity and injured his reputation before the right thinking members of the society. That the article depicted him as a land grabber and a person who infringes on other people's rights by use of his position and influence.

3. The Plaintiff was further aggrieved by what he stated as the Defendants' failure to contact him prior to the publication for clarification, failure to retract the publication and failure to apologize. The Plaintiff sought the following reliefs:

- (a) General damages for defamation
- (b) Damages on the footing of aggravated or exemplary damages.
- (c) Interest on (a) and (b) above.
- (d) An order that the Defendants publish an unconditional apology for public embarrassment and ridicule caused to the Plaintiff.
- (e) Costs of and incidental to this suit.

4. The Plaintiffs claim is denied as per the statement of Defence dated 9th June, 2015. It is stated that the words in question were published on an occasion of absolute privilege and were not actuated by malice or reckless conduct by the Defendant. That the words were a fair report of **HC ELC 99 Of 2014 Mombasa Said Mwavumbani & others v Msambweni Development Company Ltd.**

5. It is further contended that the publication was made in public interest. That in the alternative, the reference to the Plaintiff's name was due to a genuine mistake due to similarity of names. That by the time of filing the Defence, the Defendants were in the process of publishing an apology and making a payment of Ksh. 300,000/= in court by way of amends.

6. The Plaintiff filed a reply to the Statement of Defence, joined issues with the Defence and reiterated the contents of the plaint.

7. The Plaintiff testified (PW1) and called two witnesses in support of his case. He adopted his witness statement as his evidence. He produced his bundle of documents as exhibits. He described himself as follows:

1. **Founding Principal Mururia High School, Gatundu, 1964-1965.**
2. **Education Secretary Catholic Schools, 1965 -1966.**
3. **Director, National Environmental Secretariat, 1973 -1978.**
4. **Director of Information, UNEP, 1978 - 1983.**
5. **Member of Parliament, Juja Constituency, 1983 -1992.**
6. **Assistant Minister, Ministry of Water and Development, 1984 -1985.**
7. **Assistant Minister, Ministry of Education Science and Technology 1985 - 1987.**
8. **Minister, Ministry of Tourism 1987 – 1989**
9. **Minister, Ministry of Research, Science & Technology, 1989 – 1991.**
10. **Executive Director, Democratic Party of Kenya, 1992 -2002.**
11. **Managing Director Kenya Airports Authority 2003 - 2010.**
12. **Chairman Mangu High School, Parents Teachers Association.**
13. **Chairman Mangu High School Board of Management**
14. **Elder of the Golden Heart (E.G.H.)**

8. The Plaintiff stated that his photograph was juxtaposed against the article in question with a caption which described him as a land owner and uncle to President Uhuru Kenyatta. He denied any relationship with the company mentioned in the article or the land in question. His evidence was that the article portrayed him as a person who has defrauded the squatters referred to therein, a person who abuses the power of the State to commit crimes and as a person who tramples on people's rights. He described the article as malicious and stated that the story was not verified.

9. The Plaintiff asserted that he is a man of integrity and an outstanding member of the society. That there was no apology save for a small article titled **"for the record"** which came after more than one year and stated that the same did not amount to an apology, was small in print and not as prominent as the article complained of and was not accompanied by any photograph.

10. PW2 Charles Waweru Gatonye and PW3 Peter Kanyango both testified that they had known the Plaintiff for over 40 years. They adopted their witness statements as their evidence. It was the evidence of the two witnesses that the Plaintiff is a respected member of the society who has served the country in various public offices including being a Diplomat and a Member of Parliament, an Assistant Minister and a Minister. That although the Plaintiff is an uncle to President Uhuru Kenyatta, the Plaintiff has not exploited that relationship. The article was described as having portrayed the Plaintiff as a land grabber, an influence peddler who uses his relationship with the President to exploit other people and as the manager of a shady land company.

11. The 2nd Defendant testified on the Defendant's side (DW1). He adopted his witness statement as his evidence and produced his documents as exhibits herein. He stated that he is a journalist and that he had attended the court proceedings in **ELR No.99 of 2014 Mombasa Said Mwavumbani & others v Msambweni Development Company Ltd.** That the name Muhoho was mentioned in the said proceedings and due to the similarity in the names he genuinely mistook the name for George Muhoho whereas the same referred to Paul Muhoho. That upon the discovery of the error, the 1st Defendant published an apology and a clarification and made a payment in court by way of amends.

12. I have considered both the Plaintiff's case and the Defendants' case together with the written submissions filed by the respective counsel for the parties.

13. It is not in dispute that the article in question was published by the Defendants. The article referred to the Plaintiff. After evaluating the evidence, this court's finding is that the article both by ordinary language and by innuendo bears the meaning attributed to the same by the Plaintiff.

14. The Defendants have contended that the publication was made on an occasion of absolute privilege as the same was a report of court proceedings. The court proceedings were not produced as exhibits herein. There is therefore nothing to show whether the article was factual. In the instant case, there is no privilege as there is no evidence adduced by the Defendants to prove that the article was premised on correct facts.

15. It was submitted by the Defendants' side that the Plaintiff is a public figure and that the publication was fair comment made on public interest. As stated by the Court of Appeal in the case of **Nation Media Group Ltd & another v Alfred N. Mutua [2017] eKLR**

“28. To sustain the defence of fair comment, the appellants were required to demonstrate that the words complained of are comment, and not a statement of fact; that there is a basis of fact for the comment, contained or referred to in the article complained of; and that the comment is on a matter of public interest [See Gatley on libel and slander 8th edition 1981 (Sweet & Maxwell) at paragraph 692 at page 291].”

16. In the case at hand, the evidence establishes that the Plaintiff was not contacted for any clarification. There was no verification of the facts. In the case of **J.P Machira t/a Machira & Company Advocates v Wangethi Mwangi & another [1998] eKLR** the Court stated that malice **“can be inferred from a deliberate, reckless, or even negligent ignoring of facts’ and that “deliberate lies can also be evidence of malice.”**

17. There was no apology made directly Plaintiff. The Defendants did not reply to the Plaintiff's Demand Notice. The **“for the record”** publication by the Defendant came more than one year later. I would also agree with the Plaintiff that the same was not as prominent as the article complained of and that the article was small in print and fails to apologize unreservedly.

18. With the foregoing, this court finds the Plaintiff's case proved on a balance of probabilities. The Plaintiff is 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**)

19. The Plaintiff has 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.”

20. 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 v James Okoth Omburah T/a Omburah & Co. advocates [2013] eKLR** and **Standard Ltd v G. N. Kagia T/a Kagia & Co. Advocates [2010] eKLR.**

21. The Plaintiff's proposed a sum of Ksh.25,000,000/= as aggravated damages. The following cases were relied on:

(a) **Kipyator Nicholas Kiprono Biwott v Clays Ltd & 5 others [2000] eKLR** where Ksh.30,000,000/= was awarded as general damages and exemplary damages.

(b) **Alnashir Visram v Standard Ltd 2016 eKLR** where Ksh.20,000,000/= was awarded as general damages.

22. On the other hand, the Defendants side relied on the case of:

(a) **Musikari Kombo v Royal Media Services [2018]eKLR**

(b) **Miguna Miguna v Standard Group Ltd & 4 others [2017] eKLR**

Where the award of general damages was Ksh.5,000,000/= and the aggravated damages awarded was Ksh.1,000,000/=.

23. The principles to be considered by the court in awarding damages in a defamation suit were set out by the Court of Appeal in the case of **Johnson Evans Gicheru v Andrew Morton & another Civil Appeal No. 314 of 2000** while quoting from the English decision of **Jones v Pollard [1997] EMLR 233,243** as follows:

“1.The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition;

2. The subjective effect on the plaintiff feelings not only from the prominence itself but from the Defendant's conduct thereafter both up to and including the trial itself;

3. Matters tending to mitigate damages, such as the publication of an apology;

4. Matters tending to reduce damages;

5. Vindication of the plaintiff's reputation past and future.”

24. I have considered the authorities cited by the respective counsel for the parties herein. I have also considered the following comparative awards:

(a) **Hon. AMB Chirau Ali Makwere (supra)** where the Plaintiff who was a former ambassador and a politician was awarded Ksh.3,000,000/= as general, exemplary and aggravated damages.

(b) **Martha Karua v Standard Limited & another Nairobi HCCC No. 295 of 2004** where a cabinet minister was awarded Ksh.4,500,000/= as general and aggravated damages.

25. With the foregoing, I assess general damages at Ksh.5,000,000/= and aggravated damages at Ksh.1,000,00/= I also award Ksh.500,000/= in lieu of an apology. It is rather late in the day for any meaningful apology to be published over six years down the line.

26. The upshot is that judgment is hereby entered for the Plaintiff against the 1st and 2nd Defendants jointly and severally for the sum of Ksh.6,500,000/= and costs.

Date, signed and delivered at Nairobi this 15th day of Oct., 2020

B. THURANIRA JADEN

JUDGE