



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 242 OF 2012

JANE NJERI ONYANGO.....PLAINTIFF

-VERSUS-

ERICK OCHIENG.....1ST DEFENDANT

JOE KARANJA.....2ND DEFENDANT

THE STANDARD LIMITED.....3RD DEFENDANT

JUDGMENT

1) Jane Njeri Onyango , the Plaintiff herein filed this compensatory suit against Erick Ochieng, Joe Karanja and The Standard Ltd, the 1st ,2nd and 3rd Defendants respectively for the publication of an article which the Plaintiff found offensive vide the plaint dated 23rd May 2012.

2) In the aforesaid plaint the Plaintiff sought for Judgment as follows:

a) General and exemplary and/or aggravated damages for defamation

b) An injunction order or issue to restrain the Defendants by themselves, their servants and/or agents or otherwise howsoever, from the further publication or causing to be published the said or any similar words defamatory to the Plaintiff.

c) An order do issue directed at the Defendants to publish a suitably worded retraction of the defamatory statement published on 2nd June 2011 and with similar prominence as the original statement published.

d) Costs of the suit and interest.

3) In respect to the Plaintiff's claim, the 1st and 3rd Defendants filed their defence dated 14th December 2012 in which they admitted publishing the articles but denied that the article was defamatory of the Plaintiff. The 2nd Defendant too filed his defence dated 6th June 2013 to deny the Plaintiff claim.

4) When this suit came up for hearing, the Plaintiff testified and summoned two independent witnesses to testify in support of her case. The Plaintiff (PWI) stated that on the 2nd of June 2011, the 3rd Defendant printed or caused to be printed and published in the Standard Newspaper a sports article titled

“KLTA FACING CRISIS AFTER AFFILIATES PULL OUT

“Kenya Lawn Tennis Association (KLTA) is undergoing a management crisis.

It is apparent there is in-fighting in the federation with some members having pulled out. The KLTA ‘rebels’ demand that the forthcoming elections be postponed to give time for constitutional review. Besides, they want the federation council dissolved to enable them set up a management committee to review the federation’s constitution. The group accused KLTA Council, which was disbanded eight months ago, of high handedness. The council is said to hold meetings without quorum, besides failing to submit minutes of previous meetings, thus operating illegally.

According to KLTA constitution, elections and submissions of accounts must be carried out every April of the year. It is alleged that selection for the national teams to tournaments are done without consent of the members. "We want a change of the constitution because the current one allows those in office to lock out majority of Kenyans from participating in elections," said Liz Odera of Sadili Oval.

The members claim that no district, province or county representation is covered in KLTA and management continues to remain only within two clubs in Nairobi.

KLTA has been accused of swindling support and equipment donated by International Tennis Federation to the country. "The equipment never reach their intended targets, said Joe Karanja, a coach at Loreto Convent. But KLTA chairman Patrick Gichira has hit back at the group, saying he has been disappointed by their rants.

"After realizing all these flaws, why shouldn't they (rebels) consult with KLTA?. They too have a responsibility since they are part of the federation," said Gichira. Gichira added that the federation has a clear – cut structure, which the management follows to the letter. Some members feel it is time KLTA brought down tennis from the elites in Nairobi and spread it across the country to give every Kenyan child an oppourtunity. "Junior are expected to pay every little service, including tournament levies; said Odera.

5) According to PW1, the aforesaid article made right thinking members of the society to believe that K.L.T.A was undergoing a tough administrative period engineered by members in leadership position for personal and selfish gains. It is her view that on the face of it, she would be rendered unfit to hold, contest or serve in any public position of trust.

6) She further said that the article portrayed her as a person who cannot be trusted with resources and aid from both donors and sponsors, since it was alleged that the donor funds donated were misappropriated, squandered, pilfered and or put to a wrong use or purpose. The Plaintiff urged this court to find the article defamatory.

7) PW1 also stated that she was a National vice chairperson at KLTA and therefore she was responsible for the organization's operations and national administration and therefore a depiction of KLTA having wrangles and administrative issues was a square blow in the face of the Plaintiff who was otherwise mandated to ensure a good running of the K.L.T.A.

8) PW1 further stated that being a practicing advocate , the article was injurious to his relationship with clients and colleagues who were now meant to perceive the Plaintiff in negative light as a person who was capable of misconducting herself and misappropriating the resources entrusted to her by clients and colleagues alike.

9) PW2 and PW3 testified Plaintiff's seasoned experience in private capacity as an advocate and as an administrator in sports and other societal organizations. It is pointed out that the article was injurious and send negative perceptions in relation to the Plaintiff's leadership capabilities and trustworthiness.

10) Joe Karanja (DW1) and Erick Ochieng (DW2) testified in support of the defence case. DW1 relied on his written witness statement. He stated that he had not written on mismanagement at KLTA and that he understood the need to verify information before printing or releasing them to the media.

11) DW2 claimed that most of the information he used to publish the article was drawn from Joe Karanja (DW1). Joe Karanja expressed shock at how words were planted in his mouth. He denied giving the information on the press statement, which were used in the making of the article.

12) The 3rd Defendant on its part maintained that the article contained fair comments on a matter that was on public interest.

13) Having considered the rival evidence and the submissions plus the authorities, the following issues command themselves for determination.

First is whether the article is defamatory of the Plaintiff.

Secondly, whether the Plaintiff is entitled to the reliefs sought in the Plaintiff.

14) On the first issue as to whether the article is defamatory of the Plaintiff it is the submission of the Plaintiff that the article put her in bad light as an administrator and official of the Kenya Lawn Tennis Association (KLTA). The Plaintiff averred that the article portrayed her as dishonest and a thief. In other words, it is her submission that the article injured her reputation, character and dignity.

15) The Defendants are of the submission that the article did not defame the Plaintiff because she was not mentioned by name. They argued that the story ws time in substance and fact in regard to the K.L.T.A. They also argued that the article was not malicious.

16) Having considered the rival submissions and evidence it is clear that though the article did not specifically mention the name of the Plaintiff, a person reading the article will obviously infer that the Plaintiff was being referred to. She held a senior position in KLTA and was in charge of administration. The evidence tendered has shown that the story (article) was not true in substance. It was calculated to destroy the reputation of the Plaintiff. In the end I find the article Defamatory of the Plaintiff.

17) The second issue is whether the Plaintiff is entitled to the reliefs sought. Having succeeded in proving liability against the Defendants, I

am convinced that the Plaintiff is entitled to be paid damages. The Plaintiff beseeched this court to award her a sum of ksh. 5,000,000/=. The Defendants on the other hand proposed an award of ksh 400,000/=

18) I have taken into account the authorities cited by both sides. It is apparent that the Plaintiff sought for both general and aggravated exemplary damages. With respect, I agree with the submissions of the Defendant that there was no cogent evidence adduced to show that there was republication or that the Plaintiff was not given a right of reply. I decline to grant such an award.

19) The only award that I think the Plaintiff is entitled is that of general damages. The relevant cases which were cited are mainly two. The first is the case of **Musikari Kombo Vs Royal Media Sercises Ltd eKLR** where this court awarded ksh. 5,000,000/= for general damages.

20) The second case is that of **Johnson Evan Gicheru Vs Andrew Morton & Another C.A no 314 of 2000**. Where the Appellant was awarded ksh. 6,000,000/-

21) In this case I am satisfied that a sum of ksh. 2,000,000/= is a reasonable award on general damages.

22) In the end Judgment is entered in favour of the Plaintiff and against the Defendants jointly in the sum of ksh. 2,000,000/= The Plaintiff to have costs of the suit.

Dated, signed and delivered at Nairobi this 13th of December, 2019.

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J. K. SERGON

JUDGE

In the presence of:

.....**for the Plaintiff**

.....**for the 1st Defendant**

.....**for the 2nd Defendant**

.....**for the 3rd Defendant**