



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 368 OF 2014

HON. PETER L. N. KIILU.....PLAINTIFF

- V E R S U S -

HEADLINK PUBLISHERS LTD.....DEFENDANT

JUDGEMENT

1. Hon. Peter L. N. Kiilu, the plaintiff herein filed this suit seeking for *inter alia* damages for defamation against Headlink Publishers Ltd, the defendant. The plaintiff successfully obtained judgment in default of appearance and defence hence this suit proceeded to hearing as a formal proof. In the plaint dated 8.8.2014, the plaintiff sought for judgment in the following terms:

- a. A permanent injunction restraining the defendant by itself, agents, servants, and employees or otherwise howsoever from further publishing or circulating the words set out in paragraph 11 above or any of them or any other words to like effect disparaging the plaintiff.***
- b. General damages.***
- c. Aggravated/exemplary damages***
- d. Costs of this suit.***
- f. Interests on (b) and (c) above at court rates.***

2. What provoked the filing of this suit is the publication published at page 14 of the Weekly Citizen Vol. 17 issue no. 23 of June to 15, 2015 titled:

“Makueni School bus doing hotel errands for Kiilu.” The said publication carried the photograph image of the plaintiff and contained the following words:

Makueni school bus doing errands for Kiilu

.....

3. Peter Kiilu (PW1) testified before this court and adopted the witness statement he executed as his evidence. PW1 told this court that he was a public administrator by profession, having studied Government and Sociology between 1974 and 1977 at the University of Nairobi. Prior to his recent appoint as Director and chairman of the Board of Directors of Water Resources management Authority (WARMA), pw1 stated that he represented Makueni constituency as a member of parliament between 2007 and 2013. PW1 further stated that he served as a District Officer (D.O) in many division rising to

the position of District Commissioner (D.C) in 1984 a position he held until 1991 when he was promoted and appointed as provincial commissioner (P.C) a position he held between 2002 – 2003. PW1 also served as a senior deputy secretary with the Public Service Commission of Kenya. He also stated that he served as a board member of many schools and colleges including Ngoto Boys Secondary School. PW1 further said that he is a staunch Christian and has served as the chairman of the Anglican Church of Kenya (A.C.K.), Dioceses of Machakos and that he is currently the chairman ACK, Diocese of Makueni. He claimed that he is a highly respected public figure as manifested by the various responsibilities bestowed upon him by the government and the public. The plaintiff averred that on or about 9th June 2014, the defendant falsely and maliciously wrote and published the aforesaid conspicuous publication with his photograph image. PW1 stated that the aforesaid words directly referred to and were understood to refer to him. He further stated that the words in their ordinary and natural meaning meant and were understood to mean that he was corrupt, unethical, dishonest, fraudulent person who is insisting of chairing the Board of Governors of Ngoto Boys Secondary School for personal and selfish gain. He further stated that the publication depicted him as a reckless person not deserving of any public office and who should be investigated by the Ethics and Anti-corruption Commission. The Plaintiff urged this court to find the publication as disparaging, false, malicious, scandalous and defamatory of him. He said he has never used the subject school bus for personal errands and or gain. He also stated that he does not sit in the procurement committee of the school and neither does he dictate or involve himself with the procurement processes. The plaintiff stated that as a result of the malicious falsehoods perpetuated through the said defamatory publication, he has greatly been injured in his credit, reputation, character, image, integrity and operations and he has therefore been brought to public scandal, ridicule, odium, hatred and contempt in the eyes of right thinking members of the society and has suffered great loss, injury and damage to his reputation and work as a distinguished public servant.

4. Having considered the evidence tendered by the plaintiff and the written submissions and the authorities cited, two issues commend themselves for determination.

First, whether the publication complained of is defamatory to the plaintiff.

Secondly, if the answer to the first issue is in the affirmative, whether or not damages is payable to the plaintiff and how much.

On the first issue, the plaintiff has given detailed attributes in his evidence to show that he has had distinguished career in public service and within the community. He has given evidence showing that he served as a District Officer (D.O), Provincial Commissioner (PC,) Senior Deputy Secretary with the Public Service Commission within a span of 40 years in public service. He was also able to show that he is a staunch Christian who serves at the top level in the church hierarchy of the Anglican Church of Kenya. The plaintiff is currently serving as the Director and Chairman of the Board of Directors of Water Resources Management Authority (WARMA). He is the immediate former Member of Parliament of Makueni Constituency.

6. There is no dispute that despite the plaintiff's good standing and reputation before right thinking members of society and his peers, on 6th day of June 2014, the defendants falsely and maliciously wrote and published or caused to be published at page 14 of the Weekly citizen vol. 17 issue no. 23 of June 9th – 15th 2014, an article titled:

“Makueni school bus doing hotel errands for Kiilu.”

There is also no dispute that the said publication carried the photograph image of the plaintiff and contained the following words

“Stake holders and parents of Ngoto Boys Secondary School in Sultan-Hamud want the Ethics and Anti-Corruption Commission to investigate the conduct of the school board of governors chairman Peter Kiilu over alleged mismanagement of the school bus.

The former Wiper MP of Makueni constituency and one time PC in the dark days of Daniel Moi

era who has remained the chairman of the school since 1994 is accused of misusing the bus for personal errands to the detriment of students. According to an insider who sought anonymity, the former Makueni MP and now Water Resources Management Authority chairman courtesy of jubilee government has over extended the Kanu days dictatorial ways of the management of the school and allegedly decides who should head the school for his own interests.

The school bus is said to be always parked at his Kindu Mall hotel in Emali town and is allegedly used to ferry water and charcoal for his hotel while students trek to various activities in the district. It is also claimed that only the former PC and close relatives trade with the institution.

As the BOG chairman, Kiilu allegedly awarded himself tender to supply building materials for the completed classroom block. In what amounts to Kanu days hangover lasting too long for the good of the society, his brother is the sole supplier of beef to the institution with his sister supplying cereals, it is claimed.

The school stakeholders now want Kiilu, a Kalonzo Musyoka ally, charged with abuse of office, contravening tendering procedures and for arm twisting principals to award his cronies tenders.

They also want the ministry of education to have the Wiper man dropped as BOG chairman for overstaying and for allegedly using the school to enrich himself and his close family members. Kiilu did not pick the phone when contacted nor did he reply to messages.”

7. I am convinced the words used in the above excerpt in their natural and ordinary meaning and by insinuations they bear, were calculated to disparage and lower the plaintiff's reputation and estimation in the eyes of the general public and in the minds of right thinking members of society and undermining his relationship with his peers. The aforesaid words also portrayed the plaintiff as a corrupt and unethical individual who wants everything for himself and close family members at the expense of the school, students and members of the public thus lowering the plaintiff's standing before right thinking members of society and exposing him to hatred and ridicule by his peers. The plaintiff told this court that his political opponents are currently circulating copies of the Weekly Citizen vol. 17 issue no. 23 of June 7th – 15th 2014 using them in political rallies to show the plaintiff as a corrupt and unethical individual who is unfit to hold a public office. The plaintiff has stated that he is handicapped to do anything about the false accusations and has no means of countering the defamatory articles propagated by the weekly citizen against him as the defendant has refused to apologise.

8. In the end, I am satisfied that the plaintiff's reputation and standing in society were damaged by the publication published by the defendant.

9. Having determined the question in respect of liability, let me, now determine the question of damages. A successful litigant in a defamation suit no doubt has to be paid damages. In **John =vs= M.G.N Ltd (1996) 2 ALL E.R 35 at 47**, the Court of Appeal of England stated inter alia:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation, vindicate his good name and take account of the distress hurt and humiliation which the defamatory publication has caused.”

10. In the case before this court, I have already stated that the plaintiff suffered ridicule, Odium, hatred and contempt in the eyes of right thinking members of the society and has suffered grave injury loss and damage to his reputation. The plaintiff cited the case of **Nicholas Biwott =vs= Clays Ltd & 5 others (2000) eKLR** where Justice Visram, awarded the plaintiff ksh.15,000,000/=

11. In the case of **Hon. Musikari Kombo =vs= Kenya Broadcasting Corporation, Nairobi H.C.C.C. no. 87 of 2011 (unreported)** this court made an award of ksh.7,000,000/=

12. In the circumstances of this case, I think an award of ksh.7,000,000/= for general damages is

sufficient. I make the award in favour of the plaintiff.

13. The plaintiff has also asked to be given exemplary/aggravated damages. An award on this head is made when the plaintiff proves that the defendant at the time of publishing the defamatory article knew he was committing a tort to gain economic or some advantage. The court will make the award if it is shown that an award of damages is insufficient. The plaintiff has demanded an apology from the defendant but the defendant has offered none. I am convinced that exemplary damages should be awarded.

14. On this head, I make an award of ksh.3,000,000/= as exemplary and or aggravated damages.

15. The third main prayer the plaintiff has beseeched this court to issue is an order for injunction to restrain the defendant by itself agents, servant and employees from publishing or circulating the words complained of or any of them or any other words disparaging the plaintiff I am satisfied that the plaintiff has made out a prima facie case entitling him the order as sought.

16. In the end, I enter judgment in favour of the plaintiff and against the defendant. I make the following orders:

i. Prayer (a) of the plaint is granted as prayed.

ii. The plaintiff is awarded skh.7,000,000/= as general damages for defamation.

iii. The plaintiff is given ksh.3,000,000/= as exemplary/aggravated damages.

Net total ksh.10,000,000/=

iv. The plaintiff is given costs of the plaint.

Dated, Signed and Delivered in open court this 10th day of February, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant