



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 244 OF 2006

WANJUKI MUCHEMIPLAINTIFF

VERSUS

1. NATION MEDIA GROUP LTD
2. JAINDI KISERO.....DEFENDANTS

RULING

1. The Plaintiff's suit is in defamation. The Defendants entered appearance and filed defence on 13th April 2006.
2. On 12th July 2006 the Defendants filed two notices. One is a **notice to admit facts** under **Order XXII, rules 4 and 5** of the Civil Procedure Rules then in place. The other one is a **notice to produce documents** under **rule 8** of the same Order.
3. On 30th August 2006 the Defendants filed **chamber summons dated 29th August 2006** under **Order VI, rule 13(1) (c)** of the Rules. It sought the main order that the plaint be struck out upon the grounds that it is embarrassing and will unduly delay the fair trial of the action. The single ground for the application set out on the face thereof is that the plaint does not set out the exact words that are alleged to be defamatory of the Plaintiff **as required by the mandatory provisions of Order VI, rule 3**. The application is supported by the affidavit of one SEKOU OWINO, a legal officer of the 1st Defendant. This application is the subject of this ruling.
4. The Plaintiff has opposed the application by his own **replying affidavit filed on 2nd March 2009**. The tenor and effect of the replying affidavit is that the application has no merit.
5. The application was canvassed before Khaminwa, J by way of written submissions. The Defendants' submissions were filed on 23rd January 2012 while those of the Plaintiff were filed on 27th March 2012. Khaminwa, J is no longer available to prepare the ruling, and that is how the matter has ended up before me.
6. I have considered the submissions, including the authorities cited.
7. The Defendants' argument is that the Plaintiff's claim is based on publications carried in the February 27th to 5th March 2006 issue of the weekly newspaper called the **East African**, the article being

titled *State paid six lawyers \$ 1 million to fight five-day case*; that the Plaintiff in his plaint has “thrown” to the Defendants the full article without identifying what sections of it are defamatory of him as now required by **Order 2, Rule 15(1) (c)** of the **Civil Procedure Rules, 2010** (the **Rules**); that the plaint is framed in a manner that is embarrassing as it makes it impossible for the Defendants to know what precisely to defend themselves against; and that therefore it is in the interest of justice that the plaint be struck out.

8. The Plaintiff’s argument on the other hand is that he has pleaded as required by the Rules; that the entire article quoted in his plaint is defamatory of him and that therefore it was necessary to reproduce the entire article; that the Defendants have in any event filed a full defence to the claim and put the Plaintiff to strict proof of his allegations; that the Defendants have given notices to produce and also to admit documents, thereby indicating that they fully understand the Plaintiff’s claim against them; and that therefore the application has no merit.

9. Ordinarily, when words pleaded to be defamatory are contained in an article, it is best that the entire article be pleaded in order that the court may have the opportunity to determine the tenor and effect thereof. It would be inappropriate to plead only such portions of the document or article that the claimant thinks support his case. In such a case I am sure the defendant would be quick to demand that the entire article be pleaded or produced!

10. In the present case it was open to the Defendants to demand the particulars of the portions of the article in question that the Plaintiff alleges to be defamatory of him. It appears from the submissions of the Plaintiff that his answer to such a request for particulars would have been that the entire article is defamatory of him. Whether or not the entire article is defamatory of the Plaintiff appears to be one of the issues to be canvassed at the trial of the action.

11. In any event whatever deficiencies there may be in the plaint can be cured by amendment as the court might order; it has not been pleaded that the plaint is incurably defective or that no life can be breathed into it by amendment.

12. Striking out pleadings is a draconian remedy that will be resorted to only in the clearest of cases. The present case is not one such.

13. This application is entirely without merit. It is dismissed with costs to the Plaintiff. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF JULY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2013