



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO. 252 OF 2012**  
**ROYAL MEDIA SERVICES LIMITED.....APPLICANT**  
**VERSUS**  
**EDICUS WANJALA PIUS.....RESPONDENT**  
**(Being an appeal from the Judgment and decree of the Chief Magistrate**  
**Hon. T.C. Wamae dated 27<sup>th</sup> April, 2012 in CMCC No. 9896 of 2006)**

**JUDGMENT**

The appellant was the defendant in the lower court whereas the respondent was the plaintiff. The respondent had sued the appellant claiming damages for defamation following a broadcast aired by a television station owned by the appellant. It was the respondent's case that the words contained in the broadcast portrayed him as a person guilty of dishonourable and deplorable conduct, constituting a criminal offence and that he was an immoral and beastly person, unworthy of holding the office of a teacher.

It was also the respondent's case that he was portrayed as untrustworthy individual and ruthless manipulator with little respect for rules, laws and institution. His claim was denied by the appellant in the statement of defence, but after a full trial the appellant was found liable and ordered to pay the respondent a sum of Kshs. 1 Million general damages. Each party was ordered to bear their own costs.

Aggrieved by the said judgment the appellant filed this appeal. The brief facts as stated in the pleadings were that the respondent was a computer class teacher at Hospital Hill High School Nairobi. In a bulletin aired by the appellant's station in June, 2006 it was alleged that a parent attempted to assault the plaintiff for allegedly sexually molesting her daughter. Police were said to have been called by the principal of that school who arrested the parent, but further coverage of the incident pointed to the respondent as the teacher said to have sexually molested the female student.

In the statement of defence, the appellant pleaded constitutional privilege and public interest if at all the said coverage was done by its station. It was also pleaded that if the said words were indeed uttered and broadcast, it was after thorough investigations in accordance with principles of responsible journalism and therefore relied on the defence of truth or justification.

The summary of the appeal is that the trial court erred in failing to consider the defence of constitutional privilege and public interest raised by the appellant. The trial court was also faulted for holding that the appellant was motivated by malice and finally, that the damages awarded were exorbitant.

It is my duty as the appellate court to evaluate all the evidence presented before the trial court so as to arrive at independent conclusions. This I have done. Only the respondent testified in support of his pleadings while the appellant did not call any evidence. The broadcast did not mention the respondent's name, but it was obvious from whatever was said that it related to him, as evidence pointed to his image being clearly flashed on the screen.

In arriving at the decision to hold the appellant liable, the lower court had the following to say,

***“In exercise of its freedom of expression and in scrutinizing the plaintiff, the defendant had a duty to ensure that it gathered and presented news and information accurately and impartially as provided under Section 46 (1) (d) of the Kenya Information and Communication Act 2004. The defendant did not interview the plaintiff to confirm the correctness of the information it broadcast and for relying only on information from the student and her mother, the defendant did not act impartially.....***

***For failing to establish the accuracy of the information it broadcast, I find that the defendant was motivated by malice and it is therefore liable to the plaintiff for the damage it caused to his person and his profession as a teacher.”***

The appellant did not call any evidence to support its statement of defence. Pleadings and submissions cannot take the place of evidence in any litigation. It follows that the evidence of the respondent remained uncontroverted.

The appellant ought to have taken steps to verify the information before airing it and there is no evidence that it took such a step. To say the least, it was negligent and reckless on the part of the appellant to do so without interviewing the respondent to obtain his part of the story – See **Godwin Wanjuki Wachira Vs. Okoth (1977) KLR 24.** The trial court was therefore correct to hold the appellant liable to the respondent.

In awarding damages, the learned trial magistrate referred to several related cases and in my judgment I am unable to fault her in that regard. The end result is that this appeal is dismissed with costs to the respondent. I note that the appellant was ordered to deposit the decretal sum in court. If that order had been complied with, the said sum shall not be released to the respondent.

***Dated, signed and delivered at Nairobi this 6th Day of April, 2017.***

**A. MBOGHOLI MSAGHA**

**JUDGE**