



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL SUIT NO.160 OF 2010

CHARLES WANJOHI WATHUKU.....PLAINTIFF

-VERSUS-

SAM KIPLANGAT.....1ST DEFENDANT

NATION MEDIA GROUP LIMITED.....2ND DEFENDANT

(Before Hon. Justice Byram Ongaya on Friday 5th December, 2014)

JUDGMENT

At all material times, the 1st Defendant was the employee of the 2nd Defendant as a correspondent. The 2nd defendant is the publisher of the newspaper known as the Daily Nation with wide circulation within and beyond Kenya.

The 1st Defendant authored a national news story in the Daily Nation published on Friday, November 6, 2009 titled “**Judges pull out of Sh.300m case.**” Among other things, the story narrated thus:

“Sh.200, 000 bribe

The clan insists that Mr. Wathuku Ngunjiri had no child, but Mr. Wathuku (Charles) was granted letters of administration for the estate in 2001 by Mr. Justice Juma.

Mr. Justice Juma was sacked for receiving a Sh.200, 000 bribe while presiding over the case, to rule in favour of Mr. Githinji Ngunjiri, a brother of Mr. Wathuku Ngunjiri. The judge was accused of receiving bribes from both sides. Yesterday, the parties wanted to argue an application by Mr. Githinji Ngunjiri seeking to have Mr. Wathuku undergo a DNA test.”

The Plaintiff was offended with the story as authored by the 1st Defendant and published by the 2nd Defendant. The Plaintiff filed the plaint on 10.11.2009 through Kagundu & Mukunya Advocates and averred that the publication thus, “**The Judge was accused of receiving bribes from both sides**” was defamatory. The Plaintiff’s case was that the words were libellous in their express meaning and implied that the Plaintiff was a corrupt person who interfered with the cause of justice by corrupting the presiding Judge, the plaintiff was a dishonest person, and the plaintiff committed a criminal offence.

The Plaintiff’s case was that as the petitioner in Succession Cause No. 60 of 1997 at the High Court in Nyeri he never bribed the Judge and there was no allegation either in the High Court or in the Judges’ Tribunal in which Justice Juma was indicted for improper conduct that the plaintiff ever bribed the Judge. The Plaintiff’s further case was that he never bribed the Judge and that it was Charles Mwangi Gitundu,

the 2nd respondent in High Court Succession Cause No. 60 of 1997 who told the Judges' Tribunal that was looking in to the conduct of Justice Juma that he (Charles Mwangi Gitundu) bribed the Judge. The claimant pleaded that he was never involved in the said bribery. The Plaintiff had written to the Defendants on 6.11.2009 demanding an apology by the said Defendants and pointing out the anomalies and falsehoods in the story as published but the Defendants never published any apology or corrections to clear the Plaintiff's name. In the circumstances, the plaintiff stated that he had suffered injury to his character and reputation including ridicule and public odium before the right thinking members of the society and therefore claimed general, punitive and exemplary damages severally and jointly against the defendants. The Plaintiff prayed for judgment against the Defendants for:

- a. General punitive and exemplary damages for the tort of libel.
- b. Costs of the suit interest.
- c. Aggravated damages.

The Defendants filed the defence through Archer & Wilcock Advocates and prayed that the Plaintiff's suit against them be dismissed with costs.

The case was heard on 5.11.2014. The Plaintiff testified to support his case. The 1st Defendant testified to support the Defendants' case. The parties filed their respective submissions. The court has considered the pleadings, the evidence and the submissions on record and makes the following findings on the pertinent issues for determination:

1. The **1st issue** is whether the Defendants authored and published the alleged defamatory story. The court finds that there was no dispute that the 1st Defendant authored and the Defendants published the words the Plaintiff says were libellous. The court further finds that at all material time the 1st Defendant was the 2nd Defendant's servant employed as a correspondent.
2. The **2nd issue** for determination is whether the story was defamatory. For the Defendant it was submitted that the Article complained of was not defamatory as it contained allegations of fact and was true in substance and so far as it consists of expression of opinion, it was a fair comment made in good faith and with no malice against the Plaintiff. The Plaintiff submitted that the 1st Defendant was clear in his evidence that the story as published referred to both sides in the succession case as was presided over by the Judge in the story and "**both sides**" in the publication clearly included the Plaintiff. The Plaintiff submitted that the publication adversely affected the Plaintiff's social and business life because it portrayed the Plaintiff to be a corrupt person who obstructed the path of justice by allegedly bribing the presiding Judge to unjustly enrich himself through wrongful inheritance. The 1st Defendant testified that he had examined the proceedings of the Judges' Tribunal which dealt with Justice Juma's case and the Defendant stated that the proceedings showed that the Plaintiff never bribed the Judge. The 1st Defendant further testified that both parties to the case in the story as published could only mean parties to the case whose particulars or details he had highlighted in the story. The court has considered the account by the 1st Defendant and the story as published and finds that the Plaintiff was libelled as pleaded and as submitted for the Plaintiff because the story portrayed the Plaintiff as having been a party to the succession proceedings and one such party that had bribed the Judge. That was a libellous publication for which the court finds the Defendants to be liable severally and jointly.
3. The **3rd issue** for determination is the quantum of damages to be awarded in favour of the Plaintiff. It has been submitted for the Defendants that as per **John –Versus- MGN Limited [1966]1 All ER 35** the court held that in assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel, the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage and loyalty, the more serious it is likely to be. The Defendants further cited the case of **Emmanuel Omenda –Versus-Safaricom Limited [2012]eKLR** where Odunga J. stated that libel as opposed to slander is actionable per se and an action for defamation is essentially an action to compensate a person for the harm done to his reputation; defamation is not about publication of falsehoods about a person but about publication of falsehoods that disparage the reputation of the plaintiff or tend to lower the person

in the estimation of right thinking members of society generally. The Defendants further cited **Peter Maina Ndirangu –Versus- Nation Media Group Limited, Civil Case No. 396 of 2011 at Nairobi** where Waweru J. stated thus, “**Though libel is actionable *per se* (without proof of damage), for purposes of assessment of damages to be awarded to a plaintiff it is necessary to look at all relevant factors such as the circulation of the medium in which it is published. It is also prudent for a plaintiff to adduce evidence showing how his reputation and business had actually suffered as this may affect the quantum. The defendant’s conduct both up to and including the trial is also important.**” The Defendants submitted that taking the two cases into consideration, the appropriate award for the Plaintiff on general damages would be Kshs. 500, 000.00, if at all.

4. The Plaintiff submitted that the 2nd Defendant had formed the habit of defaming the Plaintiff as shown by exhibit 10 being the judgment in **Civil Suit No. 399 of 1997 in the Chief Magistrate’s Court at Nyeri, Charles Wanjohi Wathuku –Versus- Mwangi Gaita and Nation Newspapers** in which the court found that the Plaintiff had been defamed by being portrayed as dishonest and a criminal. The Plaintiff’s case was that the Defendants had refused to tender an apology despite receiving the Plaintiff’s invitation for apology and correction of the libellous publication. The Plaintiff submitted for Kshs. 8,000,000.00 for general damages, Kshs. 2,000,000.00 for exemplary damages and 2,000,000.00 for punitive damages. The Plaintiff cited **Hon. Amb. Chirau Ali Makwere –Versus- Nation Media Group Limited and Wangethi Mwangi [2009]eKLR** where Khamoni J awarded Kshs.8,000,000.00 for general damages; Kshs. 1,000,000.00 aggravated damages on account of malice which was pleaded and proved against the Defendants; and Kshs. 1,000,000.00 punitive damages on account of the defendant’s refusal to render apology.
5. The court has considered the rival submissions and the guiding principles in the cited cases. The court has found that the Defendants authored and published libellous story against the Plaintiff. The court has carefully considered the content and nature of the defamatory words in the present case. The court finds that the defamation adversely, closely and seriously impaired the Plaintiff’s personal reputation as a litigant who went before court with full trust and confidence in the established due process of our courts of law. The Defendants published words which gave the impression and alleged that the Plaintiff was corrupt, had no respect for due process of justice, and that the Plaintiff was allegedly capable of engaging in a dishonest and daring act of defeating the sanctified due process of the court by allegedly, bribing the presiding judge. In the opinion of the court the publication was not only defamatory but also caused obvious anxiety and stress to the Plaintiff as a litigant in pending legal proceedings in which the Plaintiff must have had a legitimate expectation to appear and attend without suffering a stigma of a person with little integrity and respect for due process arising from and associated with the defamatory publication. The court finds that such allegations seriously lowered the Plaintiff’s reputation before the right thinking members of society including his family, consumers of judicial services and those who associated with the Plaintiff as a business person. The Court awards the claimant **Kshs. 2,000,000.00** general damages for the libellous publication.
6. The Plaintiff has established that the 2nd Defendant had formed a habit of publishing defamatory material against the Plaintiff. In the opinion of the court, that Defendant’s conduct aggravated the Plaintiff’s suffering as it showed persistent malice and insulting conduct on the part of the 2nd Defendant against the plaintiff and the Plaintiff is awarded **Kshs. 1,000,000.00** in aggravated damages.
7. The Defendants refused to render apology and they refused to make correction of the libellous publication despite the Plaintiff’s invitation for the Defendants to do so. The court awards the Plaintiff **Kshs. 1,000,000.00** for punitive damages for the refusal to render apology and to make corrections.

In conclusion, judgment is entered for the Plaintiff against the Defendants for:

1. **The Defendants to pay the Plaintiff Kshs. 4,000,000.00 by 1.02.2015 failing interest at court rates to be payable thereon from the date of this judgment till the date of full payment.**
2. **The defendants to pay costs of the suit.**

Signed, dated and delivered in court at Nyeri this **Friday, 5th December, 2014.**

BYRAM ONGAYA

JUDGE