



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 465 of 2007**  
**THE BOARD OF GOVERNORS UPPER**

**HILL SCHOOL ..... 1<sup>ST</sup>**  
**PLAINTIFF**

**MICHAEL NJUGUNA MUHIA ..... 2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

- 1. DR. SAM NTHENYA**
- 2. DR. JOHN NGIGI**
- 3. THE BOARD OF TRUSTEES NAIROBI WOMAN'S HOSPITAL**
- 4. PAUL KINYUI CHURU**
- 5. MARGARET WANGECHI KINYUI**
- 6. RADIO AFRICA LTD T/A KISS 100 FM**
- 7. RADIO AFRICA LTD T/A CLASSIC 105 FM**
- 8. ROYAL MEDIA SERVICES LTD T.A CITIZEN RADIO**
- 9. ROYAL MEDIA SERVICES T/A INOORO**
- 10. REGIONAL REACH LTD T/A KAMEME FM**
- 11. ROYAL MEDIA SERVICE T/A CITIZEN TV**
- 12. KENYA BROADCASTING CORPORATION (KBC RADIO)**
- 13. THE STANDARD LTD T/A STANDARD**
- 14. THE NATION NMEDIA GROUP T/A DAILY NATION**

15. EAST AFRICAN MAGAZINE LTD T/A DRUM PUBLICATION
  16. THE PEOPLE LTD T/A PEOPLE DAILY
  17. THE STANDARD LIMITED T/A KENYA NETWORK (KNT)
  18. NATION MEDIA LTD T/A NATIONAL TV (NTV)
  19. KENYA BROADCASTING TV (CHANNEL1)
  20. TIMES NEWS SERVICES LTD (KENYA TIMES) .....
- DEFENDANTS**

### RULING

Before the court are two applications both brought by way of Chamber Summons pursuant to order VI rule 13(a) of the Civil Procedure Rules & Section 3A of the Civil Procedure Act. The first application is dated 5<sup>th</sup> June, 2008 brought by the 8, 9<sup>th</sup> and 11<sup>th</sup> Defendants. The second application is dated 8<sup>th</sup> November, 2009 brought by the 6<sup>th</sup> & 7<sup>th</sup> Defendants. Both applications are seeking to have the plaint struck out as against the named Defendants i.e. 8<sup>th</sup>, 9, 11 and 6, and 7 for failing to disclose any reasonable action against them.

The applications are opposed by the Plaintiffs', who filed grounds of opposition dated 16<sup>th</sup> September, 2008 and 10<sup>th</sup> December, 2008.

The 8, 9<sup>th</sup> and 11<sup>th</sup> Defendants contend that the amended plaint does not disclose any reasonable action against them, the words alleged to be defamatory have not been set out or disclosed and that the suit is time barred contrary to Order VI rule 6A of the Procedure Rules 6A.

The 6<sup>th</sup> & 7<sup>th</sup> Defendants urge the court to strike out the plaint as it discloses no reasonable cause of action, on the ground that the alleged defamatory publication complained of in the amended plaint touch on the 6<sup>th</sup> & 7<sup>th</sup> Defendants.

The Plaintiffs' contend as against all the above named Defendants that the plaint as amended discloses reasonable cause of action as pleaded in paragraphs 10(1) – 10 (i-11), 11, 11a 11b, 13, 14, 15, (a) & b. Further that the Law of Limitation does not apply as the suit was filed within time and that the amended comply with Section 8 of the Defamation Act Cap 36 of Laws of Kenya.

I have considered the submissions by all counsels before me. The issue for determination is whether the cause of action is barred by Limitation and whether the amended plaint discloses reasonable cause of action against the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Defendants.

Order 6A Rule (1) states:-

**“A party may, without the leave of the court, amend any pleadings of his once at any time before the pleadings are closed.”**

I find that the plaint herein was filed within one year of the cause of action which means that it was filed well within time. I also find that the amendments were done within the provisions of order VIA Rule 1 and therefore the issue of time Limitation does not arise.

Order VI Rule 6A (1) states:-

**“Where in an action for libel or slander the Plaintiff alleges that the words or matters complained**

**of were issued 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.”**

I have read paragraph 10 of the amended plaint and the same makes a general reference to the Defendants by themselves or their servants having jointly or severally caused to be published, printed or publicized words as stipulated in the proceedings paragraph. Paragraph 10 (1) does not make reference to the publication by the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> & 11<sup>th</sup> Defendants paragraph 11, 13, of the amended plaint does not quote the publication by the said Defendants either.

Gathey on Libel & Slander at Section 4 Paragraph 26.11 headed **“setting out words complained of”** reads in part:-

**“In a libel the words used are the material facts and must therefore be set out verbatim in the statement of claim preferably in the form of quotation. It is not enough to describe their substance, purport or effect. The Law requires the very words of libel to be set out in the declaration that the court may judge whether they constitute ground of action ....”**

It is to be noted that Order Rule 6A is indeed in mandatory terms and an action of defamation that does not satisfy the rule is clearly defective. It is obvious that the whole suit is hinged on paragraph 10 (i) where the words complained against the other Defendants has been particularized in line with this order.

I have also considered the case of **Hon Nicholas Kipyator Kiprono vs. Hon. Paul Muite & Another HCCC No. 1309 of 2003 Francis Oyasi vs. Wachira Waweru & The Standard Limited HCCC No. 1225 of 1999.**

For the reasons above stated I find that the Plaintiff failed to comply with the mandatory requirement of Order 6 Rule 6A and, I accordingly grant the prayers in the Chamber Summons dated 5<sup>th</sup> June, 2008 filed by the 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> Defendant. Likewise I grant the prayers in the Chamber Summons filed and dated 8<sup>th</sup> November, 2008 by the 6<sup>th</sup>, 7<sup>th</sup> Defendants.

Dated and delivered at Nairobi this 2<sup>nd</sup> day of November, 2009.

**ALI- ARONI**

**JUDGE**