



REPUBLIC OF KENYA



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**Murori v LN (Civil Appeal E076 of 2022)  
[2023] KEHC 26051 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26051 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E076 OF 2022  
EM MURIITHI, J  
NOVEMBER 30, 2023**

**BETWEEN**

**PHINEAS MURORI ..... APPELLANT**

**AND**

**LN ..... RESPONDENT**

*(An appeal from the Judgment and Decree of Hon. E.W Ndegwa  
(R.M) in Githongo PMCC No.17 of 2019 delivered on 25/5/2022)*

**JUDGMENT**

1. By a Plaint dated 3/6/2019, the Respondent sued the Appellant seeking special damages, general damages for defamation, costs of the suit and interests. She pleaded that on 24/8/2018 while in the company of her colleague teachers among them one SM and NNG at about 4.00 pm within Kariene Market of Meru County, the Appellant while accompanied by Police Officers from Kariene Police Station and a security officer and for no apparent reason uttered the following defamatory utterances in Kimeru against her, “Ugwe muka umuthuku uri mwamba umenene muno” meaning “You ugly woman, you are a big thief.” The said utterances meant and portrayed the Respondent in the eyes of her colleague teachers and the right thinking members of the society as a thief, a robber, a woman of no morals, an obtainer, a person that does not deserve to be a teacher and a disrespectful person. As a result of the said utterances, the Respondent, who enjoyed a good name as an experienced teacher and a mentor was humiliated and her reputation put to question in the eyes of her colleague teachers and the right thinking members of the society. She averred that the defamatory utterances were malicious and negligent.
2. The Appellant denied the claim by his defence dated 26/6/2019 and prayed for the Respondent’s suit to be dismissed.



3. Upon full hearing of the case, the trial court found that the Respondent had proved her case on a balance of probabilities, and awarded nominal damages for defamation of Ksh 150,000 plus costs and interest.

### **The Appeal**

4. On appeal, the Appellant filed his Memorandum of Appeal on 23/6/2022 listing 6 grounds as follows:
  1. The learned Resident Magistrate erred in law and facts by failing to appreciate the nature of the plaintiff's claim and thereby misconstrued the evidence tendered.
  2. The learned Resident Magistrate erred in law and facts in considering irrelevant facts and failed to consider the relevant facts to find that the claim as filed by the Respondent was not at all proved.
  3. The learned Resident Magistrate erred in law and facts in failing to consider the defendant's evidence and the facts that the defendant was entitled to the prospection of his property by the law.
  4. The learned Resident Magistrate erred in law and facts by failing to appreciate that the defendant followed the due process and his action per se did not amount to defamation of the Respondent.
  5. The learned trial court erred in law and facts in failing to properly analyse and interpret the evidence tendered which clearly exonerated the defendant from any wrong doing and therefore her findings were against the evidence tendered and the law.
  6. The learned trial courts judgment and the decree is against the evidence tendered and the law applicable in the circumstances.

### **Duty of the Court**

5. This being a first appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions. In doing so, the court must bear in mind that it did not have the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] EA 123).

### **The Evidence**

6. PW1 LN, the Respondent herein, adopted her statement recorded on 3/6/2019 as her evidence in chief. She went on to testify that, "I am a teacher at [Particulars Withheld] primary school situated at Abothuguchi Central. I am the plaintiff in this case. I know the defendant Phineas Murori. He is a business man at Kariene market." She produced the demand letter dated 30/8/2018 and an order dated 29/5/2019 as exhibits in court.
7. On cross examination, she stated that, "I did not know Phineas Murori before 24/8/2018. He was unknown to me. I would not expect someone who does not know me to have malice. I did not communicate with him. Police officers were communicating with him. On that day, I went to a shop/mini supermarket Kariene market. I stood at the door because the milk was displayed. I was with SMA (now deceased). I did not see the defendant Phineas Murori in that shop. Someone uttered some words in Kimeru. Phineas Murori was directing Police Officers to me. I learnt about him later. I did not know that he had made a formal report at the station. I learnt of it later. When a report is made, I expect police to investigate. I learnt he is the owner of the supermarket. Police officer's were interrogating me but I was the wrong person. If someone is offended, they should report to the police and chief. When police



officers checked the CCTV footage, they said I was not the one. They realized I am a good lady. There were many teachers. My reputation was damaged since the rest of the teachers had left knowing I was a thief. The seminar was for class 8 teacher. The CCTV footage was payed in front of other people. We were left with teacher leaders waiting for a photo. The police vehicle was waiting for me at the gate but I refused to be arrested. The other teachers intervenered for the police not to arrest me after I resisted the arrest. I later went to the police station to find out what was the matter while there, I found that a formal report had been made by Phineas Murori that his property had been stolen from the shop. The OB report indicated that the defendant noted that some perfumes and sprays were stolen from his shop and on checking CCTV footage one lady stealing and giving it to another lady. My name does not appear in the report. I am still a teacher. I was not sacked from employment because somebody asked something. At that time I was not doing any business. I have lost the glory of my good name. I as somewhere in the society. I am a leader in the church clan. I can no longer manage them because people have no trust in me. The clan and my friends and colleague teachers learnt about to. My own children self esteem was also injured. I cannot go to Kariene town because everybody points finger at me. Being pointed fingers prevents me from going to the market. I was called a thief which offended me. Someone who does not know me can have malice and call me a thief.”

8. On re-examination, she stated that, “Prior to the incident, I did not know the defendant before. The police communicated with Phineas and not me. Police officers and the Securico’s of the school came with the police. When Phineas was communicating with the police, I was there. I was present and I saw and heard Phineas as they communicated with the police. I entered the shop at Kariene. I wanted to buy a packet of Brookside milk which I did not get. I was accompanied in the shop by SM who is deceased from the shop. I proceeded to [Particulars Withhheld] primary school where the seminar was. The incident happened at St. [Particulars Withhheld] . I was not allowed at St. [Particulars Withhheld] . Mrs. M, Mrs M among other teachers were there. Mr. NN who was present is my witness. After the seminar was over, we went for lunch, the security Officer confronted me she came running and grabbed my hand bag. After two steps she handed me over to police officers. I did not know why I was being rounded up. I did not see Phineas Murori because I did not know him. The head teacher told them not to embarrass me and gave them the headteacher’s office. In the office I was told I stole property belonging to Phineas Murori and was shown the said Phineas Murori. By that time Phineas was in the office. I sent my husband to the station later and he was told that police officers were sent to arrest me (L) over theft report. The report by one Phineas Murori is the defendant list of exhibits. I did not make any report with the police. Criminal investigators investigated the report. The police found that I was not the one who had stolen. I am not able to tell if theft had taken place in Phineas Murori shop because I was not involved in the theft and was not the investigating officer. I was shown the CCTV footage. The same did not capture me stealing from the shop. NN, Mrs Mamong others who were at the seminar now think that I am a thief. I was not sacked after the incident. The incident damaged me seriously because it tarnished my name. I lost the glory of my good name. I have 2 adult children and one is 16 years old. If I was a thief the police would not have set me free.”
9. PW2 NNG, a teacher employed by TSC No 31xxxx at [Particulars Withheld] Primary School Igoji adopted his witness statement recorded on 3/6/2019 as part of his evidence in chief. He went on to state that, “Around August 2018, I was still a teacher in the same school. I know the plaintiff. She is a colleague teacher.”
10. On cross examination, he stated that, “I knew Phineas Murori. He was operating Seven Stars supermarket at Kariene Market. I saw him on 24/8/2018 at around 4.00 PM at [Particulars Withheld] Primary in company of two police officers and a school guard from [Particulars Withheld] school. They were accompanied by Murori. They wanted to arrest L who was attending a seminar. There was a communication between L and Phineas Murori accompaniment because a report had been made that



L had stolen milk from the supermarket. Murori pointed at L and there was a commotion because L protested and resisted. I was present. We were taking lunch. Murori pointed at L so that police could arrest her accompanied by Murori. The guard was used by Murori to point at L. The guard allowed the police officer and Murori entry initially. L was pointed by the guard. Murori then shouted that it was L who stole milk from the supermarket. Murori said that the lady was found in the supermarket stealing milk and there was a CCTV footage. He also said that she is ugly and a thief. She intimidated the teacher and teachers intervened by demanding the CCTV footage. I watched the CCTV footage and it was not L. Somebody had stolen but it was not L and therefore the police left. I do not take L to be a thief. She is a good teacher to date. She suffered total humiliation because I knew her for a long time. She is honourable and has taught many. I do not think she is a thief. She is a reputable teacher.”

11. On re-examination, he stated that, “I knew Phineas Murori on the day of the incident. I was not with L at the shop. L told me that a theft report had been made at the station. 2 police officer’s the guard and the defendant encountered the plaintiff. Phineas Murori directed the officers to the school and were allowed in by the guard. I knew L before 24/8/18 as a teacher. She is also a mother and wife. I had not prior to this date heard of theft incidents regarding her. There was shouting by the teachers who could not believe that the police had come to arrest L. Murori made some utterances in presence of myself and other teachers. He said you ugly woman, a thief. I could not believe the stated character that was being portrayed by Murori as she was being humiliated over allegations of stealing a packet of milk worth Kshs 25/=. I saw the CCTV footage. L was not in the footage. I do not hold L in the same distinct as I did prior to 24/8/2018.”
12. DW1 Phineas Murori M’itonga, the appellant herein, adopted his witness statement together with the list of documents filed on 27/6/2018 as DEX 1. He went on to testify that, “I live at Kariene Market where I work. I knew the plaintiff on the on the material day when items got lost on 26/6/2019. In my report to the police, I did not mention any name. The police officer did their work.”
13. On cross examination, he stated that, “In my witness statement in paragraph 2. I recorded that the plaintiff entered our shop on 24/8/2018 together with some other people. They were in the shop. I saw her in the shop. She was accompanied by one man. I have recorded in my statement that she had other accomplices. She was only accompanied by one man. I did not see her take anything including a perfume from the shop. After she left together with other people in the shop I then realized that something was missing. I left for the police station to report. I do not recall the name of the police officer who took over my case. I was given 3 police officers to the place where the plaintiff was attending a meeting with other teachers at [Particulars Withheld] Primary School. We first went to the shop and then led the police officers to [Particulars Withheld] Primary School to look for the thief who had stolen my items after I saw the pictures from the CCTV camera. Police officers would not have gone there had I not led them. The CCTV Camera showed persons heading to [Particulars Withheld]. The police officers saw the footage. There were many people at the school who were all unknown to me. The head teacher and the watchman were at school. The police officers asked to interrogate the plaintiff. Personally I did not point out the plaintiff since they had seen the footage. I accompanied the police to go and look for my property. I gave a description at the person, I had seen in the footage to the police according to her clothes. The officers investigated and failed to charge her since there was no evidence. At the material time, the plaintiff was called by the head teacher and at that it was believed she was a thief but at the time they left the officers knew she was not a thief. I am not calling any police officer as my witness. The plaintiff was not found with any stolen item upon investigation. The police officers contacted the plaintiff. They did so after reported the matter to them. I was in court when the plaintiff testified. The plaintiff stated that she was still a teacher and had not been sacked.”



14. On re-examination, he stated that, “After reporting to the police, I left the matter to them. They requested me to go with them to the school. The CCTV camera outside faces the school. The officer checked the Camera inside and outside the shop. The one outside showed that the people in the shop went to the school on entering the school, we all (police officers) and I looked at the plaintiff. The female police officer called her and when she refused to co-operate the headteacher called the police officer and Lin her office. L was interrogated by the police inside the offices. I did not defame her. She was not known to me. I was only following my lost items. I had no reason to tarnish her name. The police officers decided not to charge her and left her in school since there was no evidence she was not even arrested. I did not tarnish her name.”

### Submissions

15. The Appellant urges that he had the right to invoke the law when he realized that after the Respondent left the supermarket, some properties were missing, and although the Respondent may have been aggrieved by the investigations, that does not amount to defamation at all. He urges that he was following the due process of the law in order to not only recover his property but to also apprehend the culprits and he had no malice or evil intentions to defame the Respondent. He cites *Erick Odinga v Caleb Ochieng Ojunga* (2021) eKLR to remind the court of its duty as the first appellate court. He faults the trial court for failing to consider his evidence which in fact was corroborated by the Respondent, and prays for the appeal to be allowed with costs.
16. The Respondent urges that investigations if any, ought to have been conducted with decorum and in keeping with her right to dignity under Article 28 of the *Constitution*. She faults the Appellant for failing to either call the two police officers or produce a copy of the police OB, and prays for the dismissal of the appeal with costs.

### Analysis and Determination

17. This court notes that although the grounds of appeal are 6 in number, they all revolve around the issue of whether the Respondent proved her case against the Appellant on a balance of probabilities.
18. *Black Law's Dictionary* 8<sup>th</sup> Edition defines defamation as “the act of harming the reputation of another by making a false statement to a third person.”
19. The Respondent pleaded that the Appellant called her ugly and a big thief in the presence of her colleague teachers. PW2 indeed acknowledged that he was present when the said defamatory utterances were made. Even on thorough cross examination, he affirmed that, “I knew Phineas Murori. He was operating Seven Stars supermarket at Kariene Market. I saw him on 24/8/2018 at around 4.00 PM at [Particulars Withheld] Primary in company of two police officers and a school guard from [Particulars Withheld] school. They were accompanied by Murori. They wanted to arrest L who was attending a seminar...Murori then shouted that it was L who stole milk from the supermarket. Murori said that the lady was found in the supermarket stealing milk and there was a CCTV footage. He also said that she is ugly and a thief. She intimidated the teacher and teachers intervened by demanding the CCTV footage. I watched the CCTV footage and it was not L. Somebody had stolen but it was not L and therefore the police left. I do not take L to be a thief. She is a good teacher to date. She suffered total humiliation because I knew her for a long time. She is honourable and has taught many. I do not think she is a thief. She is a reputable teacher.”
20. Although the Appellant at first denied mentioning the Respondent's name to the police, he admitted in cross examination that he had given the description of the alleged thief to the police upon which the subsequent interrogation of the Respondent was founded. He stated that, “I recorded that the plaintiff



entered our shop on 24/8/2018 together with some other people...I did not see her take anything including a perfume from the shop. After she left together with other people in the shop I then realized that something was missing. I left for the police station to report...I was given 3 police officers to the place where the plaintiff was attending a meeting with other teachers at [Particulars Withheld] Primary School. We first went to the shop and then led the police officers to [Particulars Withheld] Primary School to look for the thief who had stolen my items after I saw the pictures from the CCTV camera. Police officers would not have gone there had I not led them. The CCTV Camera showed persons heading to [Particulars Withheld]...At the material time, the plaintiff was called by the head teacher and at that it was believed she was a thief but at the time they left the officers knew she was not a thief.”

21. There is no doubt that as a result of the said utterances by the Appellant, the Respondent’s reputation had been gravely lowered in the eyes of the right thinking members of the society.
22. The Respondent’s testimony read in part that, ““I have lost the glory of my good name. I am a leader in the church clan. I can no longer manage them because people have no trust in me...My own children self esteem was also injured. I cannot go to Kariene town because everybody points finger at me. Being pointed fingers prevents me from going to the market...NN, mrs M among others who were at the seminar now think that I am a thief...The incident damaged me seriously because it tarnished my name. I lost the glory of my good name.”
23. When PW2 was re-examined, he stated that, “Murori made some utterances in presence of myself and other teachers. He said you ugly woman, a thief. I could not believe the stated character that was being portrayed by Murori as she was being humiliated over allegations of stealing a packet of milk worth Kshs 25/=. I saw the CCTV footage. L was not in the footage. I do not hold L in the same distinct as I did prior to 24/8/2018.”
24. The Court of Appeal in *SMW v ZWM* [2015] eKLR, (Karanja, Mwilu & Azangalala JJA), defined a defamatory statement as one that tends to lower him/her in the estimation of right thinking members of society generally or one that exposes him/her to public hatred, contempt or ridicule or one that causes him to be shunned or avoided.
25. From the totality of the evidence on record, this court finds that the utterances made by the Appellant in reference to the Respondent, were defamatory in nature as they ultimately lowered her reputation and good name in the right thinking members of the society.
26. This court is satisfied that the Respondent proved on a balance of probabilities that the Appellant specifically referred to her as a thief, (ugly may be not), in the presence of her colleagues, which words were defamatory. The Respondent was consequently shunned and avoided by people and her reputation was completely lowered in the right-thinking members of the society. The fact that the Respondent was not dismissed from her employment cannot be construed to mean that she was not defamed.

### **Orders**

27. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
28. The Respondent shall have the costs of the appeal.

**DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

