



**Omondi v Barclays Bank of Kenya Limited (Civil Appeal 339 of 2016)
[2023] KEHC 2713 (KLR) (Civ) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2713 (KLR)

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

CIVIL

CIVIL APPEAL 339 OF 2016

PM MULWA, J

MARCH 31, 2023

BETWEEN

RAPHAEL EVANS OMONDI APPELLANT

AND

BARCLAYS BANK OF KENYA LIMITED RESPONDENT

(Being an appeal against the judgment and decree delivered by E.K. Usui (Mrs.) (Senior Principal Magistrate) on 30th May, 2016 in Milimani CMCC NO. 1208 of 2014)

JUDGMENT

1. Raphael Evans Omondi, the appellant herein, filed a suit against the respondent vide the plaint dated March 10, 2013 and sought for general damages, plus costs of the suit and interest thereon.
2. The appellant pleaded in the plaint that he was at all material times a customer of the respondent and an employee of the University of Nairobi.
3. The appellant pleaded in the plaint that sometime in the month of December, 2010 the respondent lodged a false and malicious report with the Credit Reference Bureau (CRB) claiming that the appellant's Account Number 2021xxxxxx had a non-performing loan in the sum of Kshs 599,082/ and yet the appellant had all along being repaying his loan.
4. It is pleaded in the plaint that upon applying for a separate loan facility with Standard Chartered Bank sometime in the year 2013, he was denied the said loan facility on account of the report previously made with CRB, thereby causing him to suffer among others, ridicule; inconvenience and lack of credit facility; and for which he sought for an award of general damages against the respondent.
5. Upon being served with summons, the respondent entered appearance and filed its statement of defence on June 16, 2014 to deny the averments made in the plaint.



6. More specifically, the respondent denied the averments made in the plaint that the report made with CRB was malicious and false, pleading instead that the said report was appropriately made on the basis of a non-performing account belonging to the appellant; namely Account Number 03711xxxxx which was dormant and which was used to settle the loan Account Number 2021158766.
7. At the formal hearing of the suit, the appellant testified whereas the respondent called one (1) witness.
8. Upon close of submissions, the trial court in its judgment awarded the appellant general damages in the sum of Kshs 50,000/ plus costs of the suit and interest thereon.
9. The appellant has sought to challenge the award made on general damaged by way of the present appeal. The appellant has therefore put forward the following grounds of appeal vide his memorandum of appeal dated June 30, 2016:

- i. That the learned trial magistrate erred in law and in fact in awarding the appellant general damages of Kshs 50,000/.
- ii. That the learned trial magistrate erred in law and in fact by awarding general damages which were too low in the circumstances.
- iii. That the learned trial magistrate erred in law and in fact in not considering the appellant's evidence in the judgment.

SUBPARA iv.

That the learned trial magistrate wrongly applied the applicable principles of law in arriving at the judgment of the suit before the court.

10. This court directed the parties to file written submissions on the appeal.
11. The appellant on the one hand submits that the award made on general damages by the trial court is inordinately low in view of the fact that CRB is an institution with national and international access to and from other institutions.
12. The appellant therefore urges this court to disturb the aforementioned award by substituting it with a more reasonable award in the sum of Kshs.1,000,000/ while citing the case of *Joseph Maina Mwaura v Equity Bank of Kenya Limited* [2019] eKLR in which the High Court sitting on appeal upheld the sum of Kshs 700,000/ awarded on damages to a plaintiff who had been listed as a defaulter with CRB.
13. On the other hand, the respondent through its submissions dated May 25, 2022 urges this court to uphold the award made by the trial court by arguing that the appellant has not demonstrated that the trial court applied any wrong principles and/or took into account any irrelevant factors, quoting *inter alia*, the case of *Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] eKLR where the Court of Appeal rendered itself thus:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.”



14. I have considered the contending submissions on appeal and the authorities relied upon. I have also re-evaluated the evidence which the trial court had the opportunity to look at.
15. It is clear that the appeal primarily lies against the award made under the head of general damages resulting from the alleged malicious and wrongful listing of the appellant with CRB, which award the appellant deems to be inordinately low in the circumstances. I will therefore address the three (3) grounds of appeal contemporaneously under that head.
16. The law sets out that an award of the trial court can only be interfered with in the following scenarios as articulated in the renowned case of *Kemfro Africa Ltd t/a Meru Express Services 1976 & Another [1976] v Lubia & Another (No 2) [1985]* eKLR cited in the submissions by the respondent:
 - a. Where an irrelevant factor was taken into account.
 - b. Where a relevant factor was disregarded.
 - c. Where the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.
17. The above position is echoed by the court in the case of *Joseph Maina Mwaura v Equity Bank of Kenya Limited [2019]* eKLR in the following manner:

“...in the case of *Shabani v City Council of Nairobi (1985)* KLR, 516 the Court of Appeal equally held as follows:-

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate based on some wrong principle or on a misapprehension of the evidence.”
18. In his submissions before the trial court, the appellant proposed the sum of Kshs 2,000,000/ as constituting a suitable award under that head and cited the case of *Leah Gacheru v Barclays Bank of Kenya Ltd [2005]* eKLR in which the court, upon considering a claim whereby a false and malicious publication was made concerning the plaintiff therein and by the defendant in a local newspaper, awarded the plaintiff general damages in the sum of Kshs 2,000,000/.
19. On its part, the respondent submitted before the trial court that the appellant was not entitled to any award under that head in the absence of proof that he suffered any loss/damage arising out of the report made by the respondent and adding that in any event, at the time of applying for the loan with Standard Chartered Bank, the respondent had withdrawn the report with CRB.
20. The learned trial magistrate reasoned that there was no evidence to support the averments by the appellant that the report with CRB was circulated to Standard Chartered Bank or to any other institutions. Consequently, the learned trial magistrate awarded the sum of Kshs 50,000/ on damages.
21. Upon my re-examination of the pleadings and evidence, I note that the respondent admitted to the fact that it made an erroneous report with CRB concerning the account pleaded in the plaint and later had the said report withdrawn on the basis that the account in question did not have any outstanding loans.
22. Upon my consideration of the authority of *Leah Gacheru v Barclays Bank of Kenya Ltd [2005]* eKLR cited by the appellant on the subject of general damages, I observed that unlike in the present instance where there is no credible evidence to indicate a publication of the report with CRB concerning the appellant, the information concerning the plaintiff in the above-cited case was published in a local



newspaper with wide circulation and hence the award made therein would not be comparable to the one here. In my view therefore, the award proposed by the appellant falls on the higher side.

23. Upon my study of the impugned judgment, I support the reasoning made by the learned trial magistrate that whereas the appellant suffered inconvenience as a result of the erroneous report, it is apparent from the evidence tendered that the report was later withdrawn following the instructions by the respondent and the appellant was able to obtain a loan.
24. Be that as it may, I note that the learned trial magistrate did not cite any guiding authorities to support the award made.
25. I therefore considered the case of *Reuben Kioko Mutyaene v Kenya Commercial Bank Limited; Transunion t/a Credit Reference Bureau Africa Limited (Interested Party)* [2020] eKLR in which a plaintiff was awarded the sum of Kshs 400,000/ on general damages for temporary inconvenience and some economic embarrassment resulting from the premature and reckless listing of his information with CRB.
26. I find the above-cited case to be comparable to the one now before me. Consequently, I am convinced that the award made by the learned trial magistrate fell on the lower side, thereby necessitating disturbance.
27. In view of all the foregoing circumstances, I find that an award in the sum of Kshs 500,000/ would constitute adequate compensation to the appellant.
28. Nevertheless, and on the subject of consideration of the evidence by the appellant, upon my perusal of the impugned judgment, I have not come across anything to indicate that the learned trial magistrate overlooked the same.
29. **FINAL ORDERS:**
 - i). The appeal succeeds on merit.
 - ii). The trial court's award in the sum of Kshs 50,000/ made on general damages is hereby set aside and is enhanced to an award in the sum of Kshs 500,000/.
 - iii). The appellant shall have interest on the general damages at court rates from the date of judgment until payment in full.
 - iv). The appellant shall have the costs of the appeal to be borne by the respondent.

JUDGEMENT DELIVERED VIRTUALLY, SIGNED AND DATED AT MILIMANI THIS 31ST DAY OF MARCH, 2023

P.M. MULWA

JUDGE

In the presence of:

Aden – Court Assistant

No appearance for Appellant

No appearance for Respondent

