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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 1490 OF 2005

JOHN KAHIU NDUNGU & OTHERS. PLAINTIFFS'/RESPONDENTS'

VERSUS

NATION MEDIA GROUP LIMITED. DEFENDANT/APPLICANT

R U L I N G

Before me is a Chamber Summons dated 10th May 2006 filed by M/s Mohamed Muigai Advocates for the defendant **NATION MEDIA GROUP LTD.** The application was filed under Order 6 Rule 13(1) & (9) of the Civil Procedure Rules and section 3A of the Civil Procedure Act (*Cap 21 Laws of Kenya*). The prayers in the application are as follows: -

- 1. The plaintiffs' suit herein be struck out.*
- 2. Costs of this application and those of the suit be borne by the plaintiffs.*

The application has grounds on the face of the Chamber Summons. The grounds are as follows: -

- a) The plaintiff is incurably defective as it does not set out the words and/or precise words that are alleged to be defamatory.*
- b) The plaintiff does not disclose any or any reasonable cause of action against the defendant.*

No affidavit was filed in support of the application, as rule 16 of Order 6 of the Civil Procedure Rules does not appear to require the filing of an affidavit with the Summons.

The application was opposed. Grounds of opposition were filed on 14th July, 2006.

The said grounds of opposition are as follows: -

- a) The application is fatally and incurably defective.*
- b) The application is bad in law.*
- c) The application is frivolous and vexatious.*

On the hearing date, Mr. Mogere appeared for the defendant/applicant, while Mr. Karuga appeared for the plaintiffs/respondents.

Learned Counsel for the applicant, Mr. Mogere, submitted that the plaintiff discloses no cause of action. It was contended, that this being a case

for defamation, the specific words published or broadcast have to be contained in the plaint for the court to know whether a cause of action has been disclosed. It was counsel's argument that in our present case, the plaintiff did not give the alleged defamatory words in the plaint. Therefore, the plaint should be struck out for disclosing no cause of action. Reliance was placed on the case of **FRANCIS OYATSI Vs WACHIRA WARURU and THE STANDARD LTD** [2006] eKLR where it was held that the plaint in a slander case should set out verbatim in the statement of claim the very words of libel, so that the court may judge whether they constitute a ground for action. Counsel contended that, even after this application was filed in 2006, no attempt had been made by the plaintiffs to amend the plaint. It was contended that this was a proper case where the court should exercise its discretion to strike out the plaint.

Mr. Karuga for the respondents, on the other hand, submitted that the court needs to look at both the plaint and defence. Counsel submitted that there was no item of defence, alleging non disclosure of a cause of action. Counsel contended that the case of **FRANCIS OYATSI** (*supra*) was distinguishable as that case related to a publication in the print media, while the present case was a publication in the electronic media by way of

television broadcast. Counsel also argued that they had asked for particulars of the broadcast from the applicant/defendant, but had so far not been provided with the same. Counsel was of the view that the words broadcast herein were always in the knowledge and possession of the defendant/applicant. Counsel maintained that this application was an abuse of court process, and should be dismissed.

I have considered the application, documents filed and submission of counsel for the parties.

This is a defamation matter. Order 6 rule 6A (i) of the Civil Procedure Rules provides: -

"6A(i) where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in an defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense."

It is true that in the case of **OYATSI** (*supra*) the court upheld what was stated by Nyamu J, (*as he then was*) in **HON. NICHOLAS BIWOTT vs HON. PAUL MUITE & ANOTHER** – HCCC 1369 of 2003 that in defamation cases the exact words complained of should be stated in the

plaint. That holding of the court came from a citation of a text from

GATLEY ON LIBEL AND SLANDER section 4 paragraph 26.11.

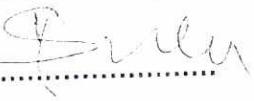
In my view, the Kenyan position of what must be stated in a plaint in a libel or slander case is what is provided for under Order 6 Rule 6A (1) of the Civil Procedure Rules. The requirements in Kenya appear to me to be slightly different from the English position given by **GATLEY** in his text. In my view, what is required in Kenya is that the plaintiff has to give the particulars of the facts and matters on which he relies upon. This requirement, in my view, is different from the requirement to state the exact words ^{as per} is the case obtaining in England. There is no requirement in Kenya that the exact words be stated verbatim. With due respect therefore, I do not agree with the observations in the above cases.

Obviously, where the exact words are available, they should be given. However, in Kenya the law allows plaintiffs in libel cases, to give particulars of facts and matters which he/she relies upon for the defamation case, not the exact words. If the legislature wanted the exact words to be pleaded verbatim, nothing would be easier than to plainly state so. I hold that when particulars of facts and matters relating to the

alleged defamation are given, that is adequate under the provisions of the Civil Procedure Act in Kenya.

The plaintiff in the present case gave sufficient particulars that can sustain the plaint. Of course, the proof of the case or its success is another issue which has to be established through evidence. But, in my view, the allegations and particulars given in the plaint herein are sufficient to sustain the plaint, subject to proof of the case. I find no merits in the application. I will dismiss the application, which I hereby do. However, costs will be in the cause.

Dated and delivered at Nairobi this 7th day of December, 2010.


GEORGE DULU

JUDGE

In the presence of: -

Peter Munga

Stanley Kamau

Allan Rugu

Moses Mbugua

Catherine Muendo – court clerk