



REPUBLIC OF KENYA



KENYA LAW
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**Maraga v Abdullahi (Civil Case E010 of 2022)
[2024] KEHC 3516 (KLR) (Civ) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E010 OF 2022**

**CW MEOLI, J
MARCH 19, 2024**

BETWEEN

HON (RTD) CHIEF JUSTICE DAVID MARAGA PLAINTIFF

AND

AHMEDNASIR MAALIM ABDULLAHI DEFENDANT

RULING

1. This suit was filed by Hon. (Rtd) Chief Justice David Maraga (hereafter the Plaintiff) against Ahmednasir Maalim Abdullahi (hereafter the Defendant). Having filed his defence, the Defendant took out the Notice of Motion dated 5th June, 2023 (the Motion) and expressed to have been brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA), Cap 21; and Order 2 rule 15 (1) (a) of the *Civil Procedure Rules* (CPR), 2010. Seeking to strike out the plaint dated 10th January, 2022, with costs.
2. The Motion is premised on the grounds on its face whose effect in summary is that the Plaintiff's suit which is founded on the tort of defamation, does not disclose any reasonable cause of action against the Defendant as the defamatory words allegedly uttered/published by the Defendant were not specifically pleaded. Moreover that, the plain and natural or other meaning of the words allegedly published by the Defendant were similarly not pleaded in the plaint, and that the Plaintiff's claim against the Defendant relates to his formerly held public office and in no way targets him as an individual. Further that the plaint is frivolous, vexatious and lacking in substance.
3. To oppose the Motion, the Plaintiff swore a replying affidavit on 17th October, 2023 wherein he contended that the plaint does specifically plead and disclose the particulars of defamation against the Defendant herein, in addition to pleading the particulars of the defamatory publications verbatim. The Plaintiff further stated that the plaint equally set out the plain, natural and ordinary meaning



- of the words in the defamatory publications made by the Defendant; and that the Defendant had an opportunity to adequately respond to the plaint by way of his statement of defence dated 23rd February, 2022.
4. The Plaintiff further averred that he is not precluded by law from bringing a claim for defamation against the Defendant herein or any other person, for any publications made in an attempt at disparaging his character. Besides, that claims founded on defamation are personal in nature and hence his claim against the Defendant is properly before the court. He concluded with the averment that if the suit is struck out summarily, he stands to suffer great prejudice and injustice.
 5. The record shows that applications similar to the instant Motion were filed in two (2) separate but related suits, namely HCCC No. E008 of 2022 (Hon. (Rtd) Chief Justice David Maraga-v-Ahmednasir Maalim Abdullahi & Nation Media Group PLC) and HCCC No. E009 of 2022 (Hon. (Rtd) Chief Justice David Maraga-v-Ahmednasir Maalim Abdullahi & Nation Media Group PLC).
 6. The parties were directed to file and exchange written submissions on the Motion and the other Motion. However, at the time of writing this ruling, only the submissions by the Plaintiff had been filed. There is no indication that the Defendant's submissions were either availed to this court for consideration or uploaded to the online CTS platform.
 7. In urging the court to dismiss the respective Motions filed in the abovementioned suits and to sustain the three (3) suits collectively, the Plaintiff's counsel anchored his submissions on the decisions in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] eKLR and *Meya Agri Traders Ltd v Elgon House (2010) Ltd* (Civil Appeal 15 of 2020) [2023] KECA 574 (KLR) on the discretionary power of the courts in determining applications seeking to strike out pleadings summarily. Counsel argued that in such instances, the courts ought to proceed with extreme caution, and strike out a party's pleadings only in the clearest of cases. Counsel reiterated the Plaintiff's averments that there is no basis lies for striking out of the plaint herein since the particulars of the claim made against the Defendant have been set out therein, in all three (3) suits.
 8. Moreover, while relying on the decision rendered in *Grace Wangui Ngenye v Chris Kirubi & another* [2015] eKLR, he asserted that the Plaintiff did set out the natural and ordinary meaning of the defamatory publications made by the Defendant, to which the latter responded in detail through his statement of defence.
 9. Counsel further reiterated the Plaintiff's averments that the alleged defamatory publications made by the Defendant targeted the Plaintiff's personal and professional character, rather than his former public office, thereby terming it a personal claim against the Defendant. In so submitting, counsel once more cited the case of *Grace Wangui Ngenye v Chris Kirubi & another* (supra) as well as the case of *Johnson Evan Gicheru v Andrew Morton & another* [2005] eKLR where persons who held public offices had instituted claims founded on defamation in their personal and professional capacities.
 10. Regarding whether the plaint filed is frivolous, vexatious and an abuse of the court process, counsel contended that the applications in the three suits have not been brought within the principles enunciated in *Spinners and Spinners Limited v Kimilili Wholesalers(K) Limited* [2021] eKLR. On those grounds, counsel urged the court to dismiss the relevant Notices of Motions filed in the respective suits.
 11. The court has considered the rival affidavit material and the submissions together with the authorities relied upon. The Motion (which mirrors the prayers in the respective Motions of like date in the related



suits) seeks the striking out of the suit against the Defendant, for failure to disclose a reasonable cause of action against him. The relevant provision is Order 2, Rule 15(1) of the [CPR](#) which provides as follows:

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a)	it discloses no reasonable cause of action or defence in law; or
(b)	it is scandalous, frivolous or vexatious; or
(c)	it may prejudice, embarrass or delay the fair trial of the action; or
(d)	it is otherwise an abuse of the process of the court,

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

12. The power to strike out pleadings is discretionary and ought to be exercised judicially. In *The Co-Operative Merchant Bank Ltd v George Fredrick Wekesa* (Civil Appeal No. 54 of 1999) the Court of Appeal stated thus:

Striking out a pleading is a draconian act, which may only be resorted to, in plain cases....Whether or not a case is plain is a matter of fact.... Whether or not a case is plain is a matter of fact....A Court may only strike out pleadings where they disclose no semblance of a cause of action or defence and are incurable by amendment.”

13. In *Yaya Towers Limited v Trade Bank Limited (In Liquidation)* [2000] eKLR the Court of Appeal expressed itself in the following manner:

“A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial....It cannot be doubted that the Court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction, which ought to be sparingly exercised and only in exceptional cases, and its exercise would not be justified merely because the story told in the pleadings was highly improbable, and one, which was difficult to believe, could be proved.”

14. Earlier in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Madan JA, stated that:

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided



it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

15. From the record, it is apparent that the Plaintiff’s claim against the Defendant is founded on defamation. Upon perusal of the plaint in question, the court observed that the Plaintiff set out the particulars of the defamatory publications allegedly made by the Defendant on various dates. Moreover, the Plaintiff set out the natural and ordinary meaning of the words published and asserted defamatory sense by way of imputation and innuendo. It is therefore apparent that the particulars of the alleged defamatory publications are pleaded in the plaint, contrary to the assertions by the Defendant.
16. It is also apparent that the Plaintiff brought the claim in his personal capacity. It is trite law that defamation suits constitute claims of personal nature and hence the court is unable to find that this instant suit was not properly instituted. The court is satisfied that the plaint herein discloses a reasonable cause of action against the Defendant.
17. Further as to the Defendant’s assertions that the suit is vexatious, scandalous, or frivolous pleadings, the Court of Appeal in the case of *Uchumi Supermarkets Limited & another v Sidhi Investments Limited* [2019] eKLR held thus:

“As stated in the case of *Trust Bank Limited v Amin Company Ltd & Another* (2000) KLR 164, a pleading or an action is frivolous when it is without substance or is groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expenses. In addition, an action should not be treated as an abuse of the process of the court unless it is plain beyond a peradventure at the interlocutory stage that the action cannot succeed (*D.T. Dobie & Company (Kenya) Limited v Muchina*) Supra.”
18. Upon its consideration of the averments in the plaint and material canvassed in respect of this Motion, the court does not accept the Defendant’s contention that the Plaintiff’s pleadings are frivolous, vexatious or amount to an abuse of the court process. Or that no reasonable cause of action has been pleaded against the Defendant.
19. Consequently, the court is of the considered view that the Notice of Motion dated 5th June, 2023 is without merit. It is accordingly dismissed with costs to the Plaintiff.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 19TH DAY OF MARCH 2024.

C.MEOLI

JUDGE

In the presence of:

For the Defendant: Ms. Wanja

For the Plaintiff: Mr. Ouma

C/A: Carol

