



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 6833 OF 1991

JAMES P. MUREITH PLAINTIFF

VERSUS

KENYA TEA DEVELOPMENT AUTHORITY & TWO OTHERS DEFENDANTS

J U D G M E N T

The Plaintiff who was formerly employed as the Agriculture Manager by the Kenya Tea Development Authority claims damages from the Kenya Tea Development Authority and the Nation Newspaper for libel arising out of a letter terminating his services (to which for brevity I will refer as “the offending letter”) dated 21/12/1990 which was addressed to him and signed by C.M. Irungu then the A.G. General Manager and copied to the Ag. Financial Controller requesting him to organize for the payment of his terminal dues.

The said letter of termination of the Plaintiff services had the following words inter-alia.

It has come to our notice that on 14th December, 1990 you signed a cheque of Kshs.3 Million in payment of Messrs Kenya Ironmongers (KSM) Limited without any documents or other evidence in support of such a payment.

This was in contravention of the authority’s standing procedures, practice and financial regulations which you, as Head of Department and a signatory of the Authority’s cheques, it bound to observe and strictly adhere to. Your negligence in this regard was likely to result in the authority being defrauded of a large sum of money.

Your conduct in this matter amounts to gross misconduct under the Authority’s Staff Regulations and instructions punishable by summary dismissal.

On 4th January, 1991, the second Defendant, The Nation Newspaper Limited, published or caused to be published in its daily newspaper of that day the following words about the Plaintiff:-

“KTDA men lose Jobs” Two Senior Officials of the Kenya Tea Development Authority (KTDA) have lost their jobs following payment of Kshs.3 Million to a Hardware Merchant, source in the Organization confirmed yesterday.

They are the Agriculture Manager and an Assistant Accountant in charge of imports.

The Kshs.3 Million was paid through a cheque supporting documents issued against the goods supplied accounted for only Kshs.600,000/= source told the Nation.

The Plaintiff contended that the above said words published by the first defendant in the letter of termination aforesaid and the words published in the Daily Newspaper of 4th January, 1991 by the second defendant meant and were understood to mean that the Plaintiff was fraudulent, corrupt, dishonest, misfit and of low moral standard in the community. By their action aforesaid, the first and second Defendants jointly and severally defamed the Plaintiff and put him to public ridicule and scorn and caused him to be shunned and avoided by Professional Colleagues and friends.

The facts are admitted. Although the Plaintiff was not mentioned by full names, the descriptive details were capable of leading to identification.

The name of the Plaintiff is not required so long as reasonable people understand as referring to Plaintiff. He was the agriculture manager of the first defendant.

RWABUGAHYA V. EAST AFRICAN NEWSPAPERS (NATION SERVICES) LTD 1968 E.A. 576.

It is clear from the words complained of in the said confidential letter of termination of service that the first defendant does not deny to have owed Messrs Kenya Ironmongers (KSM) Ltd the said Kshs.3 Million, neither was the first defendant against the payment of the said Shs.3 Million to Messrs Ironmongers (KSM) Ltd nor to the signing of the said cheque in payment thereof perse.

What the first defendant was against and which made the Plaintiffs service to be terminated was the signing of the cheque of Shs.3 Million without any document or other evidence as at the time of signing which was contrary to the first defendant's standing procedure, practice and Financial Regulations. The facts having been admitted, the next question is whether the words contained in the newspaper article were defamatory. The test to be applied was set out in SHAH V. UGANDA ARGUS 1971 E.A. 362 at page 364.

“Any words or imputation which may tend “to lower a person or persons in the estimation of the right thinking members of society, or expose a person or persons to hatred, contempt or ridicule have been held to be defamatory, and it is the general impression that the words are likely to create in the minds of reasonable persons which must be considered rather than making a close and precise analysis of the words used”

The first defendant submits that in the ordinary and natural meaning, the general impression that the words complained of are likely to create in the minds of reasonable persons is that the Plaintiff's service with the first defendant were terminated for his negligence in carrying out his duties under his contract of employment with the first defendant.

There is no evidence as to how the said letter of termination of the Plaintiff's services with the first defendant leaked to the newspapers. The Plaintiff submitted that the same was delivered in an ordinary envelope and that it was not properly sealed.

But if a letter containing a libel intended for and is addressed to the person libeled, is wrongly opened by a third party, there is no publication on which an action can be based.

HUTH V. HUTH {1915} 3KB 32

POWELL V. GELSTON {1916} 2KB 615

Reviewing the evidence as a whole I am unable to say that the Plaintiff has established that the words complained of were defamatory.

The Plaintiff's suit is therefore dismissed with costs.

Dated and delivered at Nairobi this 21st day of June, 2001

J.L.A. OSIEMO

JUDGE



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