



**Grewal & another v Long (Civil Cause E055 of 2021)  
[2022] KEHC 12729 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12729 (KLR)

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

**CIVIL CAUSE E055 OF 2021**

**JK MULWA, J**

**JUNE 23, 2022**

**BETWEEN**

**RAVINDER SINGH GREWAL ..... 1<sup>ST</sup> PLAINTIFF**

**HARMINDER SINGH GREWAL ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LINDA MEIN LONG ..... DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated February 25, 2021, the plaintiffs sued the defendant for alleged defamation and sought for a permanent injunction to restrain the defendant by herself or her agents or otherwise from publishing any further or similar defamatory material concerning them; general damages; exemplary damages; aggravated damages; costs of the suit and interest.
2. The plaintiffs' claim was that on September 21, 2019, the defendant falsely and maliciously published posts which were defamatory of them on her Facebook page known as 'Linda Mein Long' as follows:

“If you follow me on facebook you will know I have just come back to Kenya. While I was away some people broke into my property and now claim they own it. My friend of many years Charo Charo Baya and his family were evicted out and I came home to be locked out. I went to my home let myself in the gate and walked in asking the house boy who were these people in my home. I locked them ...

These people who have taken my house have illegally taken 74% of my company. Am now out on the streets I can't even get in to get my clothes, as you can expect am distraught and very angry I know many Friends here on facebook have come stay with me kaskazi has been my home 16 years ....”

Comments



“Yeah 16 years and some Punjabi S come and get me evicted out bastatd S I will get it back.”

“Indian guys from Nairobi they came when I was a way they pay off police another friend of mine been arrested they pay of everyone. Because I’m not financially strong am relying on judge in court but funds are low”

3. They pleaded that whereas the Facebook posts did not refer to them by their names, their family, friends, professional colleagues and employers knew that the defendant was referring to them in view of dispute regarding the management of Kas Kazi Properties Limited (hereafter “the Company”) which owns the subject property, a hotel in Malindi. They pleaded that the publications were defamatory of them both in their natural and ordinary meaning and also by innuendo. According to them, the offending words were understood to mean that: they were criminals, land grabbers, illegally in acquisition of 74% shares in the company, Punjabi bastards, people who illegally broke into the defendant’s home and evicted her and that they are unethical, unprofessional and unscrupulous persons.
4. They contended that the defendant published the offending posts knowing fully well that the same would be consumed by the society generally. Further, the plaintiffs claimed that the posts were malicious and their reputation, image, credit, integrity and status as career businessmen and professionals have been substantially damaged by the offending publications. As a consequence, they have suffered grave mental anguish, public ridicule, odium and societal ostracization in the eyes of right thinking members of the society and within the area where the hotel is located. Lastly, that the defendant has failed and/or refused to publish an apology on her Facebook page despite demands by the plaintiffs.
5. An interlocutory judgment was entered in default of appearance and defence by the defendant on June 22, 2021. Thereafter, the case proceeded to formal proof.
6. PW1, Ravinder Singh Grewal, the 1st plaintiff herein adopted his Witness Statement dated February 25, 2021 as part of his testimony and produced the plaintiffs list and bundle of documents. He testified that he is an engineer and manages a family business known as Kehar Transport. He got to know the defendant in early 2019. It was his testimony that he was shocked by the Facebook posts since he never defrauded the defendant of her property nor evicted her therefrom. He stated that the defendant’s husband, Tony Long, sold to him his 50% shareholding in the Company in 2019 and he paid him in dollars. He was under the impression that the defendant had discussed the matter with her husband but the defendant later told him that she believed the transaction was highly illegal.
7. According to PW1, the offending post portrayed him as a murderer yet he is an honest, sincere and straightforward professional who controls lots of businesses. As a consequence of the offending post, he and his family have suffered ridicule and his reputation has been eroded. Among the documents produced by PW1 were the publication in question, letters and affidavits written to the Registrar of Companies to confirm their shareholding and directorship of the Company and a demand letter to the defendant to pull down the offending posts.
8. PW2, Haminder Singh Grewal, the 2<sup>nd</sup> plaintiff herein also adopted his witness statement dated February 25, 2021 as part of his testimony. He testified that he is a businessman and works with the 1st Plaintiff in the transport business. He stated that the Facebook posts are false and malicious since the defendant was well aware of all the changes in the management of the company. It was his testimony that he has known the defendant since May 2017 when he loaned her some money and she used her shares in the company as collateral. Upon her failure to repay the loan, the defendant transferred 24% of her shares, equivalent to 240 shares, to him on 6th May 2018 and appointed him



as a director of the Company. In support, PW2 relied on various documents in the plaintiffs List and Bundle of documents inter alia, a letter to the Registrar of Companies from the defendant, minutes of a meeting held in May 2017, copy of agreement for transfer of stock, the company's CR6 signifying his appointment as director and the company's annual return for 2018.

9. PW2 further testified that he invested a lot in improving the property to a state where rooms were to be let out. Further, according to PW2, since the publication of the online posts which the Defendant has refused to pull down, he has suffered damages. He has also been ridiculed for partnering with criminals and has developed anxiety which has affected his health.

### **Analysis and Determination**

10. I have considered evidence tendered by the Plaintiffs, the written submissions as well as the authorities cited. The following are the issues arising for determination:
  - i. Whether the plaintiffs have made a case for defamation against the defendant;  
and
  - ii. Whether the plaintiffs are entitled to the reliefs sought.

### **Whether the Plaintiffs have made a case for defamation against the Defendant**

11. In their written submissions, the plaintiffs contended that they have established a case for defamation against the Defendant. They referred to the case of *Musikari Kombo v Royal Media Services Limited* [2018] eKLR where the court set down the ingredients of the tort of defamation. It was their submission that the offending statements clearly referred to the Plaintiffs and, in their natural and ordinary meaning, were understood to mean that the Plaintiffs illegally acquired 74% of the shares in the company, which is false and malicious. They also maintained that the defendant published the defamatory statements.
12. According to *Black's Law Dictionary*, 9<sup>th</sup> Edition at page 479 defamation is defined as:

“The act of harming the reputation of another by making a false statement to a third person.”
13. Patrick O'Callaghan in the *Common Law Series: The Law of Tort* at paragraph 25.1 stated that the law of defamation is primarily concerned with the protection of a person's reputation and not his or her character.
14. The elements of defamation were outlined by the Court of Appeal in case of *Selina Patani & another v Dhiranji v. Patani* [2019] eKLR and *Raphael Lukale v Elizabeth Mayabi & another* [2018] eKLR as follows:
  - 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.
15. To begin with, the plaintiffs' uncontroverted evidence has established that the Defendant published the statements on her Facebook handle.



16. Were the statements complained of defamatory? In *S M W v Z W M* [2015] eKLR the Court of Appeal stated as follows:

“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.”

17. In *Halsbury’s Laws of England* 4<sup>th</sup> Edition Vol. 28 at page 23 the authors opined:

“In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense.”

18. Kuloba J. (as he then was) in J. *Kudwoli & anor v Eureka Educational & Training Consultants & 2 others* [1993] eKLR stated that a reasonable man in the context of defamation cases is simply a fair-minded person with ordinary intelligence.

19. This court holds the view that the Facebook posts were indeed defamatory and referred to the plaintiffs. The defendant stated in the said posts that the people who were taking her house at Kas Kazi were some Indians from Nairobi who had illegally acquired 74% of her company. The plaintiffs, who are of Indian origin, have tendered uncontroverted evidence to show that they acquired a total of 74% of the shares in Kas Kazi Property Services Limited from the defendant and her husband in 2018 and 2019 and are currently directors in the company alongside the defendant. Any reasonable person who knows the Plaintiffs and their involvement in the company would readily conclude that the Facebook posts referred to them even though their names were not mentioned therein.

20. Further, on a plain reading of the Facebook posts, it can be imputed that the Plaintiffs fraudulently obtained 74% of the shares in Kas Kazi Property Services Limited and had illegally evicted the defendant from the subject property. This is also the innuendo that according to the Plaintiffs, would be deduced from the offending posts by a reasonable person consuming them as pleaded at paragraph 7 of the Plaint. I therefore find that the plaintiffs reputations were indeed injured as a result of the offending publications.

21. Further, as the plaintiffs have produced evidence to show how they acquired their respective shareholding in the Company, I find that they have sufficiently established that the Facebook posts were false and malicious.

22. For the foregoing, the court finds that the Plaintiffs have proved their case on a balance of probability against the Defendant.

### **Whether the Plaintiff are entitled to the reliefs sought**

23. On the prayer for a permanent injunction against the Defendant, the Plaintiffs did not advance any arguments in that regard, hence the court is not inclined to make any orders to that effect.

24. On damages, it is well settled that an award of damages in defamation cases is discretionary. The court of Appeal in *C A M v Royal Media Services Limited* [2013] eKLR stated that:

“No case is like the other. In the exercise of discretion to award damages for defamation, the court has wide latitude. The factors for consideration in the exercise of that discretion as



enumerated in many decisions including the guidelines in *Jones v Pollard* (1997) EMLR 233-243 include objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published and any repetition; subjective effect on the Plaintiff's feelings not only from the prominence itself but from the Defendant's conduct thereafter both up to and including the trial itself; matters tending to mitigate damages for example, publication of an apology; matters tending to reduce damages; vindication of the Plaintiff's reputation past and future."

25. In *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR, Mativo J. cited the case of *John v MG Ltd* (1996) 1 ALL E.R. where the English Court of Appeal held: -

"The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will compensate him for the wrong he has suffered. That must compensate him for damages to his reputation, vindicate his name, and taken account of the distress, hurt and humiliation which the defamatory publication caused...

Exemplary damages on the other hand had gone beyond compensation and are meant to "punish" the defendant. Aggravated damages will be ordered against a defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize."

26. As regards general damages, the Plaintiffs urged that an award of Kshs. 4,000,000/= for each of them would be adequate compensation. This, according to them, is in view of the fact that they run a prestigious steel fabrication company known as Kehar, a market leader in the transport sector and owing to the fact that the offending posts were widely circulated to the Defendant's audience and close friends in the United Kingdom where the Plaintiffs' relatives also reside. In support, they relied on the case *Arthur Papa Odera v Peter O. Ekisa* [2016] eKLR where the court awarded the plaintiff general damages of Kshs. 2 million.
27. On aggravated damages, the Plaintiffs urged the court to award them Kshs 3,000,000/= for the continuing injury to their reputation caused by the Defendant's refusal to pull down the publication and proffer any apology despite a demand to do so. Reliance was placed on the case of *Ken Odondi & 2 others v James Okoth Omburah t/a Okoth Omburah & Company Advocates* [2013] eKLR where the Court of Appeal upheld an award for exemplary damages since the appellants therein had refused to retract the offending article or apologise.
28. In assessing damages in this case, the court notes that the Plaintiffs did not provide any proof of their alleged market leading business and how it has been affected by the defamation. However, the court has taken cognizance of the fact that the defamatory post was circulated worldwide and within the country, specifically in Malindi, in view of the platform used and the numerous comments and/or exchanges thereon. It has also considered the fact that there was no apology or retraction of the offending posts by the defendant despite a demand having been issued in that regard by the Plaintiffs' advocates.
29. In the case of *Ben Kangangi v Anerlisa Muigai* [2022] eKLR, a businessman who was defamed by social media posts was awarded a global sum of Kshs. 2,000,000/- in damages. In *Mary Koli Kitonga v Ghetto Radio Limited* [2020] eKLR, the court awarded a plaintiff who was defamed via Facebook general damages of Kshs. 700,000/- and exemplary damages of Kshs. 200,000/- while in the case of *Charles Kinoti Akwalu v Josephine Kananu Nkwene* [2018] eKLR, a composite award of Kshs. 1,000,000/- was given to a business person defamed through a similar medium. In my view, these cases involved persons whose societal status is comparable to that of the Plaintiffs.



30. In the premises, a composite award of Kshs. 1,500,000/- each in damages shall be adequate compensation for each of the Plaintiffs.

Consequently, judgment is hereby entered for the Plaintiffs against the Defendant in the sum of Kshs. 1,500,000/= each plus costs of the suit and interest at court rates from the date of this judgment.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE, 2022.**

**J. N. MULWA**

**JUDGE**

