



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 157 OF 2008**

**HENRY K. TANUI.....PLAINTIFF**

**-VERSUS-**

**PAUL K. MATUMBI.....DEFENDANT**

**JUDGMENT**

- 1) On 26<sup>th</sup> February 2008, Paul K. Matumbi, the Defendant herein wrote a letter concerning and about Henry K. Tanui, the Plaintiff herein to the Managing Director, consolidated Bank and copied the same to the Chairman of the aforesaid bank. In the aforesaid letter the Defendant stated inter alia that the Plaintiff's University Education was doubtful and that he solicited for handouts as harambees and lunches.
- 2) The Plaintiff felt that the contents of the letter defamed him consequently, he filed this suit in which he sought for damages against the Defendant. The Defendant filed a defence to deny the plaintiff's claim.
- 3) When this suit came up for hearing, the plaintiff and the Defendant each testified in support of their case without summoning any independent witness. At the close of evidence parties were invited to file written submissions. However, at the time of writing this Judgment, the Plaintiff was the only party who had filed his submissions.
- 4) When, Henry K. Tanui (PWI) came to testify, he adopted the contents of his written witness statement as his evidence in chief. He also produced as exhibits in evidence the documents attached to his list of documents. PWI stated that he was a professional banker employed by consolidated Bank of Kenya Ltd as Head of Credit. He stated that by virtue of the sensitive nature of his job and his track record he was respected and held in high esteem by his colleagues and members of the public whom he interacted with on a daily basis.
- 5) PWI averred that the Defendant wrote the letter dated 26<sup>th</sup> February 2008 attacking his professionalism, integrity and his way of conducting business. He said that the letter was written to his employer's, Managing Director and copied to the Chairman. He further stated that the letter purported that he had been blocking the Defendant's Company called Prudential Valuers Ltd from providing services to Consolidated Bank of Kenya.
- 6) PWI also pointed out that the Defendant's letter purported to inter alia that his University Education was doubtful and that he solicited for bribes from the Defendant's Company in exchange for getting work from the Bank with the pretence that they were meant to be for lunches and harambees.
- 7) It is the Plaintiff's submission that the letter was written out of malice and that it contained false information which was intended to injure his reputation before right thinking members of the society and particularly his employer.
- 8) It is the evidence of PWI that he was appointed to the position of Head of Credit after a rigorous and competitive exercise. He tendered evidence to show that he holds both a Masters and a Bachelors Degree in Financial Services. PWI produced various Diploma and certificate qualifications awarded to him together with his curriculum vitae in support of his case.
- 9) He stated that he was earning a monthly salary of ksh. 500,000/=. He said that due to the embarrassment and ridicule the letter had caused him, he left the employment of Consolidated Bank and joined Eco- Bank (K) Ltd to take up a job in which he earned a monthly sum of ksh 300,000.
- 10) PWI further stated that when his former employer received the Defendant's letter, its Managing Director together with the disciplinary committee summoned him to explain the genesis and truthfulness of the letter. PWI, said he was cleared of any wrong doing by his former employer. He stated that throughout his career he never involved himself in corrupt deals neither did he demand for handouts as alleged.

11) In his defence Paul K. Matumbi (D.W.I) admitted authoring the letter dated 26<sup>th</sup> February 2008 addressed to the Plaintiff's employer. He stated that he had verbally complained to the Managing Director about the Plaintiff but was told to put in writing his complaint.

12) DWI stated that his company **Prudential valuers Ltd** was at all material times in the panel of valuers of Consolidated Bank (K) Ltd. In both his written witness statement and oral evidence, the Defendant averred that the letter was not defamatory but contained true facts.

13) DWI produced the plaintiff's curriculum vitae, which shows that the Plaintiff had no Degree qualification. The Plaintiff disputed the authenticity of the Curriculum Vitae. The Defendant that the Plaintiff that the Curriculum Vitae shows that the Plaintiff was incompetent and unprofessional. DWI claimed that the Plaintiff frequented his office to ask for handouts to enable his Company get more valuation jobs from Consolidated Bank.

14) He said that initially he fell pray to the plaintiff's demands but he soon noticed that he was not getting more work and he stopped acceding to his requests.

15) DWI claimed that the Plaintiff circulated an email to all branches of the bank informing them not to give his Company valuation work. DWI said that his company was eventually removed from the Bank's panel of valuers though it was later reinstated. He claimed that the letter was not defamatory.

16) After considering the riral evidence and the plaintiff's submissions, the following issues arose for determination:

**First**, whether or not the Plaintiff has met out a case establishing defamation?

**Secondly**, whether the Plaintiff is entitled to damages.

17) On the first issue it is not in dispute that the Plaintiff's name is mentioned in the letter dated 26<sup>th</sup> February, 2008 which letter was signed by the Defendant. The Defendant admitted authoring the letter under confidential cover. The letter was written to the managing Director and Chairman of the Plaintiff's employer, Consolidated Bank of Kenya. There is no dispute that the letter was received by the duo.

18) It is also not disputed by the Defendant that the Plaintiff was summoned by the Bank Managing Director and the Disciplinary Committee to explain the allegations of the letter. The duo qualify as third parties since the information given concerned someone else (Plaintiff) and not themselves.

19) The question which has also to be determined is whether the contents of the letter were false. In order to clearly determine the veracity of the letter, it is important to have the contents of the letter reproduced as follows:

*"The Managing Director*

*Consolidated Bank of Kenya Ltd*

*P O Box 51133-00200*

*NAIROBI.*

*Dear Sir,*

***RE: PRUDENTIAL VALUERS LIMITED VALUATION SERVICES***

*We write to register our concern with the way your Mr. Tanui has treated us in the past five months to the extent of brokering (sic) us from providing valuation services to the bank, all because of the following reasons;*

*1. Mr Tanui sometimes last year forwarded to the under signed his curriculum Vitae so that we could negotiate with the co-operative Bank to offer him a job. The undersigned tried to prussue the matter but the application was rejected because Mr. Tanui (sic) University Education was doubtful and Co-operative Bank has a policy to (sic) employ new staff aged 30 years and below. The C.V is with us and can table us evidence.*

*2. Mr. Tanui has been frequenting our officers since November last year with the intention of securing land for some athletes based outside the country and as a result he has requested for commissions of which we cannot give beyond some limits. This has made him threaten us with removal from the panel of valuers for consolidated Bank of Kenya Limited.*

*3. The undersigned knows Mr. Tanui for a long time ever when the undersigned was working for Mr. Joshua Kulei and by extension the former President of Kenya and it is wrong for Mr. Tanui to revert to old differences to frustrate us by denying us the chance to provide our professional services.*

*4. We mentioned some issues we think are important for you to know now although if we are given a chance we can let you discover more touching issues on this matter and others.*

*We have severally communicated with Mr. Tanui through telephone and short messages and it is apparent that he is likely to*

*succeed in his effort to block us from providing the Bank with our professional services.*

*We now plead with you to intervene so that he does not accomplish his intended threats. We are tired of Mr. Tanui's habit of soliciting for hard (sic) outs in pretence that it is for lunch or Harambees and we wish to let you know that we shall not part any further money from today onwards.*

*Please assists us.*

*Thank you.*

*Yours faithfully*

*P.K MATHUMBI*

*cc. Chairman Consolidated Bank of Kenya Limited"*

20) The plaintiff tendered his curriculum vitae and academic qualifications as exhibits in evidence. The Defendant did not controvert these documents save that he produced the Plaintiff's old Curriculum vitae which did not help his case.

21) What come out clearly is that the Plaintiff's academic qualifications were not doubtful. Therefore, the contents of the letter to that extent were false. In the aforesaid letter the Defendant alleged that the Plaintiff demanded handouts for lunches and harambees. The Plaintiff vehemently denied the Defendant's allegations. The Defendant was adamant that the Plaintiff indeed made such demands. The Defendant however stated that he wrote the letter out of anger having discovered that his company was not getting work and had even been removed from the panel of valuers of Consolidated Bank (K) Ltd. The Defendant's evidence on this aspect needed corroboration from an independent witness to prove that the Plaintiff demanded handouts. There was no iota of evidence to prove that. With respect, I find the allegation to be false.

22) The final issue is whether the Defendant was actuated by malice to write the offensive letter. It is apparent from the evidence from both sides that the Defendant was prompted to write the letter on the suspicion that the reduced volume of work given to the Defendant's valuation company by Consolidated Bank of Kenya was attributed to the Plaintiff. The Defendant admitted in his evidence that he wrote the letter in a feat of anger believing that the Plaintiff was behind his woes.

23) In my humble estimation, I find the tone and contents of the letter to be malicious. It seriously damaged the reputation of the Plaintiff. It portrayed him as corrupt, incompetent and unprofessional in eyes of right thinking members of society.

24) Having come to the conclusion that the Defendant was actuated by malice to write the letter about and concerning the Plaintiff, I now turn my attention to the question of quantum. The Plaintiff has stated that as a result of the publication of the offensive letter, he was forced to leave the employment of Consolidated Bank (k) Ltd and take up a less paying job with Eco Bank (K) Ltd.

25) The Defendant is of the submission that it is only the Plaintiff's ego which was affected and not his reputation. The Defendant did not tender any apology.

26) I am convinced that the Plaintiff is entitled to damages. The Plaintiff has urged this court to award him a sum of ksh. 10,000,000 in general damages and a sum of ksh. 2,000,000 as exemplary damages.

27) The Plaintiff relied on two cases: **First** is the case of **Sameul Mukunya Vs National Media Group Ltd and Another [2015] eKLR** in which this court awarded a sum of ksh. 15,000,000 as general damages and ksh. 3,500,000/= as aggravated damages.

28) **Secondly**, is the case of **Nicholas Biwott Vs Clays Ltd & 3 others [2000] eKLR** in which this court awarded ksh. 15M as general damages and ksh. 15M as exemplary.

29) The defendant did not make any proposal on quantum. Having considered comparable awards I find that a sum of ksh. 6,000,000/= is reasonable for general damages.

30) I have already noted that the Defendant did not tender any apology. He has continued to deny that the content of the letter is offensive. The Defendant has in his testimony averred that the contents of the letter are true. An award of exemplary damages is appropriate in the circumstances. I award the Plaintiff ksh. 1,500,000 as exemplary damages. However, I find it inappropriate and unnecessary to grant the other prayers.

31) In the end, Judgment is entered in favour of the Plaintiff and against the Defendant as follows:

**i) General damages            Ksh 6,000,000/=**

**ii) Exemplary Damages    Ksh 1,500,000/=**

**Total                                Ksh 7,500,000/=**

iii) Costs of this suit

**Dated, signed and delivered at Nairobi this 13<sup>th</sup> of December, 2019.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant