



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 75 OF 2016

BRENDA KIMANZI-ONAM PLAINTIFF

V E R S U S

KILIMANI JUNIOR ACADEMY LIMITED..... DEFENDANT

RULING

1. Kilimani Junior Academy Ltd, the defendant herein, took out the motion dated 4.10.2016 in which it sought for the following orders:

- 1. THAT this honourable court be pleased to strike out the instant suit as against the defendant herein.***
- 2. THAT in the alternative the honourable court be pleased to strike out the reply to defence dated 7th June 2016.***
- 3. THAT the costs of this application and the entire suit be borne by the plaintiff.***

2. The motion is supported by the affidavit of Heidi Bird. When served with the application, Brenda Kimanzi-Onam the plaintiff herein, filed a replying affidavit she swore to oppose the motion. When the motion came up for interpartes hearing learned counsels recorded a consent order to have the motion determined by written submission.

3. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits and against the application. I have also taken into account the rival written submissions. It is the submission of the defendant/applicant that this suit pleads no reasonable cause of action against the defendant. It is also pointed out that the action is scandalous as it imputes bad conduct and character against a Third Party whom the plaintiff has failed to enjoin as a party to this suit. The defendant further argued that the facts are clear that the plaintiff has no reasonable cause of action against the defendant and no amount of amendment can cure the defect.

4. In response to the defendant's submissions, the plaintiff argued that her suit has a high probability of success as the words complained of are defamatory in nature hence it is not a hopeless case. This court was urged not to strike out the suit since that may amount to driving the plaintiff out of the judgment seat.

5. The history behind this dispute can easily be deduced from the pleadings and the submissions of the parties. The plaintiff was an employee of the defendant from January 2009 until January 2016 when she resigned. Upon her resignation, the defendant caused to be published in the Standard Newspaper of 8/2/2016 a notice to inform the general public that the plaintiff had ceased to be an employee of the

defendant with effect from 8th February 2016. In the same notice it is indicated that the plaintiff is not authorised to act or transact on behalf of the defendant and that the defendant would not be liable for any transactions, agreements and contracts negotiated and entered into by the plaintiff on behalf of the defendant.

6. The aforesaid publication appears to have offended the plaintiff and she consequently filed this suit alleging that the words published in their ordinary meaning meant and were understood to mean that the plaintiff is a person of such character as would transact business on behalf of her former employer after resignation. It is also the averments of the plaintiff that by reason of the publication of the aforesaid words to the public and the entire education fraternity has severely injured her character, credit and reputation as an educationist of good standing. The plaintiff averred that the publication was malicious and unwarranted.

7. When served with the plaint, the defendant filed a defence in which it admitted the publication but denied that the same was defamatory. The defendant further denied being malicious in having the notice published. The defendant argued that the publication was meant to inform its stakeholders the fact that the plaintiff had left the defendant's employment and by extension she no longer had capacity to contract on its behalf.

8. Having given a brief background of this dispute, the question which needs to be answered is whether this is an action which can be said to be without a reasonable cause of action?

9. It is not in dispute that the defendant caused to be published the notice which appears to have offended the plaintiff. The plaintiff's complaint is that the publication was unwarranted and malicious. It is also the plaintiff's submission that the publication was defamatory to her. The defendant is of the contrary view. When this suit comes up for hearing some of the issues which will need answers are inter alia:

i. Whether or not the publication was defamatory.

ii. Whether or not there was malice on the part of the defendant to publish the notice.

iii. Whether or not the defendant was justified in publishing the notice.

The above issues amongst others can only be answered in a substantive trial. I am satisfied that the plaintiff's suit raises serious questions which should be tested and interrogated in a trial.

In the end, I find the motion dated 4/10/2016 to be without merit. The same is dismissed with costs abiding the outcome of this suit.

Dated, Signed and Delivered in open court this 2nd day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant