



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chomba v Karanja (Civil Case 85 of 2017)  
[2022] KEHC 11172 (KLR) (Civ) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11172 (KLR)

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

**CIVIL**

**CIVIL CASE 85 OF 2017**

**JK SERGON, J**

**MAY 31, 2022**

**BETWEEN**

**ALICE WANJIKU CHOMBA ..... PLAINTIFF**

**AND**

**ERNEST KARANJA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff herein filed a suit by way of the plaint dated 14<sup>th</sup> February, 2017 and sought for judgment against the defendant in the following manner:
  - a. General damages for defamation
  - b. Damages on the faulting of aggravated or exemplary damages
  - c. Damages for personal injury on the faulting of exemplary damages.
  - d. Costs of this suit
  - e. Interest on (a) (b) and (c) above at court rates.
  - f. Any other or further relief that the honourable court may seem fit to grant.
2. The plaintiff pleaded in her plaint that on or about 25<sup>th</sup> of January 2017 the defendant falsely and maliciously lodged a complaint at Makongeni Police Station concerning her knowing the same to be false and not true and that the defendant's complaints were slanderous to the plaintiff.
3. The plaintiff further pleaded in her plaint that the defendant's complaints were interpreted in the ordinary and natural sense to suggest that the plaintiff cannot be trusted by her clients to renew their insurance policies, is malevolent in her actions, and is unfit to renew her clients' policies.



4. It was also pleaded by the plaintiff in her plaint that the defendant's conduct were all meticulously planned to hurt the plaintiff's character and reputation by spirit, words, sound, and color repeated from the aforesaid comments, and that the defendant was motivated by hatred, malevolence, and spite against the plaintiff.
5. It was further pleaded that the plaintiff's character and reputation have been severely harmed, causing great shame and suffering, and that the defendant's statements have tarnished the plaintiff's name because she has clients at the police station and among the defendant's friends.
6. The defendant entered appearance upon service of summons and filed its statement of defence on 19<sup>th</sup> February, 2017 to deny the plaintiff's claim.
7. The defendant stated the basis of his complaint to Makongeni police station was Kshs.6,000/= which he gave the plaintiff to renew insurance cover of his motor vehicle which she failed to renew nor refund the money.
8. At the hearing, the plaintiff and the defendant both testified in support of their respective cases.
9. The plaintiff who was PW1 adopted her signed witness statement as her evidence in chief and stated that she worked for Invesco insurance company as an agent and that the defendant defamed her thus making other clients to shun her.
10. The plaintiff testified that she issued the provisional debit note to the defendant and that she was paid Kshs.2000/= but the credit note recorded and received 1500/= and her commission was Kshs.500/= and that is why it never reflected.
11. In cross-examination, the plaintiff stated that she did not bring any documents to show that she is an agent of Invesco Insurance Company Limited and she did not also bring the insurance cover.
12. The plaintiff further testified that the police had indicated that the defendant lied, but that they did not have a witness statement stating that the defendant lied to the police. The plaintiff also argued that she did not present her business documents demonstrating the trend of her revenue, but that her business suffered as a result of the complaint, and that there were no witnesses to establish that she lost business.
13. In re-examination, the plaintiff stated that when a client applies for insurance, he is given an application form to fill out and pay for, after which an insurance certificate is prepared and the original is provided to the insured. That the defendant only paid Kshs.4000/= instead of the Kshs.6000/= stated at the police station.
14. It is the testimony of the plaintiff that the defendant claimed she was a thief before his colleagues who are taxi drivers.
15. The defendant on his part adopted his signed witness statement as evidence and stated that he paid Kshs.6000/= as the insurance premium to the plaintiff who told him that she was an insurance agent and gave him a cover for a month instead of annual insurance cover.
16. It is the testimony of the defendant that he reported the matter to the police when the plaintiff refused to refund his money and issue him with an annual insurance and that he did not defame the plaintiff in any way.
17. In cross examination, the defendant stated that he cannot tell the date when he paid the plaintiff Kshs.6000/= to renew insurance cover as it took two years before making the report to the police and that he did not pay Kshs.2000/= but he made payments of Kshs.6000/=.



18. The defendant testified that the police did not charge the plaintiff with any criminal offence and that he was given an insurance cover for one month but he could not tell the amount payable for an insurance cover for one month.
19. It was the defendant's testimony that he did not tell the taxi operators that the plaintiff had lied to him.
20. In re-examination, the defendant stated that when the plaintiff stopped picking his calls, he reported the matter to the police.
21. At the close of the hearing, this court called upon the parties to file and exchange written submissions but at the time of writing this judgment the defendant had not filed his submissions.
22. The plaintiff on his part gave a brief background of the matter and identified four main issues for determination to be as follows;
  - a. Whether the words uttered by the defendant in their ordinary meaning defamatory of the plaintiff.
  - b. Whether the plaintiff knew of, or was notified of and/or was contacted for clarification by the defendant on the matter before it was published.
  - c. Whether the utterance by the defendants on 25<sup>th</sup> of January 2017 and concerning the plaintiff, false, reckless and malicious.
  - d. Whether the plaintiff, under the circumstances and in view of all the foregoing, is entitled to damages as prayed for in the plaint.
23. On the first issue, the plaintiff relied on the case of Civil Appeal No.156 of 2017 [Hon.Musikari Kombo v Royal Media Services Limited](#):

“It follows that a claimant in a defamation suit ought to principally establish in no particular order:

  - i. The existence of a defamatory statement;
  - ii. The defendant has published or caused the publication of the defamatory statement;
  - iii. The publication refers to the claimant.”
24. The plaintiff submitted that the defendant stated on oath that he did not prove that he gave the plaintiff Kshs.6000/= and further confirmed that he had a one month insurance sticker that was given to him by the plaintiff, therefore confirms that the plaintiff received only Kshs.2000/= as payment for a one month insurance cover for the said motor vehicle and not Kshs.6000/=
25. The plaintiff contends that it is clear that the defendant spread that particular lie of giving the plaintiff the Kshs.6000/= which is an element of publication of the said slanderous utterances concerning the plaintiff herein which proves the existence of the necessary elements of defamation.
26. On the second issue, the plaintiff submitted that at no point did the defendant seek for any comment from the plaintiff personally before the words were published and that the defendant has never apologized or showed remorse and even in his response he did not indicate regret.



27. On the third issue, the plaintiff relied on the case of *Phineas Nyagah v Gitobu Imanyara* [2013] eKLR where court stated that:

“Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice but the law does not weigh in a hair balance and it does not follow merely because the words are excessive, there is therefore malice. Malice may also be inferred from the relations between the parties before or after publication or in the conduct of the defendant in the course of the proceedings. Malice can be founded in the publication itself if the language used is utterly beyond the facts. The failure to inquire into the facts is a fact from which inference of malice may properly be drawn.”

28. It is the plaintiff’s submissions that the defendant even went ahead and indicated to the plaintiff that he would make sure that the plaintiff does not earn any money through her insurance business by telling of how she swindled him his money which is a more vivid proof of malice on the side of the defendant.

29. On the fourth issue, the plaintiff submitted that the defendant claimed on oath he was planning on getting into taxi business and that the taxi drivers are the same plaintiff’s potential customers who are also potential customers and any right thinking member of the society would think that the plaintiff engages in dubious corrupt practices, lacks honesty and integrity, is unsuitable for the services she was rendering, has criminal disposition and that the statements are filled with falsehood and malice and the character of the plaintiff was and still damaged.

30. Upon considering the evidence tendered and the submissions together with authorities relied upon, I find the following to be the issues arising for determination:

- i. Whether the plaintiff has made a case for defamation against the defendant;
- ii. Whether the defence of truth/justification is available to the defendant; and
- iii. Whether the plaintiff are entitled to the reliefs sought.

31. The Court of Appeal in *Wycliffe A. Swanya V Tunyuta East Africa Limited & Francis Massai* Nairobi CA No. 70 of 2008 set out the essential components which a plaintiff must prove in order to succeed in an action on defamation. The plaintiff must prove the following;

- i. That the matter complained of is defamatory in character.
- ii. That the defamatory utterances or statement was published or communicated to someone other than the person defamed.
- iii. That it was published maliciously.
- iv. In slander subject to certain exceptions, that the plaintiff suffered special damages.

32. It is perhaps important to point out at this juncture that there are two kinds of defamation namely, libel and slander. Libel consists of a defamatory statement in a permanent form like in a printed or written form while slander is defamation by word of mouth.

33. Turning to the first issue, publication basically means the communication of the defamatory statement, words or information to a 3<sup>rd</sup> party other than the person allegedly defamed.

34. In this case, the plaintiff in its plaint pleaded that the defendant falsely and maliciously lodged a complaint at Makongeni Police Station concerning her knowing the same to be false and not true. The



plaintiff further stated that the complaint was slanderous and the in the ordinary meaning and natural meaning would understood to mean that she cannot be trusted by her clients to renew their insurance covers and that she is malicious in her activities.

35. On the hand the defendant stated that the basis of his complain to Makongeni Police station was Kshs.6000/= which he gave the plaintiff to renew insurance cover of his motor vehicle which the plaintiff failed to renew nor refund the money. He further stated that the he has been calling the plaintiff who has not been picking his calls.
36. Upon considering the same alongside the contents of the publication in question, I am convinced that the plaintiff has not demonstrated the manner in which the publications could be inferred in the mind of the ordinary man and consequently lowered their reputation in the minds of members of the public.
37. This is because the defendant's intention was to find out how the money he gave the plaintiff, Kshs.6000/=, was used to renew his insurance cover for a year but only renewed for a month, and when the plaintiff did not pick up his calls, he decided to report her to the police, just like any other ordinary citizen who has been wronged would go to the police station if they feel they have tried to handle a situation and it is now out of order and need the help of the police who are law enforcers.
38. I must hasten to add that in law, publication of a defamatory statement whether in spoken or written form would still be proved even if it was communicated to a single person other than the person defamed. The extent or scope of its communication is only relevant in the assessment of quantum of damages and not to proof of publication.
39. Having made the above finding, the next question for my consideration is whether the plaintiff has demonstrated on a balance of probabilities that the complaint to the police station for the Kshs.6000/= injured their reputation and character in the eyes of right thinking members of the society.
40. Defamation has been defined in Black's Law Dictionary 8th Edition at Page 448 as;  

“ the act of harming the reputation of another by making a false statement to a third person”

It is also defined in Winfield & Jalowicz 15th Edition as  

“ ... a publication of a statement which reflects on a person's reputation and tends to lower him in the estimate of right thinking members of the society generally or which tend to make them shun or avoid that person....”
41. 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.”
42. It follows that for a plaintiff to succeed in an action on defamation, he or she must prove that the offending statement was not only published but that it exposed him to public ridicule, contempt and hatred or injured his reputation in his office, trade, profession or financial credit. The standard of opinion is that of right thinking members of society. Abusive or offensive words may not be defamatory per se. To be defamatory, the words or statement must be proved to be false and malicious. The burden of proving that the words complained of were in fact defamatory lies on the plaintiff.



43. In this case, I find that the complaint which inter alia being that the plaintiff had been given Kshs.6000/= which he had been given by the defendant to pay for renewal of insurance only that the plaintiff claims to have been given 4000/= but the defendant insists on 6000/=. The plaintiff avers that the defendant claimed she was thief before his colleagues who are taxi drivers who are some of his customers.
44. Upon considering the same alongside the contents of the complaint in question, I am not convinced that the plaintiff has demonstrated the manner in which the complaint could be inferred in the mind of the ordinary man and consequently lowered her reputation in the minds of members of the public.
45. 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.
46. It is apparent that the defendant reached out for the plaintiff on phone, it is also apparent that the plaintiff did not pick his calls something that was never disputed by the plaintiff. The complaint was made by the defendant and for sure the plaintiff was granted sufficient opportunity to properly respond to the serious allegations made against her in the complaint since she was not even arrested or charged.
47. In respect to the ingredient to do with whether the complaint 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.
48. In the present instance, I am not satisfied that the plaintiff brought credible evidence to demonstrate the false nature of the impugned complaint and which evidence was supported by another plaintiff witness to back up her allegations. Furthermore, to my mind therefore, the plaintiff have not shown that the complaint was untrue.
49. In view of the foregoing, I am not satisfied that the plaintiff has established a claim for defamation against the defendant on a balance of probabilities.
50. For all the foregoing reasons, I have come to the conclusion that the plaintiff's suit lacks merit and it is hereby dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY, 2022.**

.....

**J. K. SERGON**

**JUDGE**

**In the presence of:**

..... for the Plaintiff

..... for the Defendant

