



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.404 OF 2003

ROSEMARY KIMINGI.....PLAINTIFF

VERSUS

WANGETHI MWANGI.....1ST DEFENDANT

NATION MEDIA GROUP LIMITED.....2ND DEFENDANT

RULING

The cause of action in this matter is the tort of Defamation. The Plaintiff herein filed a plaint dated 2nd May, 2003 claiming general and aggravated damages following some articles that were published by the defendants on diverse dates and which the plaintiff alleges are defamatory of her.

The Plaintiff, who is a judicial officer, alleges that the defendants jointly and severally wrote, printed and published or caused to be written, printed and published the said Articles concerning her in the way of her office, calling and profession.

The Articles related to a criminal case that the plaintiff presided over as a judicial officer, in which, the accused Reuben Nyamari Bichange was charged with the offence of defilement contrary to Section 145 (1) of the Penal code and a alternative charge of indecent assault on a female.

The plaintiff after hearing the case, found the accused person guilty of the charge of indecent assault and ordered that he be placed on probation for a period of three(3) years. It is after that decision that the defendants published the articles which are the subject matter of this suit.

The matter herein came up in court on the 9th October, 2018 and during the cross-examination of the plaintiff, a question was put to her as follows;

‘when you filed this case, did you reflect on the effect your judgment had on the minor?’

The plaintiff and her counsel objected to the question and the court had to hear the objection. Counsel for the plaintiff contended that the plaintiff is a judicial officer who heard the case in the year 2000 and who told the court that as a judicial officer, and before she gave her judgment, she had considered all the facts of the case and the circumstances surrounding it. Counsel submitted that the above statement by the plaintiff, was very important because it meant that she considered not only the minor but also the accused person and therefore the question being asked to the witness is irrelevant and purely meant to irritate the witness. That was the basis of the objection.

On her part, Counsel for the defendants, contended that the purpose of cross-examination is to test the credibility of a witness and also to build the defence case. She argued that the character of the witness and her credibility was material as it is not in her own eyes that she had been defamed but it is what the members of public think about her. She submitted that the question is tenable as the defendants are relying on the defence of fair comment.

The court has considered the objection in light of the submissions by the counsels for the respective parties. The matter herein is based on the tort of defamation and the plaintiff is a judicial officer. It is in the course of her duties that, she presided over the criminal case and rendered judgment based on the evidence on record. She stated that in deciding the case, she considered all the facts and circumstances of the case including those of the complainant and the accused person. As rightly submitted by counsel for the plaintiff, as a judicial officer, the plaintiff is supposed to consider the case as a whole taking into account the evidence on record and the circumstances of all the parties involved, the complainant and the accused alike, as they are both entitled to justice and due process.

On the other hand, it was within her right to file the suit herein if she felt aggrieved by the defamatory Articles published by the defendants. I am of the view that the question put to the witness is irrelevant and has no bearing to the defendant’s defence of fair comment on a matter of

public interest.

In the premises, I find that the objection has merits and the same is upheld.

Dated, Signed and Delivered at Nairobi this 18th day of October, 2018

.....

L. NJUGUNA

JUDGE

In the presence of:-

.....For the Plaintiff

.....For the Defendant