



**Kariuki v Standard Group PLC & another (Civil Case 150 of 2019)
[2023] KEHC 2933 (KLR) (Civ) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2933 (KLR)

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

CIVIL

CIVIL CASE 150 OF 2019

JK SERGON, J

MARCH 28, 2023

BETWEEN

GBM KARIUKI PLAINTIFF

AND

THE STANDARD GROUP PLC 1ST DEFENDANT

EVELYN KWAMBOKA 2ND DEFENDANT

JUDGMENT

1. The plaintiffs herein filed a suit by way of the plaint dated 13th December, 2005 and sought for judgment against the defendant in the following manner:
 - i. General damages for defamation, injury to dignity and reputation.
 - ii. Exemplary for defamation, injury to dignity and reputation.
 - iii. Exemplary and additional damages for ignoring the plaintiff's right to correction of misleading and untrue information affecting the plaintiff in the defendant's publication The Standard on Sunday of 2nd September, 2018.
 - iv. Costs of the suit.

2. The plaintiff pleaded in his plaint that in the issue of the standard newspaper of September 2,2018, at page 5 in the segment "Special Report" the defendants published a misleading and false report concerning him under a banner headline "Deputy CJ is fourth judge to be charged with graft claims" with a picture identified as the picture of "Justice GBM Kariuki"



3. The plaintiff further pleaded in his plaint that the publication clearly supposed to convey the idea that the Deputy Chief Justice was the fourth judge following the other three judges, including him, whose images were prominently publicized by the defendants and was evidently meant to do so.
4. It was pleaded by the plaintiff in his plaint that the plaintiff was then, may have been, or might have been a candidate for removal from the Judiciary for dishonorable grounds, according to the defendants' inset to the narrative on judges' removal.
5. The plaintiff avers that the defendant purposefully, maliciously, recklessly, or even negligently ignored the facts about him and had no right or basis to accuse him in the story by using his picture as they did because he was a judge who had been charged with graft or corruption. By ignoring the truth, the defendant hoped to boost the readership and sales of their newspaper by maligning him.
6. The plaintiff avers that the plaintiff was accused of stabbing a driver, but the defendant's report said nothing about allegations of graft against him; instead, it focused only on the plaintiff's release due to a lack of proof and subsequent Kshs. 5 million reward for malicious prosecution.
7. The plaintiff pleaded in his plaint that in his illustrious career as an advocate and officer of the court, there has never been a complaint against him suggesting any corrupt dealings, and he has never had any petitions while serving as a judge, either to the judicial Service Commission or to the President or to any competent Court or body asking that he be investigated with a view to removal under the current Constitution or the former Constitution for graft or with a view to removal.
8. The plaintiff further avers that the defendants have wrongfully interfered with his enjoyment of his honorable retirement from the Judiciary at the esteemed rank of judge of Appeal by disparaging him, lowering his esteem in the eyes of right-thinking members of society, and injuring his dignity without cause and in situations where they knew and should have known better.
9. The defendant entered appearance upon service of summons and filed their statement of defence on 5th September, 2019 to deny the plaintiff's claim.
10. In their statement of defence, the defendant stated that the article is therefore a statement that is privileged subject to explanation and or contradiction. The words published on September 2, 2018, regarding the plaintiff, were true in substance and fact, and the publication was in regard to a matter of public concern and the information therein was of public benefit.
11. At the hearing of the suit, the plaintiff testified and summoned one other witness to testify, while the defendants called the 2nd defendant to support their case.
12. The plaintiff who was PW1 adopted his signed witness statement and stated that he is a retired judge of the Court of Appeal and he is currently in private practice, practicing under G.B .M Kariuki & Co. Advocates.
13. The witness stated that he was portrayed as being dishonest and unfit to serve as a judge, and it was claimed that the article was untrue.
14. On cross-examination, the witness stated that he was acquitted and not freed as falsely alleged in the newspaper and that the article imputed graft against him but there was no evidence to justify that.
15. John Kamau Ichari who was PW2 stated that he resides in Redhill, Limuru, where he runs a company and farms. He has known the plaintiff for 30 years, and they first crossed paths when campaigning for multiparty democracy.



16. The witness stated that he saw the news article and was shocked by the accusations made against the plaintiff. He also said that he knows the plaintiff to be an honest, straightforward person who is not corrupt as claimed.
17. On cross-examination, the witness stated that he is aware that the plaintiff was accused of a crime, cleared of it, and later granted Kshs. 5 million in damages by the High Court for malicious damage. He is also aware that the plaintiff was detained and accused of stabbing a driver, but the court released him due to a lack of proof.
18. The witness stated that the publication was unfair to the plaintiff and that it is misleading too.
19. Evelyn Judith Kwamboka who was DW1 adopted her signed witness statement as evidence and stated that she has been a journalist for the past 20 years.
20. The witness stated that the article was basically reporting about judges who have been charged while in office and that she covered the criminal case before the Chief Magistrate's court.
21. On cross-examination, the witness stated that she is the country's editor in charge of all the contents from all the 47 counties and her role is to make sure that the contents meet the threshold of the media house and media council.
22. It is the testimony of the 2nd defendant that the plaintiff was not charged with graft but he was charged with a criminal offence and that she did not contact the plaintiff about the story because she relied on court documents.
23. On re-examination, the witness stated that the other judges who were mentioned in the publication did not complain except the plaintiff.
24. At the close of the hearing, the parties filed and exchanged written submissions. I have also considered the rival written submissions and was able to identify four main issues falling for determination to be as follows;
 - a. Whether the plaintiff has made a case for defamation against the defendant;
and
 - b. Whether the plaintiff is entitled to the reliefs sought.
25. On the first issue, I borrow from the Black's Law Dictionary, 8th edition definition of the term 'defamation' as follows:

“ the act of harming the reputation of another by making a false statement to a third person.”
26. The ingredients of a defamatory claim were laid out by the Court of Appeal in the case of Raphael Lukale v Elizabeth Mayabi & another [2018] eKLR and are that:
 - i. The statement must be defamatory.
 - ii. The statement must refer to the plaintiff.
 - iii. The statement must be published by the defendant.
 - iv. The statement must be false.



27. In respect to the second and third ingredients which I wish to begin with, from my evaluation of the oral evidence tendered by and on behalf of the plaintiff, I established that the publications in question were made by the defendants and made reference to the plaintiff. In its pleadings, the defendants admitted to making the said publications and did not deny that the same related to the plaintiff herein.
28. I am therefore satisfied that the plaintiff has established the two (2) referenced ingredients on defamation.
29. This brings me to the first ingredient to do with whether the impugned publications are defamatory of the plaintiff.
30. At the heart of a defamatory statement lies its tendency to lower the reputation of the claimant in question. This was the position held by the Court of Appeal in the authority of *S M W v Z W M* [2015] eKLR and restated in the case of *Joseph Njogu Kamunge* [2016] eKLR thus:

“ A statement is defamatory of the person of whom it is published if it tends to lower him/her in the estimation of right thinking members of society generally or if it exposes him/her to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.”
31. The legal position is that in order to determine whether a statement or publication is defamatory, one must seek to understand the meaning conveyed by the words in question to an ordinary/reasonable person.
32. On his part, the plaintiff under paragraphs 10 and 11 of his plaint pleaded that the words complained of in the impugned publication were defamatory of him in the sense that they could be inferred in their ordinary and natural sense to imply that they are inter alia, a corrupt person given to abusing his position and had been charged with corruption. The plaintiff also pleaded and testified that as a result of the impugned publications, his reputation was lowered. This evidence was supported by that of PW2 who was an independent witnesses.
33. I am satisfied that though the plaintiff did not set out verbatim the words published concerning him, he was able to set out the title of the said publications and describe in fair detail the nature of the publications made, as well as particularize their meaning in the ordinary and natural sense.
34. Upon considering the aforementioned particulars of defamation and innuendo pleaded in the plaint and in the absence of any contrary evidence, I conclude that the words published would ordinary sense be taken to have the meaning pleaded in the plaint.
35. Concerning the reputation of the respective plaintiff, credible evidence was tendered to support the claim that following the impugned publications, his reputation was negatively affected.
36. Further to the foregoing, I am alive to the existing legal principle that in instances of libel, the law presumes damage so long as a party has shown that the defamatory material was written or printed or in some permanent form. This was the position taken by the court in the case of *Peter Maina Ndirangu v Nation Media Group Limited* [2014] eKLR cited in the plaintiffs’ submissions, where the court stated that in an action of libel damage suffered need not be proved. Such position was restated in the case of *Alnashir Visram v Standard Limited* [2016] eKLR.
37. In the premises, I am satisfied that the plaintiff has shown that the publications in question are defamatory of him.



38. On the ingredient touching on malice, the court in the case of Phinehas Nyagah v Gitobu Imanyara [2013] eKLR was of the view that malice is not restricted to spite or ill will but may extend to reckless actions drawn from the publication in question.
39. Upon considering the nature, frequency and circumstances of the impugned publications coupled with the impact namely the injure on reputation of the plaintiff going by the evidence tendered, it is my view that the plaintiff has proved malice against the defendants. It is noteworthy that malice was not refuted by the defendants by way of evidence.
40. In respect to the ingredient to do with whether the publication was false, the court in the case of Joseph Njogu Kamunge (supra) reasoned that a defamatory statement is presumed to be false unless and until the same is shown to be true by a defendant.
41. In the present instance, I am satisfied that the plaintiff brought credible evidence to demonstrate the false nature of the impugned publications and which evidence was not countered by the defendants at the trial. Furthermore, while I note that the defendants have pleaded the defence of fair comment on a matter of public interest, it did not tender any evidence at the trial to support such defence. To my mind therefore, the plaintiff has shown that the impugned publication was untrue.
42. In view of the foregoing, I am satisfied that the plaintiff has established a claim for defamation against the defendants on a balance of probabilities.
43. This brings me to the second issue touching on whether the plaintiff is entitled to the reliefs being sought.
44. On general damages for libel, I considered the professional standing of the plaintiff who going by his testimony and supporting evidence, is an advocate of the High Court of Kenya and also practicing and with a wealth of experience in the legal field. I also took into account his evidence that he was a court of Appeal judge.
45. I also considered the case of Miguna Miguna v Standard Group Limited & 4 others [2017] eKLR in which the Court of Appeal upheld an award of Kshs.5,000,000/= made under this head.
46. The more recent case of Michael Kamau Mubea v Nation Media Group Limited & 2 others [2019] eKLR in which this court awarded a sum of Kshs.7,000,000/= on general damages to a plaintiff who was both a lawyer and a journalist.
47. I therefore find the award of Kshs.7,000,000/= to be reasonable for the plaintiff, in the circumstances.
48. For exemplary and punitive damages, the same are only awarded by the court to show disapproval of the defendant's conduct when the court is satisfied that the publication was oppressive or arbitrary and propelled by the desire and as a way of drawing a financial benefit. The Court of Appeal in Board of Trustees, National Social Security Fund VS Judy Wambui Muigai (2017) eKLR reiterated the position of the law when it held:

“Such damages are in our view called for in situations of oppressive, arbitrary or unconstitutional actions by servants of the government or wrongful conduct which has been calculated by the defendant to make a profit for himself, where such award is expressly authorized by the statute...

...exemplary damages go beyond compensation and are meant to punish the defendant may well be ordered against a defendant who acts out of improper motive or where he is actuated by malice”



49. Exemplary damages, being aimed of punishing the defendants are also called punitive damages and therefore refer to one and the same remedy.
50. I enter judgement in favour of the plaintiff and against the defendants in the following terms.
- i. General damages for Defamation Kshs.7,000,000/=
 - ii. Exemplary damages Kshs. 600,000/=
- TotalKshs.7,600,000/=
- iii. Costs of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS THIS 28TH DAY OF MARCH, 2023.

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J. K. SERGON

JUDGE

