



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 12 “A” OF 2014

GEORGE OPONDO ONGUTU APPLICANT

VERSUS

NATION MEDIA GROUP LTD.....RESPONDENT

JUDGMENT

PLEADING

1. The Plaintiff George Obondo Ongutu sued the defendant, Nation Media Group vide a Plaint dated 6th February 2014 wherein he claimed that on or about the 4th October 2014 the plaintiff’s newspaper the Daily Nation published and distributed defamatory article on him to the effect;

“The county residents yesterday stormed Land Registrar George Odhiambo’s office in protest against alleged corruption. They accused Mr. Odhiambo and his staff of demanding bribes before giving services. Mihu County Representative John Manyakha led his colleagues in demanding prompt transfer of the Registrar and the entire staff. Mr. Odhiambo fled through the backdoor and the Nation’s effort to get a comment from him were fruitless.”

The plaintiff contended that the article was malicious and depicted him to be corrupt, incompetent, inefficient and that he had escaped from the public, which was false. Further states that the publication was tainted with bad faith and as a result he had suffered mental and emotional anguish, his credit, character and reputation was compromised and this negatively affected him terms of his working relationship with his staff and members of the public. He sought for exemplary and general damages, costs and interest.

DEFENCE

2. The defendant filed a defence dated 1st August, 2014 and admitted having published the alleged words but denied the allegation of malice and bad faith. The defendant stated further that the words complained of did not refer to the plaintiff and/or in the alternative the said words were expression of opinion of fair comment and matters which were of public interest and published under a sense of public duty and without malice.

The defendant also denied that the plaintiff suffered mental and emotional anguish in his credit or

reputation.

REPLY TO DEFENCE

3. Was filed by the plaintiff on 28th August, 2014 where he reiterated contents of the plaint.

PLAINTIFF'S EVIDENCE

4. At the hearing only the plaintiff testified. The defence did not call any evidence but filed submissions along those of the plaintiff. The plaintiff's evidence was that he is the Land Registrar in Bungoma since 28th of February, 2008 a position he holds to date. He recalled that on the 4th October, 2013 he was in Nairobi having attended a meeting with the Chief Registrar on the previous day 3rd of October, 2013. He informed the court that he left Bungoma by road on the 2nd of October, 2013. He produced his bus ticket from Kisumu to Nairobi and gave an account of his stay in Nairobi on the material day. He was away for three days. His further evidence was that on 4th October, 2013 he received a call from his wife enquiring about the story published by the defendant, apart from the wife, he also received calls from several other people including his superiors from the Head Office and the assistant to the Commissioner of Lands. He alleged that the report affected his career progression and embarrassed him. On the 11th of December, his lawyer wrote to the plaintiff seeking for clarification and an apology but received no response.

He now wants compensation for damages on his person and character and costs of the suit.

The defence did not adduce evidence. However both sides filed submissions.

PLAINTIFF'S SUBMISSIONS

5. It was submitted on behalf of the plaintiff that he had proved his case on a balance of probabilities that before the publishing the article, subject matter herein the defendant did not seek any clarification from the plaintiff; the said publication was surrounded with malice, aimed at damaging the plaintiff's name and aimed at affecting his job as a Civil Servant and particularly as one in charge of the Land Registry in Bungoma.

Further that the defendant knew that its publication had wide circulation and would reach many parts of the country and was likely to damage the plaintiff's name; despite request, the defendant failed to offer an apology a clear indication that the defendant was out to defame the plaintiff.

The plaintiff quantified damages at Kshs. 10,000,000/= and relied on 2 authorities namely

1. ***Honorable Lawrence Simiyu Sifuna vs. Nation Media group & 3 others Bungoma HCCC No. 126 of 2000.***
2. ***Kipyator Nicholas Biwott vs. Clays Ltd & 3 others, Nairobi HCCC No. 67 of 1999.***

DEFENDANTS SUBMISSIONS

6. On its part the defendant submitted that in order to succeed one does not just prove publication of words complained of but he must also prove that he was defamed. It was submitted that the current plaintiff did not show he was defamed, he failed to bring forth witnesses to prove his allegation, secondly the publication did not depict the plaintiff as a corrupt person, it was comments and information on matters of public nature. It was further contended that the plaintiff failed to prove how he suffered loss of reputation, shunned and held in low esteem by his peers and members of the public; that the words published were incapable of having a defamatory meaning in their natural and ordinary meaning as pleaded.

That the plaintiff failed to demonstrate his merit to exemplary damages. In the alternative it was submitted should the court be inclined to award damage, Kshs. 200,000/= would be sufficient.

DETERMINATION

7. I have considered the pleadings, evidence on record and respective submissions filed. The issue before court is whether the words published referred to the plaintiff, whether the said words in their natural and ordinary meaning were defamatory and if so is the plaintiff entitled to exemplary damages if the answer is to the affirmative how much?

There is no doubt that the words published in the article complained of referred to the plaintiff herein and the same in their ordinary and natural meaning depicted and meant to say and to portray the plaintiff, a public servant as corrupt, did not serve the public he is supposed to serve unless he was bribed. The above statement must have caused the plaintiff mental and emotional anguish, affected his credit, character and reputation amongst the public he served, his friends and family.

In assessing of damages the court must establish the gravity of the libel and the content of publication. The case of **John vs. MGN Ltd. 1997 at 586** sets out issues to be considered in corroboration as follows;

“In assessing the appropriate damages for injury to reputation the most important factor is the gravity of libel. The more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality the more serious it is likely to be. The extent of publication is also very relevant. A libel published to millions has greater potential to cause damage than a libel published to a handful of people.”

I note that the Plaintiff still maintains in office at the Land Registry in Bungoma and continues to serve the same public and therefore the injury and damage to his reputation and character was not extreme and therefore ought not to attract a heavy award.

I award the sum of Kshs 1.5 million as exemplary damages. I further order the defendant to publish an appropriate apology to the plaintiff in its publication. I give costs to the plaintiff.

Dated at Bungoma this 9th day of June 2015.

ALI-ARONI

JUDGE.