



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 819 OF 2007**

**JK.....PLAINTIFF**

**-VERSUS-**

**KENYA BROADCASTING CORPORATION).....DEFENDANT**

**JUDGMENT**

1) **JK**, the Plaintiff herein filed an action against Kenya Broadcasting Corporation, the Defendant herein, claiming for damages for Defamation vide the Plaint dated 6<sup>th</sup> December 2007. It is the averment of the Plaintiff that the Defendant broadcast in its news bulletin of between 1.00 pm and 9.00 pm on 9/12/2006 of the Plaintiff, a defamatory material which depicted the Plaintiff as dishonest, irresponsible and of violent disposition.

2) The Defendant filed a defence to deny the Plaintiff's claim. When the suit came up for hearing the Plaintiff testified and summoned two witnesses to testify in support of his case while the Defendant summoned Kennedy Osir to testify in support of the Defence case.

3) It is the evidence of JK (PWI) that he allowed one JT (PW2) to use his private school compound to celebrate his wedding on 3<sup>rd</sup> December 2006. On the aforesaid date PWI said he arrived at the venue and was confronted by three men who started filming him. He said he confronted them for filming him without his consent and before being told the reason for that. He said despite his protest the cameraman continued filming him. PWI said that in the evening of that date he was surprised to watch a news item in the Defendant's Television News alleging that he had been caught red handed marrying a second wife secretly.

4) He said that the news item was also broadcast in other media houses on 10/12/2006. PWI said that immediately after the news bulletin was aired he received several telephone calls from his children, relatives, friends and business colleagues inquiring whether he had arranged to marry secretly and why he did not invite them.

5) He also said it was the most embarrassing moment in his life. He averred that he got married to JK for the last 34 years and he has never married any other woman. He said he has been a man of repute hence he was thoroughly embarrassed by the broadcast.

6) **JTOT** (PW2) told this court that he has been a neighbour of PWI, for over 10 years in Kiserian. He said that on 9<sup>th</sup> December 2006, he celebrated with friends at the grounds of (Particulars Withheld) school in Kona Baridi in the wedding of 3<sup>rd</sup> December 2006 he had with his wife LM. He confirmed that (Particulars Withheld) School is owned by PWI, his neighbour.

7) PW2 also said that even before he left his house and before the guest arrived some people including his former wife and two teenage children arrived and disputed the party claiming he was taking a second wife and abandoning his first wife and children. He further said he saw other people with cameras capturing the event and directed their cameras on JK alleging that he was the groom as he protested vehemently. He said that the function was not a wedding but a party he hosted and not by PWI.

8) **SKI** (PW3) stated that he was the best man of PW2 at the wedding he had with LM on 3/12/2006 held in Royal Christian Cnetre in Ongata Rongai . PW3 also said he attended the wedding party held on 9<sup>th</sup> December 2006 at (Particulars Withheld) school. PW3 said that the party was later interrupted by people who opposed the wedding ceremony. PW3 said he was surprised to see in the KBC evening news referring JK as groom who had secretly planned to marry a second wife .

9) PW3 further stated that the news item was aired by other media houses the following day on 10<sup>th</sup> December 2006. He said he was surprised because he knew JK was married to one wife JK.

10) The Defendant tendered the evidence of Kennedy Osir (DWI) who told this court that the Defendant aired the news item touching on the Plaintiff as a matter of public interest. DWI said that the story which was aired was that told by JT's estranged wife and children. He averred that he news reporter proceeded to report only on what transpired accompanied by video evidence.

11) He said that the video played did not refer to the Plaintiff by name. He pointed out that the video clip show the plaintiff throwing stones therefore, he was a man of violent disposition.

12) At the close of evidence, learned counsels appearing in the matter were invited to file written submissions which they did. Having considered the evidence and the rival written submissions plus the authorities cited, I think two issues commend themselves to be determined namely: **First**, whether the news item was defamatory of the Plaintiff. **Secondly**, whether the Plaintiff is entitled to damages.

13) On the first issue, it is the submission of the plaintiff that the news coverage complained of was defamatory and referred to the Plaintiff by pictures and words accompanying those pictures. It is said that the news item were viewed by millions of people all over Kenya.

14) The Plaintiff averred that he was actually called by those people who knew him to inquire about the whole story.

15) The Defendant submitted that the item neither referred nor linked the Plaintiff to the broadcast complained of therefore the same was not defamatory to the plaintiff.

16) The broadcast complained of is aptly captured in paragraph 4 of the plaint as follows:

**4. On or about the 9<sup>th</sup> day of December, 2006 in its news bulletins between 1 and 9 P.M the Defendant broadcast and published the following words and images defamatory of the Plaintiff:**

**COMMENTATOR:**

*“The long awaited day was finally here. Everything was set according to the script just for the big day. And this sleek vehicle was spruced up ferry the would be newly weds. Food was just as sumptuous for the big day. But the bridal party had no idea that an enraged jilted woman with her six children were planning to disrupt the wedding. Soon, area Chief and his assistant entered the compound to announce that the wedding would never be..... The Jilted woman moved to reclaim what she felt was hers.”*

*(Film of a limousine decorated with flowers together with the scene of a party and the Plaintiff holding his alleged bride’s hand).*

*“Huyu mzee amenisumbua sana. Sio watoto anasomesha, sio nini. Imekuwa ni kuniharibia tu maisha yangu tangu nikiwa mtoto.....” (‘‘This old man has given me many problems. He has neither educated the children nor done anything else. He has just spoilt my life since I was a child.’’)*

*(Film of the alleged wife complaining bitterly using the said word).*

**COMMENTATOR:**

*“The irate abandoned wife was crying foul.”*

*“Sasa anakuja kunionyesha aibu na watoto wangu wamekua wakubwa sasa hata ndio wangeoa kuliko yeye aoe. Nasikia uchungu sana kwa roho yangu.” (He has now come to embarrass me when my children have grown up. They are the ones who should have married and not him. I feel a lot of pain in my heart.)*

*(Film of the alleged wife complaining bitterly using the said words and finally weeping).*

**COMMENTATOR:**

*“She lamented her ordeal at the man’s hands since they married in 1978. The abandoned woman vowed to do anything to paralyze the event.”*

*“Nilikuja kumwambia anisomeshe nikajaribu kumpeleka kwa D.O lakini hakuna usaidizi mimi nimepata. Ndio naomba mnisaidie kwa sababu alikataa kunisomesha na sasa niko form 3. (‘‘I came to tell him to educate me and even tried to report him to the D.O but I did not get any assistance. That is why I am asking you to assist me because he refused to assist me and I am now in form three’’.)*

*(Film of a teenage girl complaining using the said words)*

*Alikuwa anafanya hiyo harusi yake kisiri sana ambaye tulikuja tukajua na hatukuchukua hatua yeyote mpaka sasa mahali tumefika kupinga hiyo harusi.”(‘‘He was conducting his wedding ceremony very secretly but we came to know but did not take any action but we have now come here to oppose that wedding’’).*

*(Film of a young man complaining using the said words)*

17) The broadcast captioned hereabove is not denied, what is stated by the Defendant is that the same did not refer to the Plaintiff and neither

is it defamatory of the Plaintiff. A cross examination of the video clip played in court will show the unmistakable picture of the Plaintiff. He was being referred to as JT, the groom. It is clear from the story aired that the Plaintiff was viewed as having married another wife while neglecting and or abandoning the first wife and children. This will obviously lower the high esteem people had for the Plaintiff.

**18)** He is depicted as a dishonest, unreliable and deceitful man. The Defendant was utterly reckless in airing such a news item before cross-checking the actual identity of the person it intended to publish his story. In the end I find that the Plaintiff's reputation was injured hence the news item was Defamatory of him.

**19)** The Defendant raised a preliminary issue in which it sought to rely on to have this suit stuck out. It was argued that the Plaintiff failed to serve the Defendant with a statutory demand notice under section 46 of the Kenya Broadcasting Act.

**20)** In response to this submissions, the Plaintiff successfully applied for leave to tender in evidence, a copy of the demand notice. I therefore find this ground controverted hence it has no merit.

**21)** The second issue is whether the Plaintiff is entitled to damages. The Defendant is of the submission that the Plaintiff is not entitled to damages since he failed to serve it with a notice under section 46 of the Kenya Broadcasting Act.

**22)** I have already stated that the aforesaid objection has been countered. Having established that he was defamed, I am convinced that the Plaintiff is entitled to damages.

**23)** The Plaintiff has urged this court to award him a sum of ksh. 22,000,000 and ksh. 3,000,000 as general and aggravated damages respectively. The Plaintiff relied on the following cases:

**i. Hon Mwangi Kiunjuri Vs – Wangethi Mwangi & 2 others Civil Appeal No 221 of 12.**

**ii. Phineshas Nyagah – Vs Hon Gitobu Imanyara HCCC No. 697 of 2009.**

**iii. Obongo and another Vs Municipal Council of Kisumu Civil Appeal No 37 of 1970**

**iv. Machira Vs N Mwangi & Another HCC NO. 1709 of 1996**

**v. Daniel Musinga t/a Musinga & Co. Advocates Vs Nation Newspaper Ltd HCCC NO 102 of 2000.**

**vi. Samuel Ndung'u Vs NATION Media Group & Another HCC No. 420 of 2017**

**vii. Dr. Christopher Ndarathi Murungaru V John Githongo HCC No. 446 of 2006**

**24)** It is clear from the plaint that the Plaintiff sought for general damages and no more. Having taken into account the authorities cited and supplied, I think an award of ksh. 3,000,000/= is a reasonable award for the Plaintiff.

**25)** In the end, Judgment is entered in favour of the Plaintiff and against the Defendant in the sum of ksh. 3,000,000. The Plaintiff to be paid costs of the suit.

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

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant