



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 428 OF 2011

STEPHEN MAINA GICHUHI.....PLAINTIFF/RESPONDENT

-VERSUS-

NATION MEDIA GROUP LIMITED T/A DAILY NATION

NEWSPAPER.....DEFENDANT/APPLICANT

RULING

1. The defendant/applicant in this instance has filed the Notice of Motion dated 10th July, 2019 supported by the grounds laid out on its body and the facts deponed in the affidavit of *Sekou Owino*. The applicant is seeking the following orders from this court:

(i) *THAT the suit be and is hereby marked as terminated by operation of the law.*

(ii) *THAT the costs of the application and suit be awarded to the defendant/applicant.*

2. Sekou Owino, being at all material times the Head of the Legal Department at the applicant's company, deponed that the plaintiff/respondent instituted the defamation claim against the applicant vide the plaint filed on 6th October, 2011 and that the applicant subsequently entered appearance on 16th November, 2011 and filed its statement of defence on 28th November, 2011.

3. It is the deponent's assertion that later on, notices to show cause were issued in the matter on various occasions and the matter was scheduled for hearing on 28th October, 2018 but that the applicant came to learn that the respondent passed away on 24th June, 2015.

4. On that note, the deponent stated that by operation of law, the suit abated on 24th June, 2015 since a defamation claim cannot survive the demise of a plaintiff. He went further on to state that in any event, the respondent's wife who was intended to take over the respondent's estate and substitute his name in the suit has also passed away.

5. The applicant filed the affidavit of service on 30th July, 2019 evidencing service of the Motion upon the respondent's advocate; who has since not filed a reply on behalf of the respondent.

6. In that case, I have taken into account the grounds set out on the face of the Motion and the facts deponed in the affidavit supporting it.

7. The record confirms that the respondent through his advocate filed the plaint on 6th October, 2011 against the applicant, claiming *inter alia*, general and aggravated damages for defamation. The record also confirms that the applicant both entered appearance and filed its statement of defence as earlier indicated.

8. Going by the record, it is clear that the court issued the initial notice to show cause on 20th February, 2017 requiring the parties to show cause as to why the suit ought not to be dismissed and that counsel for the respondent filed an affidavit in reply thereto, essentially stating that when the matter was last in court on 18th May, 2015 the same was stood over generally for the reason that the respondent had developed health complications.

9. Thereafter, another notice to show cause was issued against the parties on 3rd September, 2018 and to which the respondent's advocate filed the affidavit on 9th November, 2018 stating that the respondent died on 24th June, 2015 and that letters of administration were issued to his widow and son. The advocate went on to aver that the widow named Margaret Waithera Githiomi also passed away soon thereafter and that the son relocated abroad, which goes to show that he does not have a client. However, the counsel urged the court not to dismiss the suit.

10. Needless to say that I have established from the respondent's advocate that he is no longer alive and that one of the two (2) administrators

to his estate is dead while the other one is away.

11. The real question therefore is whether the suit; being a defamatory claim; can survive the deceased. **Section 2(1) of the Law Reform Act, Cap.26** offers an answer in the following manner:

“Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation...”

12. From the foregoing provision, it is evident that defamation claims do not fall within the purview of claims that can survive the demise of a party.

13. The courts have both acknowledged and applied the above provision on various occasions. Take for instance the case of **Gibson Kagoi Mwangi v Kenyatta National Hospital & 2 others [2014] eKLR** where my brother, Honourable Mr. Justice J. Serگون held the following in respect to a defamation claim involving a deceased plaintiff:

“The first issue in this application is whether the suit should stand considering the demise of Gladys Muthoni Kagoi. In view of the provisions of Section 2 (1) of the Law Reform Act, this suit cannot survive the deceased.”

14. The Court of Appeal in **Kiage Peter Wa Mochama & another v Standard Chartered Bank Limited [2016] eKLR** was equally not left behind when it reasoned thus:

“The appellant submitted that a suit filed prior to the death of the deceased survives for the benefit of his estate. We are not persuaded for reasons that a plain reading of the proviso in Section 2 (1) of the Law Reform Act is explicit that all causes of action subsisting against or vested in the deceased in defamation do not survive for the benefit of the estate. In defamation law, the dead cannot be defamed. Defamation suits do not survive the deceased because defamation is a personal action that cannot be assigned or brought on someone’s behalf. The reason why defamation suits do not survive is that the right of action dies with the person and once you are dead, you are taken not to have a reputation in legal terms that is capable of being damaged...There is no liability for defamation of the dead either to the estate of the deceased or to the deceased’s descendants or relatives. Once a person has left the living, you can say anything you want about him. A reputation is as perishable as the person who earned it. The dead have no rights of reputation and can suffer no wrong. In the instant case, the deceased having died on 24th August 1995, his claim for defamation does not survive for the benefit of his estate.”

15. It is therefore as clear as day that a defamation claim cannot survive a deceased party given that such a claim is of a personal nature and cannot therefore be carried over to the deceased’s estate. As a result, I find that the present suit abated with the demise of the respondent.

16. Consequently, I will allow the Motion as prayed. Due to the nature of the claim, I make no orders as to costs of both the application and the suit.

Dated, signed and delivered at NAIROBI this 17th day of October, 2019

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L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the Defendant/Applicant