

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Civil Appeal 3 of 2003

JOSEPH M'ITWANKIOAPPELLANT

VERSUS

M'MWITIITIA M'NABEARESPONDENT

(An appeal against the judgment of the Honourable G. Oyugi R.M. Civil Suit No. 14 of 2005

dated 15th day of March 2005 delivered by Honourable G. Oyugi)

JUDGMENT

In the lower court the appellant filed a plaint alleging that the respondent had defamed him by calling him a witch. In that claim, he sought general damages for that defamation. Although the respondent had filed a defence to that claim, by the time the suit came for hearing he was found to have disobeyed an order for payment of adjournment fees and he was therefore denied audience before court. The appellant suit proceeded *ex parte*. The appellant in evidence stated that on the 5th September 2003 whilst he was at Karama market the respondent found him in the company of many “wazees” and he proceeded to say that the appellant was a witch and had killed seven people. That the respondent further stated that the appellant had touched him and later his son had become mad. The people who were there persuaded the appellant not to cause any trouble and asked him to go. The appellant went to his home. That on the following day as he was selling miraa, the respondent again came and asked the people who were buying the miraa why they were buying from a witch who had killed seven people. Again the people around urged the appellant to go away. The appellant stated that from that day he was unable to sell miraa because people fear from buying miraa from a witch. On being summoned at the chief’s on another date, the respondent again repeated the same defamation. It was thereafter that he decided to file this case. The appellant concluded by saying he was an elder of a church and the defamation had caused him to stop participating in many functions. Further, that his family had been shunned by people. He produced before court a letter written by a Reverend of the National Independent Church of Africa dated 8th October 2003. It is material to note that this letter was written after the defamation he alleged. In that letter it was confirmed that the appellant was an elder at the church and he was selected to be the treasurer of the church because of his good conduct. There was nothing in that letter which supported the appellant’s contention that he did not participate in many functions in the church because of the defamation. PWII stated that he had been sent by the respondent to the appellant to tell him that he was a witch and he had bewitched seven people. That he was sent to tell the appellant not to harm the respondent’s family. PWII did not give a date when he was sent by the respondent. PWIII stated that on the 5th September 2003 when he went to a hotel in Karama he found the appellant and the respondent exchanging words. He urged them to stop because they were causing shame to themselves. The appellant left the same but the respondent begun to call him a witch. PWIV gave evidence about the 6th of September when he heard the respondent say to the appellant that he was a witch. Thereafter the appellant got on his bicycle and went away. The 5th witness also witnessed the incident of 5th and 6th of September. The lower court judgment in the lower court judgment, it was found that the appellant had failed to satisfy the provisions of Order VI Rule 6A (1). That Rule is in the following terms:-

“Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense.”

The appellant needed to give particulars to show that the words he complained of were used in a defamatory sense and not in the ordinary meaning. He also needed to set out in his pleading in verbatim the words complained of. For more understanding, I hereby reproduce part of the claim as follows:-

3. The plaintiff avers that on 5th September 2003 at Kaama Market on a market day on 6th September 2003 at Mutiutikirira the defendant went round telling people that the plaintiff is a witch and he had bewitched seven (7) people some of whom have died and/or ran mad.

4. That on 9th September 2003 the defendant before the sub chief of Ametho sub location and elders unlawfully falsely and maliciously called plaintiff a witch (murogi) who has bewitched seven people and are all dead and others are insane.

5. That the plaintiff being a respected father and a member of the society and a church elder at National Independent Church suffered in reputation of character due to the aforesaid slander and therefore claim damages and compensation of his good name slandered.

I find I am in agreement with the finding of the learned magistrate. The appellant did not give the particulars in his plaint. I am further persuaded by the case of **Abobo V. Kenya Commercial Bank Ltd & 2 others** HCC No. 61 of 2002 where it was held:-

1. Under Order VI Rule 6A of the Civil Procedure Rules the plaintiff was required to plead why he though the words complained of amounted to defamation. He was further required to give particulars of the facts and matters on which he read in support of importing the defamation in those words. The plaintiff did not make such averment in his plaint nor did he provide the particulars of the words he complained to be defamatory.

Further, the appellant's witnesses only gave evidence of the words that were uttered on the 5th and 6th Septe 2003. There were no witnesses that were called to support the appellant's allegation in respect of the alleged defamation of 9th Sept. 2003. I have on the whole considered the lower court record and submissions of the parties in this appeal. I find that this appeal has no merit and the same is dismissed with costs being awarded to the respondent.

Dated and delivered at Meru this 2nd day of October 2009.

MARY KASANGO

JUDGE