



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL CASE NO. 97 OF 2000

JOHN KIPKORIR SAMBU.....PLAINTIFF

VERSUS

FRANCIS RONO.....1ST DEFENDANT

THE NATION MEDIA GROUP LIMITED.....2ND DEFENDANT

JUDGMENT

INTRODUCTION

The plaintiff instituted the present suit on 18th April 2000 seeking damages and a permanent injunction against the defendants. The suit arose from a publication by the defendants where the plaintiff contends it defamed him.

PLAINTIFF'S CASE

The defendants published an article on 21st March 2000 where they stated;

“it is interesting to note that among the PIC members is Mosop MP John Sambu. This saw miller with wide interests in Molo and Kaptagat forests occupies a public office. As minister for Natural resources, Sambu was responsible for degazettment of over 60 percent of Kenya’s forests. Even the

controversial Karura Forest changed hands during Sambu’s tenure as minister.”

The articles were understood to mean that the plaintiff was unfit to hold office and was corrupt, unfit to be a PIC member, further that he had committed a criminal offence, abused his office and acted beyond his ministerial powers. That he was a wanton saw miller and was undermining the president and was dishonest.

He stated that the words were false and malicious. They were libelous and the defendants published words they knew to be false. That they failed to verify the truth of the said words. He was exposed to ridicule and scandal. His reputation was injured and he has suffered harm and anguish and his character has been injured.

He relied on the case of ***Samuel Ndung’u Mukunya v Nation Media Group Limited & another [2015] eKLR*** to define malice wherein the language disproportionate to the facts amounts to malice. He also relied on the case of ***CFC Stanbic Bank Limited v Consumer Federation of Kenya (COFEK) Being sued through its officials namely Stephen Mutoro & 2 others [2014] eKLR*** where it was established that failure to authenticate the words alleged imputes malice on the part of the publisher.

He submitted that the act of making the publication public is evidence that an offensive piece of information was published. He sought that damages be awarded and that the quantum be such a sum as will compensate him for the wrong he has suffered.

The plaintiff had one witness who filed 2 witness statements where he stated that he heard people talking about the Plaintiff and the theft of forest land. Further, that he lost trust in the plaintiff as a result of the story.

The plaintiff testified that despite being a shareholder in Sambos saw mills, the business had stopped at the time of the article’s publication.

DEFENDANT’S CASE

The defendant denied that the words bore or were understood to bear any of the meanings pleaded. They deny the particulars of malice and averred that they were published on an occasion of qualified privilege. In their defence they stated that they had a moral duty to publish the opinion of a concerned citizen on an issue that affected and concerned all Kenyans. The

plaintiff has not suffered any injury or loss and there can be no order for injunction on such a suit. Further, that the Plaintiff isn't entitled to 15% VAT costs as it is only applicable to goods supplied or services delivered.

The defendants never filed submissions in their defence.

ISSUES FOR DETERMINATION

The following are the issues for determination;

- a) Whether the plaintiff has proven the ingredients necessary for the tort of defamation
- b) Quantum

In considering whether the plaintiff has proven the ingredients necessary for the tort of defamation, I am guided by the findings in the case of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] Eklr where the court held;

The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiffs' reputation in the estimation of right minded persons in the society or they must tend to cause the plaintiff to be shunned or avoided by other persons.....

Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice. The defamatory words must be shown to have been published by the defendant.

The foregoing ingredients of defamation were reiterated in the case of John Edward vs Standard Ltd where the court stated as follows: -

"A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule, or contempt or which causes him to be shunned or avoided or has a tendency to injure him in his office, profession or calling. The ingredients of defamation are: -

- i. *The statement must be defamatory.*
- ii. *The statement must refer to the plaintiff.*
- iii. *The statement must be published by the defendant.*
- iv. *The statement must be false."*

These are the guidelines along which I need determine whether there was defamation.

Whether the statements were defamatory

For a statement to be defamatory it must be shown to have injured the plaintiff in some way. This injury might be in terms of his office or exposing him to ridicule and contempt. The court should also be alive to the fact that the plaintiff is a politician therefore there are various factors that would lead to him losing his office. That being said, he went ahead and won an election 2 years after the story was published. Further, there is a statement by the witness that angry youths burnt down his car and there was violence but there is no established correlation between the burning down of the car and the alleged published story. As a politician, it is a daily occurrence to be exposed to ridicule and contempt. The witness says he heard other people talking about the plaintiff but those people aren't witnesses therefore admitting such statements in evidence would amount to admitting hearsay. How do we establish that the statement resulted in the dip in popularity of the plaintiff?

The defendant pleaded qualified privilege as a defence. In Reynolds vs. Times Newspapers [1999] 4 ALL ER 609 the House of Lords set out a criteria for determining whether a publication is subject to qualified privilege as herein under:

"Depending on the circumstances, the matters to be taken into account include the following. (The comments are illustrative only):-

- (1) *The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.*
- (2) *The nature of the information, and the extent to which the subject matter is a matter of public concern.*

(3) The source of the information. Some informants have direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.

(4) The steps taken to verify the information.

(5) The status of the information. The allegation may already have been the subject of an investigation which commands respect.

(6) The urgency of the matter. News is often a perishable commodity.

(7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed.

(8) Whether the article contained the gist of the plaintiff's side of the story.

(9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

(10) The circumstances of the publication including the timing."

The main elements lacking are that the 2nd defendant never took steps to verify the information or seek comment from the plaintiff

Whether the statement referred to the Plaintiff

The statement indeed referred to the plaintiff as it mentions him by name and states the office he occupied.

Whether the statement was published by the defendant

It is undisputed that the statement was published by the defendant in a popular publication with wide circulation in the public, the Nation Newspaper.

Whether the statement was false

In *Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR* the court held;

"A defamatory statement is presumed to be false, unless the defendant can prove its truth. Defamation law puts the burden of proving the truth of allegedly defamatory statements on the defendant, rather than the plaintiff."

The burden of proving the truth of the alleged statements is therefore on the defendant. The defendant has not proven that the statements made were true, especially pertaining to the alleged deforestation. The statement was therefore false.

The defendants, in my opinion, have failed to put up a plausible defence. Within the guidelines set, to the strong plaintiff's case which makes it vivid that the defendant committed the tort of defamation.

QUANTUM

What is therefore to be determined is the quantum of damages? Section 16A of the Defamation Act provides that: -

"In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just:

Provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings."

The plaintiff did not suffer severe injury from the defamation and I therefore assess general damages at Kshs. 2,000,000/= with costs to the plaintiff. Interest be at court rates.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 5th day of April, 2019

In the absence of:

The appellant

The respondent

And in the presence of Mr. Mwelem – Court assistant