

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Suit 33 of 2005

BENAI AH SISUNGO.....PLAINTIFF

VERSUS

TOM ALWAKA t/a WEEKLY CITIZEN..... 1ST DEFENDANT

HEADLINK PUBLISHERS LTD..... 2ND DEFENDANT

JUDGMENT

By a plaint dated 8.4.2005, the Plaintiff **BENAI AH SISUNGO** sued the 2 defendants namely **TOM ALWAKA** t/a Weekly Citizen and Headlink Publishers Limited for libel and defamation. He has prayed for general and aggravated damages for libel and defamation against his person. He also prays for costs of the suit. 1st defendant is sued in his capacity as the owner of the Newspaper in question while the 2nd defendant is sued as the publisher. The offending article giving rise to this cause of action is said to have been published on page 10 of the Weekly Citizen issue of 17th – 23rd January, 2005. The article was headed “**Lugulu Parents Demand Transfer of School Head**”.

According to paragraph 4 of the plaint, the article was to the effect that over 300 parents of Lugulu Day Mixed Primary School had urged the Ministry of Education to transfer the Plaintiff from the aforesaid school for allegedly selling books, pens and pencils given to the school, as part of the Free Primary Education. The article is also said to have stated that the Plaintiff was engaged in love affairs with his students during games times and had in fact impregnated one girl from his school. According to the Plaintiff, the said report was “**false, malicious, defamatory and libelous**” and that the same has greatly injured his standing within the teaching fraternity, church and the entire community at Lugulu and Bungoma District and country at large. The plaintiff states that he actually sent a demand notice to the Defendants asking them to publish an apology but they did not do so – hence his claim for the aggravated and general damages. The Defendants were duly served with the plaint as can be seen in the affidavit of service dated 16.6.2005. They did not enter appearance or file any defence. Judgment against them was subsequently entered on 21.6.2005 and the matter proceeded by way of formal proof on 13.2.2006. The Plaintiff testified and called 2 witnesses. In his evidence, he reiterated the contents of his plaint. He said that upon reading the said article, he convened a Parents Meeting in a bid to find out if it was true they had made the complaints highlighted in the said article. He said that the parents denied having made such allegations. They even gave him a go ahead to file a suit against the Newspaper in question – hence this suit. His lawyer sent a demand notice to the Defendants on 1/3/2005 asking for an apology and retraction of the said article but none was forthcoming. According to the plaintiff, other than being a teacher, he is also a respected church elder and a family man. He testified that his reputation suffered as a result of the said article and he also suffered low self esteem. His witnesses testified that they had known the plaintiff for along time and that the story was not true. They further said that after reading the said article, they questioned the Plaintiff’s integrity and standing as a teacher, church goer and elder. They said that the article made them to change their opinion of him and they started holding him in low esteem.

As stated earlier, the Defendants did not file any defence and so the Plaintiff’s evidence and that of his witnesses was not rebutted or challenged in any way. The issue before the court for determination now is whether the said article was defamatory or libelous to the person of the Plaintiff and if so, is he entitled to the damages sought?

According to counsel for the Plaintiff in his written submission, the story as published was

defamatory of the Plaintiff in its plain tenor and was aimed at tarnishing his reputation and make a profit for the Defendants. In my view, the words complained of in their natural and ordinary meaning depicted the Plaintiff as a thief (stealing school stationery), as a paedophile (for impregnating a primary school child), and also as an unfaithful and philandering husband. These allegations were found not to be true. The Defendants did not offer any defence whatsoever and this means that they have not disputed the fact that they defamed the Plaintiff. In the result, I find that indeed the plaintiff was defamed by the Defendants. They published the said article. It was found to contain falsehoods, and further these falsehoods were believed by ordinary and right thinking persons e.g PW2 and PW3. The 2 said that the Plaintiff's standing in society and esteem was lowered in their eyes after reading the said article. My finding therefore is that the Plaintiff has proved on a balance of probability that he was defamed by the Defendants and he is entitled to damages.

This then brings me to the issue of assessment of the damages. Counsel for the Plaintiff has asked for compensatory damages in the sum of Ksh.5 million and exemplary damages of 3 million. He has cited the cases of **NICHOLAS BIWOTT -V- MBUGUSS & ANOTHER [NRB HCCC NO.2143 of 1999]** where the Plaintiff was awarded 10 million, and **NICHOLAS BIWOTT -VS- CLAYS LTD [NRB HCCC NO.1067 of 1999]** where the same Plaintiff was awarded Ksh.15 million as compensatory damages and a further 15 million as exemplary damages for libel. In my considered view however, these cases do not offer good guidelines as the awards were indeed reduced on appeal. Further the status of the Plaintiff in society in those cases was certainly different and much higher than that of the Plaintiff herein.

After carefully assessing the facts and circumstances surrounding this case, I am satisfied that the Plaintiff should be awarded Ksh.600,000/= as general/compensatory damages and exemplary damages to the tune of Ksh.400,000/= all totaling Ksh.1,000,000/= plus costs of the suit and interest thereon at court rates. Orders accordingly.

W. KARANJA

JUDGE

DELIVERED, Dated and Signed at Bungoma this 11th day of March, 2007. In presence of Mr. Waswa for Mr. Masinde for plaintiff. Plaintiff also present.

W. KARANJA

JUDGE