



**Migosi v Headlink Publishers Limited & another (Civil Suit E002 of 2023)
[2024] KEHC 12072 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12072 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL SUIT E002 OF 2023
TA ODERA, J
SEPTEMBER 30, 2024**

BETWEEN

PETER MIGOSI PLAINTIFF

AND

HEADLINK PUBLISHERS LIMITED 1ST DEFENDANT

OMENGO OLOO 2ND DEFENDANT

JUDGMENT

1. Engineer Peter Migosi the plaintiff herein sued Headlink Publishers Limited and Omengo Oloo hereinafter referred to as the 1st and 2nd defendants vide a plaint dated 15.5.23 seeking a declaration that:
 - a. The plaintiff is entitled to a retraction of the defamatory words and a suitably worded apology of similar prominence as the defamatory words.
 - b. A permanent injunction restraining the defendants whether by themselves agents or otherwise from further publishing in any way whatsoever any news items, statements, articles and words on internet, newspapers or any medium whatsoever linking or associating the plaintiff with and /or imputing impropriety, corruption, bribery and gross misconduct in his personal, social life and /or his professional career or any similar or related words defamatory of the plaintiff.
 - c. General damages for defamation.
 - d. Aggravated damages.
 - e. Exemplary damages
 - f. Costs of his suit together with interests at court rates.
 - g. Any further relief as the court deems fit to grant.



2. The defendants were served but failed to enter appearance and defence and hence interlocutory judgment was entered against them on 23.10.23 and the matter proceeded by way of formal proof.
3. The plaintiff pleaded and testified as PW2. He told this court that he is a husband, a father and a respectable engineer while the 1st defendant is a news publication, distribution and dissemination business in Kenya and East Africa and the 2nd defendant is its employee or agent. Further that on 30.4.23, the defendants published an Article on page 16 of vol 26 no .17 of April 24-30 2023 of weekly Citizen titled “Mombasa County Engineer in the spot light” which contained defamatory words and statements concerning the plaintiff.

“A lobby group has vowed to write to the Engineers Board of Kenya and the Ethics and Anti-Corruption over the credentials of Engineer Peter Migosi who works for the Mombasa County Government. It also wants the EACC to follow up on the matter to ascertain the integrity level of the said officer in relation to the work he is doing....

..... Engineer Migosi has signed several work related tenders at Mombasa County putting the county at a losing end, especially the ongoing probe on Mombasa Municipal Stadium.....

.....Some of the accusations against him include collusion with cartels in Mombasa to siphon the county billions of money and offering substandard services especially authentication of suspect construction works.....

..... He has been under pressure regarding the poor state of the Mombasa Municipal Stadium that is now an abandoned site.....

..... The lobby group will further be moving to court to seek freezing of his multimillion assets and his bank accounts.....

.....It has been established that the current administration is planning major changes in the engineering department for effective work.....”

4. It is further plaintiff's case that the said words referred to him as he is the only Engineer Peter Migosi working in Mombasa in their natural and ordinary meaning or by imputation, innuendos meant, were understood to mean and intended to mean that the plaintiff:
 - a. Is not a qualified engineer
 - b. Is a person who lacks integrity
 - c. Is a person who is dishonest and fraudulent and who has subjected the County Government of Mombasa to incur losses
 - d. Endorses and or engages in corrupt activities
 - e. Is negligent
 - f. Is selfish and involved in schemes intended to defraud, fleece and or rip off members of public
5. Also that the words were false, malicious, oppressive and spiteful and were calculated to injure disparage and lower his esteem in the eyes of right thinking members of the society as the words were published and accessed by people in Kenya and beyond. He stated that defendants have a right to publish news but they must have due regard to his rights and reputation. further that following the said publication, he has suffered and continues to suffer injuries in character and reputation and hence he has suffered grave public ridicule, hatred and contempt in the eyes of the right thinking members



of the society. Plaintiff pleaded that before the said publication he was a respectable engineer and he enjoyed high esteem and respect from the society and nationally. He said he has never been summoned by EACC for interrogation on his qualifications or charged with corruption in any court of law. He said that upon the said publication he received many calls and messages from his family members, friend's, members of public and colleagues asking about the article and he was embarrassed and it put his career at stake.

6. He told this court that he has suffered loss and damages as a result of the said libel. He pleaded the particulars of malice to wit;
 - a. Publishing words complained of without any jurisdiction
 - b. Publishing of words without verification
 - c. Publishing the said words with a malicious intent aimed at injuring the plaintiff's character and reputation.
7. He said he has never been summoned by EACC for interrogation on his qualifications or charged with corruption in any court of law. He said that upon the said publication he received many calls and messages from his family members, friend's members of public and colleagues asking about the article.
8. It is the case of plaintiff that he issued demand notice to the defendants but they failed to make good the claim.
9. The evidence of plaintiff is supported in all material aspects by the testimony of Steve Nyarwati (Pw2). He said that he bought the newspaper (Pexh 1) and saw the Article which depicted PW1 in bad light as an unqualified person, without integrity and a person who engages in corrupt activities. He said he has known plaintiff for 10 years as an upright Christian, hardworking and honest.
10. The plaintiff submitted issues for determination are:
 1. Whether the impugned article is defamatory.
 2. Whether plaintiff is entitled to the orders sought.
11. On whether the impugned article is defamatory. It was submitted that he is a respectable husband and father working for gain as an engineer and the said words were defamatory.
12. Further that black's law dictionary defines defamation as 1. malicious groundless harm to the reputation or good name of another by making a false statement to a third party person 2. A false written statement or oral statement that damages another's reputation.
13. Also that the threshold is interpretation of a reasonable reader would have of the statement as was held in the case of Musikari Kombo v Royal Media Services Limited (2018) eKL, also the case of Swanya v Toyota Africa and Another (2009) eKLR here it was held "For the purpose of deciding a case of defamation, the Court is called upon to consider the essentials of the tort generally and to see whether these essentials have been established or proved. It is common ground that in a suit founded on defamation the plaintiff must prove: -
 - (i) That the matter of which the plaintiff complains is defamatory in character.
 - (ii) That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed.
 - (iii) That it was published maliciously



(iv) In slander, subject to certain exceptions, that the plaintiff has suffered special damage.”

“It was submitted that the plaintiff proved the ingredients of defamation.

14. On damages it was submitted that the plaintiff is entitled to damages for defamation and exemplary damages to compensate him for suffering, distress, embarrassment and defamatory statement.
15. I have carefully considered the pleadings, the entire evidence on record and the able submissions by the plaintiff. The issues arising for determination are as follows:
 - a. Whether the words uttered were defamatory.
 - b. Whether the plaintiff is entitled to damages and if so, to what extent.
 - c. Who bears the costs of this suit?

i. Whether the statements published were defamatory:

16. In order to establish the tort of defamation, the Plaintiff must prove that: The statements made by the Defendant were false. The statements were defamatory, meaning they would lower the Plaintiff’s reputation in the eyes of right-thinking members of society. The statements were published to a third party.
17. The Court finds that the article published by the Defendant clearly identified the Plaintiff and linked him to corrupt activities without sufficient evidence. The article’s wording would lead any reasonable man to believe that the Plaintiff was indeed guilty of the vice of corruption and thus was unfit to hold any public office or offer professional services. Regulation 22 of the Kenya Information and Communications (Broadcasting) Regulations, 2009 provides that:

22. Unconfirmed reporting:

“A licensee shall ensure that—

- (a) reports or broadcast from its station are based on fact and that are not founded on opinion, rumour supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly;
- (b) it does not broadcast any report where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.”

18. This court takes judicial notice that the 1st defendant circulates the Citizen newspaper widely and the Plaintiff’s standing as a professional engineer was undoubtedly harmed. The evidence herein was not controverted and in the upshot I find that the allegation of the Plaintiff’s involvement in the alleged corruption, rendering the publication unverified, false, malicious and thus defamatory.

iii. Whether the Plaintiff is entitled to damages:

19. Having found that the Plaintiff was defamed, the Court must now determine the appropriate compensation. In awarding damages, the Court must consider the gravity of the defamatory statements, the extent of publication, and the impact on the Plaintiff’s personal and professional reputation.



20. The Plaintiff testified that he is a highly regarded engineer, and the defamatory publication significantly damaged his reputation and business prospects. This is supported by the evidence of PW2 who told the court that he had known plaintiff for 10 years as a person of integrity and that he saw the impugned article which depicted plaintiff as a corrupt, unqualified and incompetent person given the Defendants reckless disregard for the truth and the widespread nature of the publication, this Court finds it appropriate to award both general and exemplary damages. The courts have wide discretion to grant damages in defamation cases. In the case of John v MG Ltd [1996] 1 ALL E.R. 35 the Court held that; “The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will compensate him for the wrong he has suffered. That must compensate him for damages to his reputation, vindicate his name, and take account of the distress, hurt and humiliation which the defamatory publication caused.”
21. The plaintiff proposed general damages in the sum of Kshs. 25,000,000/= and cited the case of J.P Machira t/a Machira and Co. Advocates vs Wangethi Mwangi & Another (2013) EKLR where an advocate of Many years standing was awarded general damages in the sum of Kshs 5,000,000/= in 2001 in the said case the following cases were cited and I quote “82. Samuel Ndungu Mukunya v Nation Media Group and Another [2016] eKLR the plaintiff was awarded Kshs 20,000,000/-. The circumstances of that case are far more egregious than in the present case. In J P Machira v Wangethi Mwangi and Nation Newspapers Nairobi HCCC No 1709 of 1996, the plaintiff was awarded 10,200,000/= in 2001. In Daniel Musinga v Nation Newspapers Ltd Mombasa HCCC No 102 of 2000, the plaintiff was awarded Kshs 10,000,000/= in May, 2005. In CK Kariuki v the Standard Ltd and Association of Kenyan Insurers Meru HCCC No 5 of 2000 the successful plaintiff was awarded global damages of Kshs 20,000,000/= in 2001.”
22. I have taken into account the nature of this case its circumstances, the damage suffered by the plaintiff and the cited cases which were decided by Judges of concurrent jurisdiction and are thus not binding to this court and all the relevant factors.

Conclusion

23. In light of the foregoing, the Court enters judgment in favor of the Plaintiff and orders as follows:
1. The Defendant shall pay the Plaintiff general damages of Ksh. 10,000,000.
 2. The Defendant shall pay the Plaintiff exemplary damages of Ksh. 1,000,000.
 3. The Defendant shall publish a full retraction and apology in its newspaper and online platforms within 21 days of this judgment.
 4. On the issue of costs, there is no evidence that demand notice was issued and so the plaintiff is not entitled to costs.

T.A ODERA

JUDGE

30.9.24

DELIVERED VIRTUALLY ON THIS 30TH DAY OF SEPTEMBER VIA TEAM'S PLATFORM IN THE PRESENCE OF:

Court assistant -Oigo

Parties absent

