



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 246 OF 2017

DANIEL KARURU MWAURA T/A

KARURU MWAURA & COMPANY ADVOCATES.....PLAINTIFF

VERSUS

ROYAL MEDIA SERVICES LIMITEDDEFENDANT

RULING

1) Daniel Karuru Mwaura, the plaintiff herein, took out the motion dated 28.6.2018 whereof he applied for the following orders:

A. THAT the defendants written statement of defence filed herein be struck out;

B. THAT in the result, judgment be entered in favour of the plaintiff as prayed in the plaint;

C. THAT costs of the suit and of the application be awarded to the plaintiff.

2) The motion is supported by an affidavit and a supplementary affidavit sworn by the plaintiff.

3) When served with the motion, Royal Media Services Ltd, the defendant herein, filed a notice of preliminary objection and a replying affidavit to oppose the application. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the application disposed of by written submissions.

4) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the rival written submissions.

5) It is the submission of the plaintiff that the defendant's statement of defence is vexatious and it is intended to procrastinate the determination of the matter.

6) It is also argued by the plaintiff that the defendant's defence is evasive and without any merit. The plaintiff further argued that the defendant admitted publishing, circulating and or printing the words complained of.

7) The defendant opposed the motion arguing that this court lacked jurisdiction to entertain the application and that the motion contravenes the mandatory provisions of Order 2 rule 15(2) of the Civil Procedure Rules.

8) The aforesaid provision expressly states that the defence can be ordered struck out if it discloses no reasonable ground of defence.

9) The plaintiff also stated that evidence is not precluded where an application is brought under any other sub-rule except the case for an application solely brought under Order 2 rule 15 1(a) of the Civil Procedure Rules, therefore the application as drawn is in compliance with the law and ought to proceed for determination on its merits.

10) The plaintiff pointed out that the present application is corollary of the main suit for defamation the presence of which before this court was not and has never been disputed by the defendant in its fundamental pleadings.

11) It was further argued that in paragraph 11 the defendant expressly admitted the jurisdiction of the court and it cannot now purport to deny jurisdiction of this court. The plaintiff stated that the defendant's Inooro Television Station reported on 23.2.2017 in their broadcast that the Senate had directed that the plaintiff be investigated for corruption as he had teamed up with Governor Kabogo and the Kiambu County Government to corruptly enrich themselves. In its defence, the defendant contends that the published story did not refer to the plaintiff.

12) The plaintiff pointed out that there has been no other law firm by the name Karuru & Co. which was representing Kiambu County Government then other than the plaintiff's law firm.

13) The plaintiff also stated that his claim is based on the report by the senate committee of the Kiambu County Government. This court was urged to find that there is nothing that can go for trial therefore the defence should be struck out.

14) On the other hand, the defendant beseeched this court to find that its defence raises serious issues of fact and law which should go for trial.

15) The gist of the defendant's preliminary objection is that the plaintiff's application does not comply with the provisions of Order 2 rule 15(2) of the Civil Procedure Rules hence it should be dismissed. It is the defendant's submission that under Order 2 rule 15(2) no evidence is required.

16) After a careful consideration of the rival submission, it is clear in my mind that the plaintiff merely cited the provisions of Order 2 rule 15 of the Civil Procedure Rules without mentioning any of the sub rules.

17) What emerges from a careful reading of the grounds relied upon will reveal that the plaintiff meant to rely on Order 2 rule 5 (1) (b) – (d) of the Civil Procedure Rules. That being the case, the plaintiff was entitled to supply affidavit evidence in support of the motion. For the above reason, I reject the defendant's preliminary objection and proceed to consider the merits of the motion.

18) I have already set out in brief the grounds the plaintiff put forward in support of the motion. It is said that the defendant admitted having published the offensive words without seeking for prior clarification from the plaintiff on the veracity of the information published.

19) It is also said that the defence filed by the defendant is evasive, lacks merit and is intended to delay the expeditious conclusion of this matter.

20) In paragraph 5 of the plaint, the plaintiff stated that on 24th and 25th February 2017 the defendant falsely and maliciously published of and concerning the plaintiff a false story by Inooro T.V in Kikuyu language whose English translation bearing the headline:

“The governor William Kabogo stated that his government had spent more than 99 million shillings on various court cases. The governor was accused of failing to explain the nature of the cases or whom they involved. The firm of Karuru & Company is one of those to be investigated.”

21) In its statement of defence the defendant stated that the words were published in good faith, in public interest and without malice. It is also said that the information was privileged and a fair comment.

22) The defendant further stated that the defamatory article contained insufficient reference to the plaintiff.

23) In my view I do not think the defendant's defence can be said to be scandalous, frivolous, vexatious or evasive. The defence raises serious questions of facts and law which can only be interrogated and determined in a trial.

24) In the end, I find no merit in the motion. The same is dismissed with costs abiding the outcome of this suit.

Dated, Signed and Delivered in open court this 2nd day of November, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendants