



Case Number:	Civil Suit 124 of 1999
Date Delivered:	01 Oct 2002
Case Class:	Civil
Court:	High Court at Kisumu
Case Action:	Ruling
Judge:	Barabara Kiprugut Tanui
Citation:	Otieno v Nation Newspapers Limited [2002] eKLR
Advocates:	GR Oloo for the plaintiff JG Kagucia for the defendant
Case Summary:	<p><b>Otieno v Nation Newspapers Limited</b></p> <p><b>High Court, at Kisumu</b></p> <p><b>October 1, 2002</b></p> <p><b>Tanui J</b></p> <p><b>Civil Suit No 124 of 1999</b></p> <p><i><b>Defamation</b> - libel – pleadings in libel actions – inference of malice - requirement of particulars – facts which if pleaded must provide particulars – provisions of the Civil Procedure Rules order VI rule 6A.</i></p> <p><i><b>Defamation</b> - libel – pleading innuendo – where alleged defamatory words are used in a sense other than in their ordinary meaning – particulars of facts required – consequences of failure to give particulars in pleadings.</i></p> <p>The plaintiff sued the defendant for libel following the publication of an article in the defendant's newspaper that referred to the plaintiff in the report of a criminal case, the proceedings of which were in a magistrate's court.</p>

Counsel for the defendant raised a preliminary objection arguing that since the plaintiff alleged malice on the part of the defendant, the plaintiff had to give particulars of facts and matters from which malice could be inferred, in light of the defendant's assertion of fair comment and privilege in 'its' defence. It was further submitted by the defendant's advocate that the plaintiff's reply to defence ought to be struck out for failure to comply with order VI rule 6A (3) of the Civil Procedure Rules in the foregoing terms. Finally, the defendant's advocate submitted that the pleading of innuendo did not comply with the requirements of order VI rule 6A (1) of the said Rules.

**Held:**

1. In libel actions, the plaintiff is bound to give full particulars of facts and matters which lead to an inference of malice on the part of the defendant pursuant to order VI rule 6A of the Civil Procedure Rules.

2. In a reply to a defence in libel actions, the plaintiff must also give particulars of the alleged facts. It is insufficient to merely state that the publication is a distortion. It was necessary to particularise such distortions.

3. Where a party pleads malice, particulars must be given of facts or matters which would lead to the inference of malice.

4. The pleading of innuendo in the plaint was inconsistent with the requirement of order VI rule 6A (1); which require that where the words complained of were used in defamatory sense other than their ordinary meaning, particulars of the facts must be given.

5. Failure to comply with the mandatory rules rendered the plaintiff's suit defective and invalid.

*Plaint struck out.*

**Cases**

No cases referred to.

	<p><b>Statutes</b></p> <p>No statutes referred.</p> <p><b>Advocates</b></p> <p><i>GR Oloo</i> for the plaintiff</p> <p><i>JG Kagucia</i> for the defendant</p>
Court Division:	Civil
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Plaint struck out.
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL SUIT NO 124 OF 1999**

**OTIENO.....PLAINTIFF**

**VERSUS**

**NATION NEWSPAPERS LIMITED.....DEFENDANT**

**RULING**

At the commencement of the hearing of this suit Kagucia for the defendant raised a preliminary objection to it on points of law.

Mr Kagucia contended that the suit is misconceived, incompetent and bad in law and that the hearing of it cannot start with these pleadings. It was Mr Kagucia's contention that as the suit depends on alleged malice of the defendant and as the defendant in its defence has advanced a fair comment and privileged occasion it was incumbent upon the plaintiff in terms of order VI rule 6A(3) of the CPR to give particulars of facts and matters from which malice could be inferred. He submitted that as the plaintiff to comply with the provision of that rule the plaint and the reply to the defence should be struck out.

Mr Oloo for the plaintiff in response to that submission contended that the plaintiff had given the necessary particulars in paragraph 2 of the reply to defence of the facts and matters from malice of the defendant could be inferred and that his client had fully complied with provision of the said rule.

It is true that the defendant in paragraph 13 of its statement of defence advanced fair comment and privileged occasion. In terms of order VI rule 6A (3) the plaintiff was bound to give full particulars of facts and matters which would lead to inference of malice on the part of the defendant. It is necessary that this paragraph be closely looked at so as to establish whether or not the said rule has in fact been complied with as claimed.

In paragraph 2(a) of the reply to defence the plaintiff did not give particulars of any facts but he alleged that the publication complained of gave a distortion of the Court proceedings. It was necessary to particularize such distortions.

Under paragraph 2(b) of that reply the plaintiff contended that the defendant did not purport to express an opinion at all. This paragraph in my view did not comply with the law.

In paragraph 2(c) the plaintiff claimed that the fact that the defendant failed to offer a remedy showed that the printing and the publication of the words were not bona fide. In my view that is not giving of the particulars of facts or matters which would lead to the inference of malice.

In paragraph 2(d) the plaintiff averred that the fact that he was not an accused nor was he adversely mentioned in the Court proceedings would be sufficient to infer malice on the part of the defendant. In this paragraph I find that the plaintiff made an attempt to give particulars but it was necessary to fully do as what was stated is not sufficient.

It is also true that in paragraph 6 of the plaint the plaintiff pleaded in the alternative an innuendo, and thereafter tried to give the meaning of the words in his view. Order VI rule 6A (1) of the CPR does not appear to have been complied with and the plaintiff's counsel did to respond to his complaint.

I agree with Mr Kagucia that as these rules appear to be mandatory a failure to comply with them would render the plaintiff's suit defective and invalid, and as there is no prayer for amendment of the plaint I have no option but to strike out the plaint as prayed, which I proceed to do. The defendant will have the costs of this suit and the application.

**Dated and delivered at Kisumu this 1st day of October, 2002**

**B.K TANUI**

**JUDGE**



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