



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 346 OF 2006

JIMMY RAYANIPLAINTIFF

VERSUS

KENYA TELEVISION NETWORK LTD

Broadcasting under the name and style of

KENYA TELEVISION NETWORK (KTN)..... DEFENDANT

JUDGMENT

1. Jimmy Rayani, the Plaintiff herein instituted this claim against Kenya Television Network (KTN) vide the Plaint dated 4/4/2016 in which he sought for both general and exemplary damages for defamation. The Defendant filed a defence to deny the Plaintiff's claim.

2. When this suit came up for hearing, the Plaintiff testified without summoning any independent witness to testify in support of his case. The Defendant did not summon any witness in support of his case.

3. Jimmy Rayani (PWI) appeared before this court and stated that he has been a practicing advocate since 1966. He also said he has held various leadership positions in several companies, social and religious organizations as well as being a sports administrator.

4. PWI also stated that he was the Chairman of Kenya Cricket Association (K.C.A) from 1994 to 2004. Prior to that PWI, said he was the Chairman of Nairobi Provincial Cricket Association. He also said he was an elected Director of the International Cricket Council for a period of 7 years and that he has had on many occasions given lectures on sports Law as well as land Law.

5. The Plaintiff stated that he has never been arrested by the Law enforcers in his life and neither has he faced any disciplinary action taken against him. He further said that he is a well respected advocate, sports administrator and elder in the community.

6. PWI, said that he recalls that on 6th April 2005, the Defendant ran a news item as Breaking News in which it stated:

“Jimmy Rayani, the former Cricket Chairman of Kenya Cricket Association arrested in connection with corruption in Kenya Cricket Association.”

7. He said that immediately after the broadcast of the offending publication many relatives, friends, colleagues and business associates called him to make inquiries about the broadcast. PWI said he was traumatized, embarrassed for a long time and could not face the public, friends, relatives and clients.

8. In his testimony the plaintiff was able to show that he has never been arrested by the C.I.D nor even held in the CID Headquarters. He was able to show that he has never been arraigned in court nor charged with two counts of conspiring to defraud K.C.A of millions as alleged in the article. PW1 also confirmed that he was never called by the Defendant to verify the veracity of its broadcast.

9. The Plaintiff stated that the aforesaid words in their natural and ordinary meanings meant and were understood to mean that the Plaintiff was a corrupt and dishonest person.

10. At the close of evidence, learned counsel were invited to file written submissions together with the authorities cited. The following issues appear to commend themselves for consideration. **First** is whether the live broadcast by the Defendant were defamatory of the Plaintiff. **Second**, whether the Plaintiff is entitled to the reliefs sought in the amended plaint.

11. On the first issue, it is the submission of the Plaintiff that the live broadcast was defamatory, false, reckless and malicious. In the original

defence the Defendant admitted airing the live broadcast in paragraph 13 (v) save that the Defendant relied on the Defence of qualified privilege.

12. According to the Defendant, the Plaintiff failed to prove his case on a balance of probabilities hence it should be dismissed. It is also argued by the Defendant that the Plaintiff failed to establish the existence of a defamatory statement. The Defendant pointed out that the Plaintiff admitted in cross – examination that he himself did not hear or see the offending publication but was informed by family members and friends.

13. The record shows that the Plaintiff stated while testifying in cross examination as follows:

“I am not relying on any documents. I have not listed any witness to testify except myself. I have not produced any document to prove the contents of paragraph 3 of the plaint. The words I stated in paragraph 8 of the plaint were relayed to me by many people.”

14. It is clear that the Plaintiff did not personally hear nor see the offending words being broadcasted. He says he was told by other people. He has not called any of those people. He therefore relied on hearsay evidence. With respect, I agree with the Defendant that the Plaintiff did not establish on a balance of probabilities the existence of the Defamatory statement. He therefore failed to establish that he was defamed.

15. The other issue is whether the Plaintiff is entitled to damages. Having failed to establish liability he is not entitled to damages. However, had he succeeded in establishing liability in defamation I would have awarded him general damages.. The other claims for aggravated and exemplary damages were not established. Considering the comparable awards set out in the authorities supplied and relied upon I would have awarded the Plaintiff a sum of ksh. 6,000,000/= for general damages plus costs.

16. In the end this suit is ordered dismissed with costs to the Defendant.

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 Defendant