



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS,
CIVIL SUIT NO. 817 OF 2007.

ISAAC OKETCH OSIPLAINTIFF

VERSUS

QUEEN CLEANER & DYERS LIMITED.....DEFENDANT

JUDGMENT

By a plaint dated 3rd of December, the plaintiff claims that he was at all material times an employee of the defendant company up to about February 3rd 2007 when he resigned. That on or about the 19th day of July 2007 the Defendant published a statement regarding the plaintiff on a local daily newspaper containing the plaintiff's photograph with the following words:-

“The person appearing on this photograph is no longer an employee of Queens Cleaners & Dyers Limited.

It has come to our notice that he's been going round to our clients claiming cash payments for account settlements with the company. Please note that we shall not be liable for any transactions made by him”

The plaintiff avers that whilst he does not object and has no problem to the general information contained in the said notice informing the public that he was no longer an employee of the defendant, the words underlined in the preceding paragraph were a clear deviation from the general information and were a malicious and reckless attack on the character, profession and integrity of the plaintiff and were in fact understood in their material and ordinary meaning to mean;

- i. The plaintiff was dishonest corrupt and unreliable.
- ii. The plaintiff was untrustworthy and a person not of his words.
- iii. The plaintiff had been obtaining money from clients illegally.

That the offending words were published in a daily newspaper with wide national coverage and the plaintiff got phone calls from his friends who questioned his character and integrity. He avers that his character and reputation has been dented and his professional career put to suspicion by his subsequent employers, that his ego and self-esteem are also lowered and he cannot effectively engage his colleagues in discussions and participate in social gatherings because a number of people take him as a crook. That as a result, he has suffered injury, loss and damages and claims from the defendant damages for

defamation. The plaintiff prays for judgment against the defendant for general damages for defamation, exemplary and/or aggravated damages plus cost of this suit.

In a defence dated 18th of January 2008, the defendant avers that in giving the Notice it acted bonafide and without malice thereof and the notice was issued on the need to notify the defendant's clients and the public of the truth. It further denies that the words underlined in paragraph 4 were understood to have the meaning imputed by the plaintiff. It avers that the Notice was issued after taking reasonable steps to thoroughly verify the truth thereof and that it had a duty to inform its clients and the public of the matters contained in the said notice and to protect its property and that of its clients. The defendant pleads qualified privilege, avers that the words complained of are true in substance and fact and pleads justification. It also denies that the plaintiff's character and reputation has been dented and puts the plaintiff to strict proof.

A reply to the defence was filed on 24th February 2008, the plaintiff denied that the defendant acted bonafide and/or without malice and also noted that the defendant had no apologies for maligning and besmirching the plaintiff's character. It was averred that the defendant had also failed to indicate the particulars for truth and/or alleged justification and that the defence of qualify privilege does not lie to the defendant at all.

EVIDENCE

This matter was heard before Justice Khaminwa on the 18th of June 2012 and after confirming that the defendant was served and was absent she proceeded to hear two witnesses, the plaintiff (PW1) and PW2 Mr. Samuel Mwangi

The plaintiff testified as follows ; he worked for the defendant from 2005 to 2007 as marketer, he left and got another job with Scuntell Dry Cleaners after he resigned, he worked for them for 5 months. That the defendants caused a publication where his name and picture were shown . That he got another job at another dry cleaner, and stayed there for 10 days. That whilst there he was called by one Director Mr. Mwangi who showed him the advert of 19th July, 2007 and told him to leave, he was dismissed on that day. He was called by friends concerned and told how he had become a thief and some become fearful of him. He did not seek another employment again but decided to form his own company. He denied collecting money when he was in the defendant's employment as alleged. His advocate wrote a letter to the defendants which they did not respond to.

In the plaintiff's statement filed in Court on the 21st July 2011, he depones that the publication made on the 19th on July 2007 which was published in the daily newspaper was defamatory to his character and name and was totally untrue. That based on the on the same statement his employer Scintill Dry Cleaners terminated his employment on the grounds that he was not a straightforward person. According to the Plaintiff his career has been ruined due to the defendant libelous publication.

PW2 Samuel Mwangi testified that he knew the plaintiff from 2005 to 2007. The plaintiff worked for him as a manager at Dolphine cleaners; that he dismissed the plaintiff from employment after seeing the information from the papers. In his statement dated 20th July 2011 PW2 stated as follows;

“ On 10th September, 2007 Mr. Oketch reported on duty and was assigned his normal duty as usual. I was not aware by the time I was recruiting him to our company that he had one time been published on the newspaper for being a conman. After 10 days with Mr. Oketch I received a phone call enquiring whether I have in my employment a person called Mr. Oketch and I confirmed that I had a Mr. Oketch in my company. The lady went on and warned me that the guy (Mr. Oketch was a conman and if am in doubt she referred me to a Local Daily Nation of 19th September, 2007 which I indeed confirmed as true.

I was surprised and immediately summoned Mr. Oketch in my office who, vehemently denied this and said it was malicious and that those people want to ruin him completely, he denied all the claims. I was not satisfied by his plea and I consequently dismissed Mr. Oketch and asked him to go sort out himself

with those people since we could not retain him with all those serious allegations”.

The plaintiff filed his submissions on the 11th of July 2012. Counsel reiterated the plaintiff's evidence and stated that the plaintiff's evidence had not been challenged; that the words complained of were defamatory and untrue and that they depicted the plaintiff as a conman and thief. For general damages counsel submitted that at Scintilla Dry Cleaners the plaintiff was earning 26,000/- per month and was renewable upwards after 12 months and that the plaintiff was sacked as a result of a publication. That there was evidence from PW2 who stated that the plaintiff was employed and was earning 30,000/- plus transport allowances. The plaintiff sought an award of Kshs.2,000,000/- for general damages and relied on the following authorities;

Francis Xavier Ole Kaparo Vs. Standard Limited & 3 others (2010) eKLR, John Joseph Kamotho and 3 others Vs. Nation Media Group Limited and 2 others, HCCC No. 368 of 2001 (unreported) where the

Ojwang J, as he then was upheld by the Court of appeal in ***Civil Appeal No. 284 of 2005 (2010 eKLR)*** between the same parties and lastly, the case of ***George Nthenge Vs. Nation Media Group (2008) eKLR.***

On exemplary damages the plaintiff sought an award of ksh.500,000/-

DETERMINATION

The case of **Joseph Kudwoli -V- Eureka Educational and Teaching Consultants & 2 Others HCCC No. 126 of 1990**, sets out the issues a plaintiff in a suit founded on defamation be it libel or slander must prove:

- a. That the matter of which he complains was published by the defendant;
- b. That it was published of and concerning him;
- c. That it is defamatory in character;
- d. That it was published maliciously and;
- e. In slander, subject to certain exceptions, that he has thereby suffered special damage.

There is no dispute that the defendants caused the publication, it is not denied in the defense filed by the defendants. The plaintiff evidence is that the defendant's publication was malicious and reckless and portrayed him to be dishonest, corrupt, unreliable and untrustworthy. He denies these allegations. He states in his statement that he worked with the defendant's and resigned on the 3rd of February. The Publication was made in the Daily Nation of 19th January 2007. This is a popular daily that is circulated countrywide. This same publication caused PW2 to dismiss the plaintiff. The wordings of publication in my view suggest that the plaintiff was not trustworthy as they state that the plaintiff had been going round claiming cash for account settlement with the company a fact the defendant did not defend. It also implies that the plaintiff was obtaining money from the clients illegally. The defendant's defence of justification and privilege though pleaded was never proved.

The plaintiff claims that the statements were actuated by malice. The publication without any justification in my view was malicious it even caused the plaintiff employer Pw2 to dismiss him. On whether the plaintiff is entitled to damages, in the case of Daniel ***Musinga T/A Musinga & Co. Advocates -V- Nation Newspapers Ltd HCCC No. 102 of 2000*** it was held that:

“The success for a 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 damages to his reputation, vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory publication has caused.”

The plaintiff claims that he his character injured and he lost a job and had to start his own business, he also got calls from his friends when they read the publication, guided by the authorities relied on I find that an award of Kshs. 1,300,000/- is sufficient general damages and Kshs. 200,000/- for aggravated damages. Judgment is therefore entered for the plaintiff in the sum of Kshs.1, 500,000/- together interest from the date of judgment till payment in full plus costs of the suit.

Orders accordingly.

Dated, signed and delivered this **6th** Day of **November 2014**

R. E OUGO

JUDGE

In the presence of:

.....**Plaintiff**

.....**Defendant**

.....**Court Clerk**