



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL SUIT NO. 31 OF 2015

JACOB KIPNGETICH KATONON:::::::::::::::::::::::::::::PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED:::::::::::::::::::::::::::::DEFENDANT

JUDGMENT

The plaintiff herein Jacob Kipngetich Katonon, has filed this case against the Defendant, Nation Media Group Limited basically seeking for General Damages for defamation. Despite being served with summons, the Defendant failed to enter appearance and file any defence. Upon request for interlocutory judgement, the said interlocutory judgment was entered on 8th March, 2016. The matter was then fixed for formal proof.

In his evidence in court, the plaintiff testified that the Defendant, in its issue of 1st August, 2015, wrote,

“The trials also saw a new High Jump record. Mathew Sawe cleared 2.25M to erase the old mark of 2.24M was held by the late Jacob Katonon since July, 1992”.

That this publication has immensely caused anguish, anxiety and harm to the plaintiff and the nation in general. The plaintiff testified that he was the record holder of Triple Jump in Africa and also record holder in Long Jump in East and Central Africa, which 2 records he still held. That when he broke his leg, he remained at home for a long time without engaging in sports, but it was wrong to write that he was dead: that pursuant to the public, many people went to his home seeking to slaughter animals believing that he was dead. In the process, he suffered loss. The plaintiff did not call any witness.

I have considered the oral evidence of the plaintiff. I have also considered the submissions filed by the plaintiff on 25th April, 2017 and the decisions relied on. The plaintiff’s case is one based on the tort of defamation and specifically libel. In the case of **Phineas Nyagah -VS- Gitobu Imanyara, HCC 697 OF 2009, (2013) eKLR**, the Honourable Judge adopted a definition of defamation as:

“Defamation is tort and is defined as the publication of a statement which, tends to lower a person in the estimation of right thinking members of the society generally, or which has tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right thinking members of society to be regarded with feelings of hatred, contempt, ridicule, fear dislike and diesteem”.

Publication is otherwise the communication of the words to at least one other person other than the defamed. An action on defamation is generally one for compensation for harm done to one’s reputation, and it is necessary to show that the published falsehoods disparaged the reputation of the plaintiff. So,

what are the general elements of defamation. Again, I get guidance from the decision of the Imanyara case (above). That is to say, that for one to succeed on an action of defamation, he must show: -

(i) That the words are defamatory in that they must tend to lower the plaintiff's reputation.

(ii) The words must refer to the plaintiff.

(iii) The words must be malicious, and recklessness may be inferred to imply malice. Under this heading, it is important to note that the failure to inquire into the facts is a fact from which inference of malice may be properly drawn.

So, has the plaintiff satisfied these requirements or proved that the said aggrieved words were defamatory to his reputation? There is no doubt that the said words referred to the plaintiff. His name is specifically mentioned therein. There is also no doubt that the words complained of had falsehoods. Whereas the words implied that the plaintiff had died, the truth is that he is alive. There is no evidence on record to suggest that the Defendant made any attempt at verifying the accuracy of the statement before the same was published. The unverified statement was otherwise published in the Defendants' daily newspaper, which this court takes Judicial notice of, as having a very wide circulation in this country and beyond. To me, there lies the recklessness of the Defendant which ought and must be held to imply malice, and therefore defamation.

As already stated above, the plaintiff's case is one based on the tort of libel, which is punishable per se, without proof of damage. Having been reckless in its publication, the Defendant must surely be held, as I hereby do liable to the plaintiff. The issue then is one of quantum of damages awardable. In the **Nyagah - VS- Imanyara** case the court held that the sum awardable is at large. It is the same principle that was applied in both Godwin Wanjiru Wachira -VS- P.G. Okoth & 4 others, HCCC (Nai) No. 1227/76, and JP Machira t/a Machira & Company Advocate -VS- Wangethi Mwangi & Another, Civil Appeal No. 179 of 1997. In simple terms, the issue of quantum of damages awardable would depend on the circumstances of each case. The court of appeal in Lakha -VS- standard Limited, Civ. Appeal No. 81 of 2009, (2009) KLR 432, listed the factors to be considered in assessing the damages. Amongst these were held to be: -

- **The objective features of the libel itself, such as its gravity, its province, the circulation of the medium, and any repetition.**
- **The object effect on the plaintiff's feelings and the conduct of the Defendant up to the trial itself.**
- **Matters tending to mitigate damages such as the publication of an apology.**
- **Matters tending to reduce damages.**
- **Vindication of this plaintiff's reputation, past and future.**

I stand guided by this decision. In this particular case, the false publication aggrieved of was to the effect that the plaintiff was deceased and in his evidence in court, it was the testimony of the plaintiff that because of the publication, many people went to his home to mourn. And further that this publication has probably acted as a bar to his ambitions to be a coach. This court has a duty to balance these circumstances with any mitigating factors that may affect the quantum awardable in this matter. It is not in doubt that the plaintiff is indeed an athletics record holder. In his testimony however, he had to retire or withdraw from the sport after he broke his leg and that he has remained largely inactive. His ambition now is to be a coach. In court however, he gave no evidence of any attempt at securing a coaching job that this particular publication may have thwarted or inhibited. He has also not shown any coaching credentials even at the local level. Second, the plaintiff in his evidence did not show the exact loss or extent of loss he has suffered as a result of this publication. He called no witness to prove that indeed mourners went to his home as a result of this publication or that he received any calls from anyone

seeking to pass their messages of condolences or sympathies or even to confirm the truthfulness of the statement that he was dead. There is also no evidence on record to prove or show that the plaintiff suffered a lowering of his reputation in the minds of right-minded persons. Above all, whereas the words complained of were reckless (as already held) and so malicious, I do not see any evidence of spite or ill-will directed at the plaintiff by way of the words published. And lastly, there is nothing on record to show that the Defendant, has subsequent to this publication, published the same statement aggrieved of by the plaintiff.

All these factors put together, convinces this court that the factors mitigating on the quantum of damages herein outweigh those that are in favour of award of any aggravated or exemplary damages. In my view, the circumstances herein are in favour of award of only nominal damages to the plaintiff for this libel. The sum claimed by the plaintiff Ksh. 20,000,000/- is obviously excessive in the circumstances.

I am convinced that a sum of Kshs. 200,000/- would be sufficient compensation to the plaintiff in General Damages. I so award. I also award the plaintiff costs of this case.

DATED, SIGNED and DELIVERED at ELDORET, this 21st day of September, 2017.

D.O. OGEMBO

JUDGE

Judgment read out in open court in presence of: -

- 1. The Plaintiff and his counsel*
- 2. Mr. Melly Advocate*

D.O. OGEMBO

JUDGE