



REPUBLIC OF KENYA



KENYA LAW
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**Okello v Standard Media Group & 3 others (Civil Case 215 of 2014)
[2023] KEHC 21568 (KLR) (Civ) (17 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21568 (KLR)

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

CIVIL

CIVIL CASE 215 OF 2014

AN ONGERI, J

AUGUST 17, 2023

BETWEEN

LINDA OKELLO PLAINTIFF

AND

THE STANDARD MEDIA GROUP 1ST DEFENDANT

THE NAIROBIAN NEWSPAPER 2ND DEFENDANT

PKEMOI NGENOH 3RD DEFENDANT

CHARLES OTIENO 4TH DEFENDANT

JUDGMENT

1. The plaintiff in this case Linda Okello has sued the four defendants

The Standard Media Group,

The Nairobi Newspaper,

Pkemoi Ngenoh and

Charles Otieno seeking the following remedies

- i. General damages for libel.
- ii. Aggravated and exemplary damages
- iii. Costs of the suit herein.
- iv. Interest on (a) and (b) at court rates until full and final payment.



- v. A permanent injunction restraining the defendants whether by themselves, their agents, and/or employees from publishing the defamatory words or innuendo similar in effect and/or substance.
- vi. An order of mandatory injunction compelling the defendants to write, print and publish an apology statement retracting the defamatory article complained of in the same medium and prominent manner as the offending words published by them.
- vii. Any other or further relief that the occur may deem appropriate to grant.

2. The suit against the four defendants arose out of an article published on 16 to 22nd May 2014 with a picture of the plaintiff and the following words;

“Linda is back: Kenya’s most booty-ful police woman to take Nairobi by storm at car-wash-for-panty drive, p8”

The defendant went further to record as a headline to the article on page 8 of the same newspaper that:-

“Linda to headline carwash-for-pad, panty campaign and is expected to burh shoulders with city’s big shots”

The said article as published read as follows;-

“Internet sensation Linda Okello will be the main guest at a charity event to raise funds buy sanitary towels and underwear for poor girls. Okello who faced her boss’ wrath for her tight derriere photo that caused a buzz on social media might soon be hitting the city’s bigwig list. She is no longer the ‘cop next door as she has been honoured as a guest during Galpad’s sanitary towel event, where she is expected to interact with the city’s Who’s who.

The brainchild of the project Dr. Jude Olunga told the Nairobiian they settled for Okello since she is a celeb and will pull a large crowd to the event. We have already talked to her and she will be the day’s gal pad ambassador. We are looking forward to working with her to make the day a success” Dr. Onunga

The initiative hopes to raise money through washing Governor Kidero’s ceremonial limousine and other classic cars in the city. “The car owner will pay kshs.1000 and anyone who pays more than this amount will be declared winner of the event. Volunteers will also part with kshs.500 for every car washed. It is also about charity and we intend to raise as much money as we can,” he said

Olunga said most girls from poor families cannot afford sanitary towels. “Most girls from poor families cannot afford sanitary towels and panties. From the funds, we will ensure that every girl receives five packets of pads and five panties for one year,” he said.

“The sanitary towel idea struck me after attending a medical camp in Uriri, Migori in2011. A woman came rushing with a girl who was bleeding but unknown to her, she was on her periods. The nurse rolled a bandage and tied it around her waist to prevent her from soiling her clothes,” he said



3. The defendants filed a defence dated 12/9/2014 denying the plaintiff's claim and further stating that if the said publication was defamatory, which is denied, that the same was published with regard to a matter in which the public had a genuine interest.
4. The defendants also averred in their defence that they shall rely on the defence of "fair comment on a matter of public interest".
5. The plaintiff produced her statement dated 15/7/2014 as her evidence in chief.
6. In the said statement she stated as follows;

That at the time of filing the suit, she was a Police Officer deployed at Kiambu County Traffic Base. She was informed on 16th May 2014 about an article published in 'The Nairobi' Newspaper that she had allegedly accepted to grace a car-wash event dubbed "carwash – for-pad, panty campaign" scheduled to take place in Nairobi, which she confirmed upon purchasing a copy of the newspaper.

7. The Plaintiff further said in the written statement that she had never been contacted about the event or been involved in any meeting or event of the nature reported. She had also not been contacted to clarify the details of the article which did not auger well with her employment status as a Police Officer.
8. The Plaintiff added that the article was a falsehood, injurious to her reputation and social standing as a Police Officer, leading her to defend herself on numerous occasions before her colleagues who had formed an opinion that she was an attention seeking socialite, crowd mobilizer, headliner, and an indisciplined Police Officer with no regard for the Police Code of Conduct.

The Plaintiff then instructed her Advocates to seek withdrawal of the article and an appropriate apology from the Defendants.

9. In her cross examination the plaintiff who testified as PW 1 said that the charity event may be seen as a show of indiscipline and the same was contrary to her terms of employment.
10. The plaintiff said as a result of the publication she resigned from the police force. She also said she could not be promoted.
11. The plaintiff called Calving Juma Boy Ombata (PW 2) as her witness. PW 2 adopted his written witness statement dated 8/4/2015 as his evidence in chief.
12. He stated as follows in the said statement: That he learnt of the Plaintiff's predicament through several phone calls from colleagues and friends who were shocked by the pictures and statement published by the Defendants. He has known the Plaintiff for years as a woman of integrity who preserved her dignity and self-discipline.
13. The photograph and article depicted the Plaintiff negatively, causing her to miss out on promotions at work and her to be shunned socially as she is considered a disgrace. Those close to the Plaintiff at work were also shunned by others because of the publication. He represented the Plaintiff at the Police Orderly Proceedings as a consequence of the Publication.
14. In cross examination, PW2 stated that he is a Police Superintendent based at Samburu whose Police Number is 233418. He was called by several people about the article regarding the Plaintiff. He got a copy of the newspaper and confirms that the photograph captioned was that of the Plaintiff, in full Police Uniform.



15. PW2 explained that the Plaintiff's association with the event while in Police Uniform goes against the Police Code of Conduct. The Plaintiff was summoned by her Boss to explain her tight clothes worn in the picture on the article.
16. PW2 added that the article depicted the Plaintiff as a socialite and as a result, she missed out on many promotions and was shunned by her colleagues after the article was published.
He explained that under the National Police Service Standing orders, a Police officer is not allowed to use Police uniform out of duty except with permission of the Inspector General, which permission the Plaintiff had not been given.
17. In cross examination PW 2 said the entire story shocked him. He said the plaintiff was depicted as a socialite. PW 2 also said Linda attended police disciplinary committee and she was demoted. She subsequently left the police force.
18. The defendants did not call any witnesses, the parties filed written submissions as follows;
19. The Plaintiff submitted that the said article was highly false, defamatory, negligently authored, actuated by a malicious desire to injure the Plaintiff's reputation and Standing the National Police Service and the society and a violation of the Plaintiff's Right to Privacy, and that the following issues are for determination;
 - a. Whether the use and Publication of the Plaintiff's image by the Defendant without consent was a violation of the Plaintiff's Right to Privacy and Right to Human Dignity;
 - b. Whether the Defendant's Publication is Offensive, Malicious and Defamatory; and
 - c. Whether the Plaintiff is entitled to general and aggravated damages for defamation and violation of her image rights.
20. The Plaintiff submits that the rights of individuals to control commercial use of their image is a property right as opposed to a personal right. That Article 28 of the Constitution of Kenya protects the Right to Human Dignity, Article 31 protects the Right to Privacy, while Article 19 provides that the Bill of Rights is a cornerstone of Democracy in Kenya.
21. The Plaintiff cited Article 1, 5 and 12 of the Universal Declaration of Human Rights, 1949, which provide that Human beings are equal in dignity and Rights, no one should be subjected to degrading treatment or interference with their privacy. The Plaintiff also cited several authorities where the Courts upheld the Right to Privacy as a fundamental Human Right. The use of the Plaintiff's name and image was thus a violation of her fundamental rights and was also for an exploitative purpose without her no consent.
22. On whether the Defendant's Publication was Offensive, Malicious and Defamatory, the Plaintiff submitted that the publication had met the threshold for a tort of defamation as it was false, published, lowered the character and reputation of the Plaintiff and referred to the Plaintiff.
23. On whether the Plaintiff is entitled to general and aggravated damages, the Plaintiff prayed that the court award Kshs. 10,000,000 for general damages and Kshs. 1,000,000 for aggravated damages, and cited several decisions where the courts has awarded similar amounts.
24. The Defendant submitted that the issues for determination are;
 - a. Whether new issues brought by way of submissions should be disregarded;
 - b. Whether the Plaintiff has proved existence of any defamatory words;



- c. Whether the said publication was malicious; and
 - d. Whether the Plaintiff is entitled to the prayers sought.
25. On new issues brought by way of submissions, the Defendant's submitted that the claim of violation of the Plaintiff's right to Privacy was not pleaded and only introduced at the point of making final submission, is an ambush on the Defendant and should be disregarded by this Court.
26. On whether the impugned publication was defamatory to the Plaintiff, the Defendants submitted that the Plaintiff had failed to plead innuendo and the natural and ordinary meaning of the words used on the article were not defamatory.
27. On whether the publication was false and malicious, the Defendant's submitted that the photograph used on the article was a truthful reproduction of the Plaintiff in attire she had worn before and that the Plaintiff had not proven any malice on the part of the Defendants.
28. On the issue of quantum, the Defendants submitted that the Plaintiff had failed to prove that her reputation was injured in the eyes of right thinking members of society and should thus not be awarded general damages, but in any event should not be more than Kshs. 2,000,000, and that the claim for aggravated damages has no legs to stand on.
29. The Defendants also submitted that costs are unavailable to the Plaintiff as she had failed to prove her case.
30. I have carefully considered the evidence adduced herein together with the written submissions by both parties. I took over this case from Hon. Justice Serگون after the plaintiff had testified.
31. It is the duty of the plaintiff to prove her case against the defendants and the standard of proof is on a balance of probabilities.
32. The issues for determination in this case are as follows;
- i. Whether the plaintiff has proved her case to the required standard.
 - ii. Whether the defendants have a valid defense against the plaintiff's case.
 - iii. Whether the plaintiff is entitled to the remedies she is seeking against the defendants.
 - iv. Who pays the costs of this suit?
33. On the issue as to whether the plaintiff proved her case, the plaintiff's evidence was that the defendants published a false sensational and defamatory newspaper article which violated her right to privacy and to human dignity and further that the article was offensive, malicious and defamatory.
34. I find that the evidence of the plaintiff and her witness was not contested since the defendants did not call any witnesses.
35. The tort of defamation is defined as follows;
- “The act of harming the reputation of another by making a false statement to a third person.”
36. I find that the plaintiff has proved her case. The article depicted her in bad light. There is evidence that as a result of the publication the plaintiff underwent police disciplinary proceedings and she was demoted from corporal to police constable and she subsequently left the police force.



37. In the case of *J. Kudwoli & Ano. v. Eureka Educational & Training Consultants & 2 others* (1993) eKLR, the court had the following to say about the tort of defamation;

“Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally, or which tends to make them shun or avoid that person....

.....A defamatory imputation is one to a man's discredit or which tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit....”

38. On the issue as to whether the defendants had a valid defence, the defendants in their defence dated 12th September 2014 that they would raise the defence of “fair comment on a matter of public interest” I find that the defendants did not call any witnesses and therefore they did not raise any valid defence to the plaintiff's claim. I find that the defendants have no defence.

39. On the issue as to whether the plaintiff is entitled to the remedies she is seeking, the plaintiff is seeking the following remedies

- a. General damages for Libel;
- b. Aggravated and Exemplary damages;
- c. Cost of the suit;
- d. A permanent injunction restraining the Defendants whether by themselves, their agents, and/or employees from publishing the defamatory words or innuendo similar in effect and/or substance;
- e. An order of mandatory injunction compelling the Defendants to write, print and publish an apology statement retracing the defamatory article complained of in the same medium and prominent manner as the offending words published by them;
- f. Any other or further relief that the court may deem appropriate to grant.

40. I find that the plaintiff is entitled to damages for defamation and I award her Kshs. five million (5,000,000).

41. I also award the plaintiff aggravated and exemplary damages of Kshs.1,500,000 for reasons that the plaintiff's rights to privacy were violated and she suffered oppression as a result of the defamation in that she was subjected to disciplinary procedures and she was demoted and she finally left the police force.

42. In the case of *Godfrey Julius Ndumba Mbogori & another V. Nairobi City County* [2018] eKLR the court held as follows;

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant's conduct has been calculated to make a profit for himself



which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute”.

43. A permanent injunction be and is hereby granted against the defendants whether by themselves, their agents and/or employees from publishing the defamatory words by innuendo similar in effect and/or substitute against the plaintiff.
44. Judgment be and is hereby entered in favour of the plaintiff against the defendants jointly and severally in the sum of Kshs. Six million, five hundred thousand shillings (6,500,000) together with costs of this suit and interest at court rates from the date of this judgment until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF AUGUST, 2023.

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A. N. ONGERI

JUDGE

