



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

Civil Case 1225 of 1999

FRANCIS OYATSI ..... PLAINTIFF

VERSUS

WACHIRA WARURU .....1<sup>ST</sup> DEFENDANT

THE STANDARD LIMITED.....2<sup>ND</sup> DEFENDANT

RULING

FRANCIS OYATSI sued Wachira Waruru and the Standard Limited jointly and severally seeking special, general and aggravated damages, as well as damages for malicious falsehoods for “a continuous series of publications made daily between 2<sup>nd</sup> December 1998 and 17<sup>th</sup> December when the 1<sup>st</sup> defendant published and the second defendant caused to be published, printed and re-published prominently on the front page, back page and inside pages the following words including cartoons or effigies which are defamatory of the plaintiff.....”

The plaintiff then gives the date and the heading of what was published by the defendants in what portion of the Standard newspaper.

The plaintiff also sought an injunction order to,

“restrain the defendants from further publishing or causing or authorizing the publication of the same or similar malicious falsehoods of the plaintiff”.

There was a prayer for costs on a higher scale.

The defendants entered appearance through Messrs Mohamed Muigai Mboya advocates, and subsequently filed a defence dated 9<sup>th</sup> July, 1999.

Both parties filed lists of documents as required by the rules of practice and procedure.

When the suit came for hearing me on 20<sup>th</sup> June, 2006, counsel for the defendant, Mr. Githu Muigai, raised an objection to the plaint filed on 21<sup>st</sup> June, 1999, on which the claims of libel is premised as violating the mandatory rules relating to pleadings in libel cases particularly Order 6 Rule 6(A) Rule(1) of the Civil Procedure Rules which require the giving of particulars. That further and in addition, the pleadings are incurably defective by their failure to set out in verbatim the articles and specifically the passages in the articles complained of.

He submitted further that the plaintiff claims that there were ten different articles which were libelous, yet they were not set out in verbatim and in extensio, and this is an incurable defect in the pleadings.

Mr. Muigai submitted further that no court of law should commence a trial if there is a defect on the face of the record such as the one in the plaint herein, and that in the circumstances, the court can even move “**suo moto**”, i.e. of its own motion in a situation similar to this.

According to Mr. Mungai, a point of law can be raised by any party at any stage of the proceedings and such a point need not have been raised in the defence. That once the court is satisfied that the plaint does not comply with the mandatory special rules of pleading in libel matters, the same should be dismissed with costs. He based his arguments on a text from **GATLEY ON LIBEL AND SLANDER**, at Section 4, paragraph 26.11 headed,

“**setting out words complained of**”, and reads in part,

“In a libel the words used are the material facts and must therefore be set out verbatim in the statement of claim preferably in the form of a quotation. It is not enough to describe their substance, purport or effect. The law requires the very words of libel to be set out in the

**NICHOLAS KIPYATOR KIPRONO BIWOTT vs HON. PAUL KIBUGE MUIITE & BARAZA LTD** (Unreported), which he said was on all fours with the present suit, on the matter of setting out words complained of.

Mr. Salish Gautama for the plaintiff disagreed with the submissions of his opponent, Mr. Githu Muigai. On his part he submitted that only the question of jurisdiction can be raised at any time and further that the High Court has unlimited jurisdiction. He referred to Order 6 Rule 7 of the Civil Procedure Rules.

He submitted that the object of the pleadings is that a party who wishes to say that an action is not maintainable, should do so in the pleadings. That the defendant was entitled to come to court and seek particulars of the plaint, but it did not do so.

Mr. Satish Gautama asked the court to turn to the defence which does not challenge the plaint as not being in compliance with Order 6R 6A (1) of the Civil Procedure Rules.

He confirmed that his client is not relying on any innuendos, but says that the words in the plaint in their ordinary meaning are defamatory and libellious. That order 6A quoted by Mr. Githu Muigai does not apply.

Turning to the defence, Mr. Gautama submitted that it does not raise any point of law that the plaintiff's suit should not be heard. That this point has not been raised in the defence filed and the oral application by Githu Muigai should be dismissed.

According to Mr. Githu Muigai in reply, the question of a preliminary point being raised without a formal application is a "**point of modern law**". That pleadings are about facts and Order 6 r 7 is an exception to that Rule.

Mr. Muigai's position therefore is that any party may raise a point of Law at any time in the proceedings, including the competence of the suit, jurisdiction and the standing of the parties.

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declaration in order that the court may judge whether they constitute a ground of action.....”