



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL SUIT NO.137 OF 2016**

**MIGUNA MIGUNA.....PLAINTIFF/RESPONDENT**

**VERSES**

**THE STAR PUBLICATION LIMITED.....1<sup>ST</sup> DEFENDANT**

**THE STAR NEWSPAPER.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RADIO AFRICA LTD.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**WILLIAM PIKE.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**PATRICK VIDIJA.....5<sup>TH</sup> DEFENDANT**

**WAMBUGU KANYI.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff has jointly and severally sued the Defendants seeking damages for alleged defamation. Before the matter could proceed to hearing, the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed an application dated 20<sup>th</sup> September, 2017 seeking the following orders:

- 1. The name of the 2<sup>nd</sup> Defendant (The star newspaper) be struck out from the plaint and the proceedings herein.**
- 2. The name of the 3<sup>rd</sup> Defendant (Radio Africa Ltd) be struck out from the plaint and the proceedings herein.**
- 3. The name of the 4<sup>th</sup> Defendant William pike be struck out of the plaint and the proceedings herein.**
- 4. Costs of this application and the entire suit be paid by the Plaintiff to the 2<sup>nd</sup> ,3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

The application is supported by the grounds on its face and the supporting affidavit of Linda Musita. It is contended that the 2<sup>nd</sup> Defendant being merely a name of a publication lacks the capacity to be sued. That the Plaintiff's suit against the 3<sup>rd</sup> Defendant is based on the assertion that the 3<sup>rd</sup> Defendant is a majority shareholder, registered owner and proprietor of the 1<sup>st</sup> Defendant. That **The Star newspaper**, whose electronic version contains the publication complained of, is wholly owned by the 1<sup>st</sup> Defendant. That the 3<sup>rd</sup> Defendant is legally distinct from the 1<sup>st</sup> Defendant and that the 4<sup>th</sup> Defendant has been improperly sued as an agent of a disclosed principal.

2. The Plaintiff opposed the application by way of grounds of opposition dated 13th November 2017 as follows:

- 1. That the Application is an abuse of the process of the court.**
- 2. Order 1 rule 3 of the Civil Procedure Rules provides that; all persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally or in the alternative, where if separate suits were brought against such person any common question of law and fact would arise.**

3. That further Order 1 rule 7 of the Civil Procedure Rules provides that where a Plaintiff is in doubt as to the persons from whom he is entitled to obtain redress he may join two or more defendants in order that the question as to which of the Defendants is liable, and to what extent, may be determined as between all parties.

4. The issue as to whether the 2<sup>nd</sup> Defendant is an entity capable of being sued is framed as one of the issues to be addressed during trial.

5. That the 3<sup>rd</sup> Defendant is sued as the majority shareholder and proprietor of the 1<sup>st</sup> Defendant and is thus vicariously liable.

6. That the 4<sup>th</sup> Defendant is/was the chief executive officer and Managing director of the 1<sup>st</sup> Defendant and was in charge of setting the editorial policy. The cause of action against the 4<sup>th</sup> Defendant is specifically averred to in paragraphs 26, 27, 29 and 30 of the plaint.

7. That the Court of Appeal in *Miguna Miguna verses standard group limited and 4 others* 2017 eKLR held all the Respondents liable for defamation. The Respondents therein were the proprietor of the TV station that aired the defamatory story, the newscaster, the editor and the TV station, specifically the Respondents were; The Standard Group Limited, The Standard Limited, James Smart, Cyrus Ombati & The Kenya Television Network.

3. During the hearing of the application, the Plaintiff's side was not present though served. I have considered the application, the grounds of opposition and the submissions made by the Defendants' counsel.

4. The 2<sup>nd</sup> Defendant, **The Star Newspaper** is sued as a newspaper registered at the General Post Office as a national circulating newspaper in Kenya. The evidence in respect of the registration is yet to be tendered. From the aforesaid description, this court is not able to determine at this stage whether the 2<sup>nd</sup> Defendant has the capacity to be sued.

5. The 3<sup>rd</sup> Defendant, **Radio Africa Ltd** is sued as a majority shareholder, registered owner and proprietor of the **Star publication Ltd**, the proprietor of **The Star Newspaper**. The claim of ownership and proprietorship brings the 3<sup>rd</sup> Defendant on board.

6. William Pike the 4<sup>th</sup> Defendant has been sued as the managing Director and Chief Executive Officer of **The Star Newspaper** and an employee of the **Star Publication** and **Radio Africa Ltd**. He is described as the person responsible for setting the editorial policy and managing and supervising staff for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Without the advantage of any evidence, it is not possible to tell from this pleading exactly which role the 4<sup>th</sup> Defendant played.

7. Order 1, rule 7 provides that where the Plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more Defendants in order that the question as to which of the Defendants are liable, and to what extent, may be determined as between all parties. In my view, the Plaintiff is entitled to his day in court and in the manner that he has framed his suit.

8. In the upshot, I find no merits in the application and dismiss the same with costs.

**Date, signed and delivered at Nairobi this 17<sup>th</sup> day of Oct., 2018**

**B. THURANIRA JADEN**

**JUDGE**