



**Mutyaene v Metropolol Credit Refrence Bereau Ltd & another (Civil Case 47 of 2016) [2023] KEHC 20764 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 47 OF 2016  
HK CHEMITEI, J  
JULY 27, 2023**

**BETWEEN**

**REUBEN KIOKO MUTYAENE ..... PLAINTIFF**

**AND**

**METROPOLOL CREDIT REFERENCE BUREAU LTD ..... 1<sup>ST</sup> DEFENDANT**

**KENYA COMMERCIAL BANK LTD ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the further amended plaint dated 2<sup>nd</sup> July 2021 the plaintiff prays for judgement against the defendants for the following orders;
  - (a) A declaration that the defendant's actions amounted to defamation of the plaintiff, for publishing and circulating erroneous and malicious information that the plaintiff is a loan defaulter.
  - (b) An order directing the defendants to apologize to the plaintiff personally in writing and publish an unqualified apology through the same medium and as prominently so as to ensure that the information reaches the prior recipients of the erroneous defamatory report.
  - (c) A declaration that the defendant's actions and inactions were malicious and amounted to negligence, ignorance, breach of statutory duty of care, breach of contract and was in violation of *Fair Administrative Action act*, the *Consumer Protection Act* and the *Central Bank Prudential Guidelines*.
  - (d) Special damages as pleaded in paragraph 26 above.
  - (e) Interest on (iv), (v), and (vii)
  - (f) General and Aggravated damages.



- (g) Costs of this suit.
2. When the matter came up for hearing the plaintiff testified and call one witness. The 1<sup>st</sup> defendant called only one witness while the 2<sup>nd</sup> defendant did not call any witness. The parties also relied on their statements which were already on record and the exhibits which were produced.
  3. The parties after the close of the proceedings did file their submissions which the court has perused together with the cited authorities.
  4. The plaintiff testified that he was a businessman engaged in the sale of fruits and cereals and he occasionally relied on loan facilities to finance his businesses. He went on to state that sometimes in August 2015 he wanted to apply for a loan facility and he was denied for the reason that he had been listed in the Credit Reference Bureau hereafter referred to as CRB.
  5. On making inquiries he discovered that the 1<sup>st</sup> defendant through the instructions of the 2<sup>nd</sup> defendant had referred him to CRB for a loan facility in two accounts namely MG08XXXXXXXXX and MG08XXXXXXXXX. That the other third account no. MG12XXXXXXXXXX continued to be a performing account with default history.
  6. It was his case therefore that as a result of the said information he was unable to transact any business for failure to acquire any credit facility in particular from Chase Bank Limited, Kenya Women Finance Trust and KCB Mpesa. He accused the defendants jointly and severally for defaming him and causing untold suffering and shame.
  7. He thus prayed that because of the actions of the defendants they be punished and he be compensated and the defendants be directed to issue apology through writing to the said financiers.
  8. The plaintiff called one John Muthiti Ndunda, an accountant who produced the plaintiff's statement of accounts and other related accounting and financial records in an effort to demonstrate the loss suffered by the plaintiff. All the accounts were as well produced by the said pw2 who opined that the plaintiff had made a loss of over kshs29 million or thereabouts.
  9. After the close of his case the 1<sup>st</sup> defendant called one Pharis Kiama who testified that the 1<sup>st</sup> defendant did not commit any breach of the law as all that it did was to undertake directions as provided by the 2<sup>nd</sup> respondent. He said that after the anomaly was noticed, that is, the name of the plaintiff had been erroneously recorded under CRB it was immediately deleted on 21<sup>st</sup> August 2015.
  10. He went on to deny that the action by the 1<sup>st</sup> defendant was malicious or at all as it was raised before the complaint was made. That by the time the suit was filed the name of the plaintiff was no longer with the CRB.
  11. As indicated the 2<sup>nd</sup> defendant offered no evidence but filed its submissions. The parties have each filed lengthy submissions and the court shall summarise each of them and thereafter proceed to decipher the issues germane to the suit. It is also noted that the defendant's filed appropriate defences denying the plaintiffs claim.

#### **Plaintiffs Written Submissions.**

12. The plaintiff submitted that as a consequence of the said publication he was seen as a serial defaulter and unable to access any loans or credit facilities as evidence by the correspondences from Chase Bank as well as KCB Mpesa mobile application.



13. The plaintiff submitted that the 1<sup>st</sup> defendant failed to take reasonable steps to verify the accuracy of the information per regulation 24 of the Credit Reference Bureau Regulations 2013 (hereinafter referred to as regulations.). That had it done so it would have discovered that the plaintiff was not a loan defaulter.
14. The plaintiff went ahead to accuse the 1<sup>st</sup> defendant of failing to disclose to him information as to which institution it had advised it to blacklist the plaintiff and that it was only after the filing of the suit that he discovered and that is why it went ahead to amend the plaint to include the 2<sup>nd</sup> defendant.
15. He accused the 2<sup>nd</sup> defendant of providing wrong details to the 1<sup>st</sup> defendant without ascertaining its veracity thus breaching its duty of care as provided under regulations. This listing according to the plaintiff was tainted with malice, negligence and recklessness.
16. This was further according to the plaintiff exemplified by the fact that after expiry of 5 years the defendants had not delisted the plaintiff from CRB.
17. The plaintiff relied on several articles of *the constitution* regarding his rights to information as well as the case of *Mercy Nyawade v Banking Fraud Investigations Department & 2 Others* (2017) eKLR.
18. On the obligations of the 2<sup>nd</sup> defendant to its customers the plaintiff relied on the case of *Equity Bank Ltd & Another v. Robert Chesang* (2016) eKLR among others.
19. He further submitted that the matter contrary to the defendant's averments was not *res judicata* as it was different from Case No. 38 of 2017.
20. The plaintiff therefore submitted that he was entitled to damages namely special damages of Kshs 256,078, general damages of Kshs 20,000,000, aggravated damages of Kshs 40,000,000. The plaintiff also submitted that he was entitled to costs.

### **1<sup>st</sup> Defendant's Submissions**

21. The 1<sup>st</sup> defendant submitted that it was simply executing its statutory mandate in respect to the two accounts. It denied that the plaintiff was not aware of the same as the email dated 21<sup>st</sup> August 2015 was between all the three parties herein. Pursuant to the instructions it received from the 2<sup>nd</sup> defendant it proceeded to delete the two accounts on the same day.
22. The defendant relied on Regulations 15(1) as well as the case of *Anthony Kinua Mwaniki & Another v. KCB ltd & Another* (2017) eKLR.
23. On whether it should be condemned for executing its statutory mandate the 1<sup>st</sup> defendant submitted that the plaintiff did not prove in evidence that it was required to verify the information it received from the 2<sup>nd</sup> defendant before publication. It submitted that all that it did was simply an agency work on behalf of the 2<sup>nd</sup> defendant and it therefore had no obligation to verify and at any rate it simply proceeded to delete the account when it was notified.
24. It further submitted that what was left after the two accounts were deleted was the plaintiff's account Standbic Bank which was still active and the plaintiff was well aware of the same and it is not the subject of dispute herein.
25. The 1<sup>st</sup> defendant attacked the evidence of pw2 on the grounds that the same were presented by unqualified person and therefore it cannot be relied upon by this court and should be dismissed.



26. It submitted that there was no evidence that the plaintiff was defamed having failed to satisfactorily prove any tort of defamation. It relied on the case of *Jacob Mwantu Wangora v. Hezron Mwando Kirorio* (2017) eKLR which cited the ingredients of defamation.
27. The 1<sup>st</sup> defendant invoked the defence of qualified privilege as it was executing a public duty mandated by the law.
28. The 1<sup>st</sup> defendant summarised its submissions by stating that the plaintiff was not entitled to the reliefs sought in the plaint since it had failed to prove the same and thus the suit should be dismissed with costs.

## **2<sup>nd</sup> Defendant's Submissions**

29. The 1<sup>st</sup> issue raised by the 2<sup>nd</sup> defendant was whether it was malicious in forwarding the listing to the 1<sup>st</sup> defendant. It submitted while citing *Cornel Opiyo Osano v. Standbic Bank Ltd* (2021) eKLR that it was not malicious for the reason that when it noticed the anomaly it organised for its deletion immediately.
30. At the same time, it submitted that it has a duty of care under the Regulations to ensure accurate information is forwarded to the 1<sup>st</sup> defendant. It admitted that the same was erroneous and that is why it immediately proceeded to have it deleted.
31. On the question of loss and damage the 2<sup>nd</sup> defendant submitted that the plaintiff has not demonstrated how it lost in business as a result of the said listing with CRB. It cited the case of *Alice Nyeri Maina v. KCB* (2018) eKLR.
32. It went on to submit that the plaintiff had not suffered any damage and thus the prayer under this heading was not proved. The same goes with the prayer for defamation. It said that there was no evidence that he had been injured and unable to get loans because of the said listing.
33. The 2<sup>nd</sup> defendant for the reasons given above submitted that the plaintiff did not prove any injuries and thus the prayers sought should be dismissed and costs be awarded to the defendants.

## **Analysis And Determination**

34. The principal issue which must be answered and which was well captured by the parties albeit through different routes is whether the submissions of the name for purposes of listing by the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant was tainted with malice or not. Did the defendants jointly and severally know the same and the consequences.? Was the plaintiff aware of it.?
35. The history of the listing by the 1<sup>st</sup> defendant begins with the email of 21<sup>st</sup> August 2015 at 10:36 am from the plaintiff to the 2<sup>nd</sup> defendant. The same states as hereunder;

“Dear Anne and Francis,

Hope this finds you well. Kindly help me sort a BIG mess at Metropol. My current status report shows two non-performing accounts;

- 1) MG08XXXXXXXXX- Kshs 21941560
- 2) MG082XXXXXXXXX-Kshs 47840007.

Those two accounts DO NOT belong to me. The listing has highly affected my rating such that am disqualified from accessing facilities.



Urgently follow up to have the listings dropped and advise me.”

36. On the same day around 12: 27 pm the 2<sup>nd</sup> defendant wrote to the 1<sup>st</sup> defendant as follows.

“Mary, please Delete the two non performing accounts completely. We are processing the updates. MG08XXXXXXXX, MG08XXXXXXXX. Confirm once done”
37. On the same day around 12;51 the 1<sup>st</sup> respondent responded to the 2<sup>nd</sup> respondent that it had deleted.
38. What can be concluded from the above email trail is that the 1<sup>st</sup> and 2<sup>nd</sup> defendant once they were notified of the listing moved quickly and in a span of less than few hours to clear the plaintiffs name from the listing at CRB.
39. Secondly it appears to me that the plaintiff was aware of the said listing reading from his email quoted above where he wrote to the 2<sup>nd</sup> defendant requesting for the “big mess at Metropol” to be sorted out. Otherwise how else did he get to know about the same and urgently sought the assistance from the defendants.
40. This is exemplified by the correspondences that followed regarding the plaintiff’s creditworthiness which had plummeted as a result of the listing according to him. The plaintiff wrote to the 1<sup>st</sup> defendant on 29<sup>th</sup> May 2017 requesting a response to his letter dated 16<sup>th</sup> May 2017 on the issues about his credit falling from 623 to 579.
41. The 1<sup>st</sup> respondent through one Hellen Karuri responded by explaining how credit works by indicating that the same was based on active accounts and that, “in your case the number of active accounts have been reduced to 1 year after you paid off 4 accounts i.e. MG12XXXXXXXXXX , MG08XXXXXXXX ,0100XXXXXXXX, 1109XXXXXX, that’s explain why the score went down after the account were updated to closed status”.
42. The plaintiff thereafter proceeded to engage with the 1<sup>st</sup> defendant in an attempt to understand the reasons etc. of the credit score.
43. Looking at the four accounts mentioned in the said correspondences, I do not find the two accounts addressed by the parties in August 2015 email quoted above. Secondly these were accounts which seemed to have been a non-issue as at the time of the erroneous listing by the 1<sup>st</sup> defendant.
44. If that is the case the plummeting of the plaintiff’s credit score was not related to the two cited accounts but for the four or other accounts, the plaintiff was running.
45. The same is buttressed by the correspondence between Standbic Bank and the plaintiff. The letter dated 9<sup>th</sup> October 2015 goes on to state that;

“Further to the email below, we wish to the loan(sic) was declined because your account was CRB listed. Kindly visit a Credit Reference Bureau and get a report (CRB report) which you will scan to the bank for your account to be cleared and then you will reapply for a new loan”.
46. Again this was not part of the above two accounts cited by the plaintiff that affected his rating.



47. The letter dated 12 May 2014 from the 2<sup>nd</sup> defendant in regard to loan repayment by the respondent in respect to account number MG12XXXXXXXXXX was grateful to the plaintiff for repaying his loan and went on to state that,

“In the meantime, we shall advise CRB to update your records.”

48. It appears to me that the plaintiff as at May 2014 was already in CRB listing and it is not true that he was not aware. More importantly is the fact that the account the 1<sup>st</sup> respondent was advised to delete is the same account contained in the above letter. The issue of credit rating or score was not out of place considering the above factors. Definitely he had to be rated just like any other applicant as per the CRB regulations.

49. Was the rating malicious.? I do not think so. To the extent that the Regulations required so he had to be subjected by the lenders the same process just like any other applicant.

50. The next issue is whether the urgent deletion was done in good faith. I find that although the name of the plaintiff was already with CRB, the immediate action taken by the defendants jointly was in good faith having realised that it was not necessary to have the same. The speed at which they took was impressive and satisfactory enough to demonstrate the need to clean the plaintiff's name.

51. Subsequently the plaintiff went ahead to apply for loans from various financial institutions. According to him the said institutions were unable to provide the loan facility because his name had not been cleared by the 1<sup>st</sup> respondent.

52. The decline by KWFT for example was on June 2018 in which the bank blamed the plaintiff for cash flow problems and therefore will be unable to pay the instalments as well as low CRB ratings with a metro score of 533. The bank went ahead and indicated further that there was one account with default history.

53. This decline was done three years after the 1<sup>st</sup> defendant deleted the listing

54. The same goes with the KCB Mpesa loan application dated September 2019. From the screen shorts produced as evidence by the plaintiff it appears that the loan was declined due to the plaintiff's listing with CRB.

55. The email by the plaintiff dated 27 September 2019 goes on to inquire from the 2<sup>nd</sup> defendant, thus;

“Kindly advise if you have delisted /expunged the stale entry at Metropol CRB Ltd: Details; loan account no. MG1210700357 kshs 2678961.02 listed on 16-04-2012; last payment date 29-11-2013.

Treat the matter as urgent as it is affecting my credit rating.”

56. The above email clearly shows that contrary to the allegations by the plaintiff that he was not aware of who did the listing of his name at CRB, it is evident that as at 16-04 2012 his name was already with CRB.

57. In my view therefore the expunging of the name of the plaintiff from CRB although done when he raised the complaint to the 2<sup>nd</sup> defendant was done in absolute good faith by the defendants. He was already aware of the same and probably the defendants inadvertently had not done so.



58. What I find curious though is that although the name had been delisted, the plaintiff continued to face headwinds with the financial institutions he tried approaching for financial facilities. In this respect I doubt whether the defendant had any hand in them considering my above conclusions.
59. Did the 1<sup>st</sup> defendant breach any law by failing to seek veracity of the information from the 2<sup>nd</sup> defendant in respect to its customer the plaintiff in this case.? Looking at the regulations governing the 1<sup>st</sup> defendant and specifically Regulations 15(1), I do not think so. The same state as hereunder.;
- “(a) Obtaining and receiving customer information;
  - (b) storing, managing, evaluating, updating and disseminating the customer information to subscribers in accordance with these regulations; and
  - (c) compiling and maintaining database and generate reports from customer information database.”
60. There is no requirement that the 1<sup>st</sup> defendant ought to authenticate any information it receives from the 2<sup>nd</sup> defendant. It behoves the 2<sup>nd</sup> defendant to notify its customer of the notice that it intends to refer him to CRB. That information going to CRB will be without any alterations or query by the 1<sup>st</sup> Defendant.
61. In the premises I agree with the submissions by the 1<sup>st</sup> defendant that all that it did was simply exercising its statutory mandate of publishing the information from the 2<sup>nd</sup> defendant and I do not respectfully find any negligence on its part.
62. The same position obtains with the 2<sup>nd</sup> defendant. From the cited emails and other correspondences above I do not believe that the plaintiff was not in the picture that his accounts and specifically no MG12XXXXXXXXXX was not listed with CRB. The paper trail speaks as much and he cannot blame the 2<sup>nd</sup> defendant wholly.
63. The only issue is the fact that the name was not deleted immediately after he cleared the loan and that is why it did so in a very short moment, (within some hours) after being advised. The other issue of his inability to get credit facility was explained in the correspondences from the said financiers but in my view the CRB issue was among other reasons and not the only reason.
64. This reasoning can be stretch further since even after delisting on August 2015 there was no evidence that the defendants jointly or severally continued to have the plaintiff listed with CRB. Account number MG12XXXXXXXXXX was having a default history.
65. The court in *Kennedy Odhiambo Nyagudi v. Central Bank of Kenya & 3 Others* (2013) eKLR absolve such parties like the defendants from liability as long as they were simply executing their statutory mandate. It went on to state that;
- “I also agree with the submissions that there is no cause of action against the 3rd and 4th respondents. Assuming that the respondents complied with the law, they cannot be held liable for any harm flowing from following a law that is claimed to be unconstitutional when in fact they did not participate in or actually promulgate the regulations.”
66. I now turn to whether the plaintiff is entitled to damages as pleaded. The star witness pw2 presented his audit report. When cross examined, he said that he had done accounts up to CPA 4 and had enrolled for his PHD. He however admitted that he was not a qualified accountant as provided under the Institute of Certified Public Accountants of Kenya (ICPAK).



67. The sum total therefore is that the audit report may have been authentic but it was presented by unqualified person. It may be only persuasive but not binding and that is all. However, this court will be failing to uphold the law by relying on professional evidence tendered by an unqualified person. In such evidence, the credentials of the witness is crucial and very material.
68. In rejecting the evidence of PW2, the same goes with the plaintiff's prayers on special damages. He spiritedly showed the court the losses he made including intended investments in real estate courtesy of the failure to get loan facility because of the CRB listing. In the absence of a cogent professional report or evidence I think that the same shall remain mere desire and wishes.
69. On the issue of defamation, it was his case that he suffered financial embarrassment due to the impugned listing by CRB. Order 2 Rule 7(1) of the [Civil Procedure Rules](#) provides as follows;
- “Particulars in defamation actions [Order 2, rule 7.]
- (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a 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.”
70. The key word here is giving specific particulars of the words which allegedly defamed him. I have carefully perused the further amended plaint and I do not see such words. The words ought to be set out *verbatim* in the particulars.
71. In the absence of the said words and in failing to comply with the principles set out in respect to claims for defamation I hold that the plaintiff was not defamed. The words complained of were generalities and not conclusive enough for this court to conclude a tort of defamation in favour of the plaintiff and against the defendants. At any rate it is not in dispute that the refusal by the financial institutions to provide him with a loan facility was beyond the CRB listing.
72. Consequently, I do not find merit in this suit which has protracted for a long time. The defendants herein merely exercised their statutory obligations and in good faith. There was no evidence of malice or negligence proved against them by the plaintiff.
73. There was no requirement by the 1<sup>st</sup> defendant to provide the entity that forwarded his name to it for listing with CRB. The plaintiff was already aware that he was listed with the said entity based on the paper trail cited above.
74. The suit for the said reasons is hereby dismissed with costs to the defendants.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27<sup>TH</sup> DAY OF JULY 2023.**

**H K CHEMITEI**  
**JUDGE**

