



**Stephenson v Standard Group Limited (Civil Suit 249 of 2016)
[2022] KEHC 14922 (KLR) (Civ) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14922 (KLR)

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

**CIVIL
CIVIL SUIT 249 OF 2016**

**CW MEOLI, J
OCTOBER 28, 2022**

BETWEEN

MARK LLOYD STEPHENSON PLAINTIFF

AND

STANDARD GROUP LIMITED DEFENDANT

JUDGMENT

1. Mark Lloyd Stephenson, (hereafter the Plaintiff) in his suit filed on September 26, 2016 against The Standard Group Limited (hereafter the Defendant) avers that on or about the October 17, 2015 at page 17 of the Standard Newspaper Edition hard copy and in its digital pages under the heading “Foreigner In Court Over Forgery Claim”, the Defendant falsely and maliciously printed and published or caused to be printed and published statements which in their natural/ ordinary meaning or by innuendo were defamatory of the Plaintiff. The Plaintiff avers that by virtue of the publication of the said statements, he has been injured in his credit, character, and reputation and in his profession as a foreign international investor and has been brought into public scandal, ridicule, odium and contempt in the estimation of the right-thinking members of society. The Plaintiff seeks *inter alia* general damages for libel; aggravated and exemplary damages; a permanent injunction to restrain the Defendant by themselves their agents or servants from further publishing, printing, circulating, distributing or disseminating in any manner including on digital platforms any other or further articles concerning the Plaintiff; an apology and retraction in an article of the same prominence as the defamatory publication and; costs .
2. On February 17, 2017 the Defendant filed a statement of defence denying the key averments in the plaint and liability for defamation. The Defendant admitted the publication but averred that the same consisted of a report of court proceedings concerning the Plaintiff’s arraignment before the Makadara Law Courts on allegations of falsification of documents relating to directorship in a company and



further denied that the words employed in the publication in their natural/ ordinary meaning or by innuendo conveyed were defamatory of the Plaintiff. In his reply to the defence the Plaintiff further reiterated the other contents of his plaint.

3. During trial, only the Plaintiff adduced evidence, testifying as PW 1. He identified himself as an investor, director, and shareholder at Universal Resources International, holding the position of Chief Executive Officer (CEO) since 2010. It was his evidence that the company is involved in prospecting and mining of minerals in Kenya. He proceeded to adopt his witness statement dated September 23, 2016, the gist thereof repeating almost verbatim the averments in the plaint. The Plaintiff asserted that he had suffered at a personal level and his business had been adversely affected by the defamatory publication losing the projected revenue amounting to USD 21,328,141 per year in the 3rd year of business. He further identified and produced his documents in support of his claim as P Exh 1 to P Exh.11.
4. Under cross-examination by defence counsel, he admitted the use of his photograph, the words “claim” in the heading of the article and “alleged” in the body of the article. Upon being shown a copy of the charge sheet (P Exh 4), he confirmed having been arraigned in court for an offence but asserted his grievance to be that the article in its natural ordinary meaning or by innuendo was defamatory as pleaded in the plaint. In re-examination he contended that the entire article was defamatory in that the inference therein to a complaint in respect of another company known as Boe Sambu, the article it insinuated that he was a serial fraudster.
5. Parties subsequently filed their respective submissions. Counsel for the Plaintiff opened his submissions by relying on the definition of defamation found in Patrick O’ Callaghan’s *The Law of Tort* and *Black’s Law Dictionary*, 8th Edition at pg 448. And invoking Article 33(1) & (3) of the [Constitution](#), the [Defamation Act](#), the decision in [John Ward v Standard Ltd](#) HCCC 1062 of 2005 as cited with approval in [Selina Patani & Another v Dhiranji V Patani](#) [2019] eKLR, counsel submitted that the publications by the Defendant were defamatory and intended to bring ridicule and contempt on his Plaintiff’s person, name, and reputation amongst the right-thinking members of society. It was his contention that their natural, ordinary meaning and or by innuendo the statements in the offending publication conveyed that the Plaintiff was a involved in forgery, a fraudster, a thief, filthy, a schemer, a rogue investor, dishonest, oppressive and corrupt. Further calling to aid the cases of [Musikari Kombo v Royal Media Services Limited](#) [2018] eKLR and [Phineas Nyagah v Gilbert Imanyara](#) [2013] eKLR counsel submitted that the article by the Defendant did not amount to fair and accurate report of court proceedings and contained serious allegations which in the circumstances of this case were not covered by a defence of absolute or qualified privilege as envisaged in Section 6 and 7 of the [Defamation Act](#). The remainder of the submissions reiterated evidential matters some of which appeared to go beyond the material presented by the Plaintiff. In conclusion the court was urged to find the Defendant liable and to award damages accordingly.
6. On the part of the Defendant counsel submitted that the burden of proof lay upon the Plaintiff to demonstrate on a balance of probabilities that the words pleaded in the plaint conveyed either in their ordinary meaning or by innuendo and could be understood as bearing the meanings attributed thereto by the Plaintiff’s pleadings. Citing the provisions of Order 2 Rule 7(1) of the [Civil Procedure Rules](#) and the decision in [Baraza Limited & Another v George Onyango Oloo](#) [2018] eKLR counsel asserted that in establishing libel the Plaintiff must show whether the defamatory meaning of words was direct, indirect or both. Counsel stated that the Plaintiff’s pleadings were not in compliance with the Order 2 Rule 7(1) in that while relying on innuendo, he failed to give particulars of facts and matters upon which a reader would conceive the defamatory nature of the words that were not expressly defamatory of themselves. Thus, he contended that the plea of innuendo was unavailable to the Plaintiff.



7. On whether the words in the article were defamatory in the natural and ordinary meaning the Defendant’s counsel emphasized the undisputed facts that the Plaintiff was arraigned in court on the charges contained in the charge sheet produced at the trial, admitted the photograph taken of him and his co-Accused in court and the use of the words “claim” and “alleged” in the article. Hence the publication comprised a fair and accurate report of court proceedings and could not engender in the mind of a reasonable reader the defamatory meanings attributed to the article by the Plaintiff. In other words, that the words used in the article were not defamatory in their natural and ordinary meaning or capable of being understood by a reasonable reader to convey the meanings pleaded by the Plaintiff, or that the Plaintiff had actually committed the offences in question. The Court was urged to apply the test of a reasonable reader to objectively determine whether the publication naturally depicts the plaintiff in a defamatory. Concerning the Plaintiff’s alleged financial loss arising from the publication, counsel asserted that there was no evidence tendered to support the claim. Moreover, that the Plaintiff and his company were distinct juristic persons, and the former could not purport to plead loss occasioned to his company as a result of defamation to him in his personal capacity.
8. Finally, it was submitted that in a cause founded on defamation it is imperative for a plaintiff to establish not only publication of the defamatory statement to third parties, but also the tendency of that publication evoking feelings of contempt or low estimation of such plaintiff. Counsel relied on several decisions for this proposition, including *Daniel N Ngunia v KGGCU Limited* Civil Appeal No 281 of 1998; *George Mukuru Muchai v The Standard Limited* HCCC No 2539 of 1997 and ; *Harrison Andala Ashikube v Standard Group Limited* [2010] eKLR He asserted that the Plaintiff herein had failed to lead evidence on this aspect and in conclusion urged the Court to dismiss the suit with cost.
9. The Court has considered the evidence on record and the parties’ respective submissions. The Court of Appeal had this to say in *Musikari Kombo v Royal Media Services Limited* (2018) eKLR :

“The law of defamation is concerned with the protection of a person’s reputation. Patrick O’Callaghan in the Common Law Series: The Law of Tort at paragraph 25.1 expressed himself in the following manner:

“The law of defamation, or, more accurately, the law of libel and slander, is concerned with the protection of reputation: ‘As a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporal sanction ...’ Defamation protects a person’s reputation that is the estimation in which he is held by others; it does not protect a person’s opinion of himself nor his character. ‘The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit’ and it affords redress against those who speak such defamatory falsehoods...”
10. Actions founded on the tort of defamation bring out the conflict between private interest and public interest. Article 33(1) of the *Constitution* guarantees every person’s right to freedom of expression including the freedom to seek, receive or impart information or ideas but sub-Article (3) states that “In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others”. Article 34 guarantees the freedom of the media while Articles 25 and 31 protect the inherent dignity of every person and the right to privacy. These rights are reinforced by the provisions of the



Defamation Act. Contemplating these competing rights Lord Denning MR stated in *Fraser v Evans & Others* [1969]1 ALLER 8

“The right of speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise it without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed.”

11. In *Halsbury’s Laws of England* 4th Edition Vol 28 paragraph 10- a defamatory statement is defined as follows:

“...a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business”.

See also the Court of Appeal definition of a defamatory statement in *SMW v ZWM* (2015) eKLR.

12. Additionally, *Gatley on Libel and Slander* 6th Edn states that:

“A man commits the tort of defamation when he publishes to a third person words (or matter) containing an untrue imputation against the reputation of another”.

13. As stated in *Selina Patani & Another vs Dhiranji V Patani* (2019) eKLR’s the law of defamation is concerned with the protection of reputation of persons, that is, the estimation in which such persons are held by others. In that case, the Court of Appeal stated that:

“In rehashing, we note the ingredients of defamation were summarized in the case of *John Ward v Standard Ltd* HCC 1062 of 2005 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.”

14. In this case, there is no dispute regarding ingredients ii) and iii) above as the Defendant readily admits to publishing the article in question and that it was referring to the Plaintiff. The questions in dispute are whether the statements in the article are defamatory and false or whether they consist of a fair and accurate report of Court proceedings covered by privilege in section 6 and 7 of the Defamation Act. I propose to deal with both issues concurrently.

15. It is useful in determining these issues to set out in full the contents of the article complained of as reproduced in the plaint. The same carried a picture of the Plaintiff and his co-accused while before the court and stated as follows:

“An Australian national was yesterday arraigned in court for allegedly forging a mining company’s documents in order to take up the directorship.

Mark Lloyd, who appeared in Makadara law Courts alongside his co-accused Richard Githae, was said to have forged an affidavit alleging that Universal Resource International Ltd (URI) directors Michael Lynch, Simon Mutua and Adam Musa had resigned.



The two accused were said to have allegedly forged the documents on September 14, 2011 within the country with others who were not before the court with intent to defraud or deceive.

URI a mining company involved in prospecting for iron ore, manganese and copper in a number of locations in Kitui, Kibwezi and two sites in Voi.

The company was initially made up of the shareholders. Stephen Piano, Mr. Lynch, Githae, David Mutua and John Ndegwa started iron June 29, 2010.

In the shareholding agreement, Mr. Piano held 40 shares, Lynch 30 whereas Githae, Mutua and Ndegwa had 10 shares each.

Three months later, on August 11, Mutua and Ndegwa dropped from the company and Simon Mutua and Adam Musa, who acquired a 10 per cent stake each took up their positions.

In 2011, Lloyd was alleged to have returned an allotment form, together with minutes of a meeting in which he allocated himself 200 shares, gave Mr. Piano 650, Githae 80, Lynch 30 and for Mutua and Adam each got 20 shares each. What followed next was to reduce the three men's (Mutua, Adam and Lynch) their voting rights as directors. Lloyd came to be involved with the company through Piano who is also an Australian National. Elsewhere directors of a Gold mining company Boe Sambu have a complaint with the Criminal Investigations Department over the same case of forging directorship papers. The case will be heard in February next year."

16. In the case of the *Onama v Uganda Argus Ltd* (1969) EA the East African Court of Appeal stated as follows:

"In deciding whether the words are defamatory, the test is what the words could reasonably be regarded as meaning, not only to the general public, but also to all those "who have a greater or special knowledge of the subject matter".

17. The Court stated in *Elizabeth Wanjiku Muchira v Standard Ltd* [2011] eKLR that whether a statement is defamatory or not is not so much dependent on the intentions of the defendant but on the "probabilities of the case and upon the natural tendency of the publication having regard to the surrounding circumstances. If the words published have a defamatory tendency it will suffice even though the imputation is not believed by the person to whom they are published."-*Clerks & Lindsell on Tort* 17th Edition 1995-page 1018."

18. The Plaintiff admitted during the hearing that the article related to court proceedings in a court of law before which he and another had been arraigned on criminal charges. He produced as part of his exhibits a copy of the charge sheet and proceedings before the Makadara Law Courts as P Exh 4 The former indicates that the Plaintiff was charged with three counts of Making a false document contrary to section 347 (a) of the *Penal Code*. The directors in respect of whom the false documents were alleged to have been made are stated in the particulars of the charges to be Michael Gerard Lynch, Simon Mutuku Mutua and Musa Adams, in counts 1,2 and 3 respectively. The common particulars in all the counts are to the effect that:

"On or about the 14th day of September 2011 at an unknown place within the Republic of Kenya jointly with others not before the court with intent to deceive or defraud and without lawful authority or excuse made a certain false document namely Affidavit of Resignation



as a Director of Universal Resource International of one (name purporting to be a genuine affidavit sworn and signed by the said (name).”

19. According to the record of proceedings before the court the Plaintiff was initially arraigned before the Court on March 14, 2014 and charged alone in respect of the three counts and had taken plea on May 14, 2014. On August 4, 2014, the prosecution presented a consolidated charge sheet in which the Plaintiff and his co-accused Richard Kariuki Githae were jointly charged, and they took a fresh plea concerning the same charges outlined above. The proceedings of February 5, 2015 which are the latest in the Plaintiff's tendered record of proceedings indicate that the case was scheduled for hearing on July 9, 2015.
20. However, it appears that by the October 17, 2015 when the Defendants published their article, hearing had not commenced and subsequently the Plaintiff raised objections that led to the ruling and order by the Court on March 4, 2016 requiring the Defendant to publish a clarification to the effect that “the article was based on facts which are yet to be proved in Court and in no circumstances should the same be construed as proved facts” . This was followed by the contempt ruling delivered on September 5, 2016 in which the court imposed a fine as penalty for the Defendant's failure to comply. The rulings are part of P Exh4, and on the face of the latter ruling it is indicated that hearing had been rescheduled to September 23, 2016. The Plaintiff claimed in his evidence that he was acquitted of the charges but did not tender evidence in support of his claim.
21. I understood the Plaintiff's pleaded complaint concerning the article by the Defendant to be that the article was false and malicious as the criminal case had yet to be heard and facts proved, and secondly that the words used in the article were defamatory in their natural and ordinary meaning and or by innuendo. In *Musikari Kombo (supra)* the Court of Appeal stated that:

“The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive. In Halsbury's Laws of England 4th 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.”
22. Having carefully reviewed the words contained in the article which is the subject of this suit alongside the court proceedings, charge sheet and oral evidence of the Plaintiff I find myself unable to accept that in their natural and ordinary meaning they convey the imputations attributed to them by the Plaintiff. First, the headline of the article albeit bold, reads: “Foreigner In Court Over Forgery Claim”. The Article makes clear that the said person had been “arraigned in Court for allegedly forging a mining company's documents“ and employs phrases such as “was said to have forged”, “were said to have allegedly forged” and “was alleged” in reference to the offences and in the write-up giving some background to the charges, the latter which the Plaintiff has not shown to be false. The report indicates that the case was yet to be heard.
23. Further, reference therein to the directors of Boe Sambu Company making a complaint to the Criminal Investigation Department starts with the word “Elsewhere“before proceeding to state that the company had “filed a complaint...over the same case of forging directorship papers”. It is not readily evident how this latter portion is related to the Plaintiff. The Plaintiff made heavy weather of the proceedings in the criminal Court and orders made against the Defendants in that regard. This Court



is not bound by the findings of that court. Secondly, having looked at the proceedings and the two rulings of the of the court, it is my view that they have no bearing on the instant suit that is grounded on defamation. As the criminal court observed, the issues at the heart of the Plaintiff's objection and rulings related to the sub judice rule and not to an action for defamation. Indeed, the clarification made by the Defendant pursuant to the Court's order if anything, reiterates what to this court is the import of the entire article, namely, that it was a report of the charges and allegations made against the Plaintiff through the preferred charges. To my mind therefore the words in the article in their ordinary and natural meaning are not defamatory.

24. As regards the assertion of defamation by innuendo, the words of the Court of Appeal in *Baraza Limited v George Onyango Oloo* (2018) eKLR equally apply in this case:

“The second issue as regards liability is whether innuendo was properly pleaded to justify a finding of liability against the appellants. The Black's Law Dictionary, 8th Ed 2007 defines an innuendo in the context of the law of defamation to mean: "the plaintiff's explanation of a statement's defamatory meaning when the meaning is not apparent from the statement's face." Ordinarily the innuendo meaning is resorted to show that words that are on the face of it innocent carry a different and defamatory meaning that is not in general knowledge. It is for that reason that Order 2 rule 7 (formerly Order VI rule 6A) of the Civil Procedure Rules requires a party who relies on an innuendo to give particulars of the defamatory meaning of the words complained of, if such meaning is not apparent in their natural and ordinary meaning. (See *Grace Wangui Ngenye v Chris Kirubi & Another* [2015] eKLR). We agree with the appellants that the respondent's pleadings were not elegantly drawn. He simply lumped together the ordinary and natural meaning of the words of the broadcast as well as the alleged innuendo and pleaded their meaning in paragraph 6 of the plaint. Strictly speaking other than throwing around the word "innuendo" in the plaint, the respondent neither pleaded an innuendo properly so called, nor gave any special meaning of the words in the broadcast. A careful reading of the judgment leaves no doubt that the learned judge determined the case on the basis of the ordinary and natural meaning of the words complained of, which she found to be defamatory of the respondent. She totally ignored the alleged and ill-pleaded innuendo, and for that we cannot fault her."

25. The foregoing is true of the Plaintiff's plaint as paragraph 4 thereof merely lumps together the ordinary and natural meaning of the words in the article as well as the alleged innuendo. The Plaintiff did not plead any particulars of the facts and matters upon which an inference of innuendo could be based. Indeed, the matters pleaded at paragraph 4 a) to h) appear to be drawn from what the Plaintiff supposes to be the plain meaning conveyed by the words used in the report. It is therefore the court's considered view that the Defendant's article is at worst a garnished report of the fact of the Plaintiff's arraignment and in my view, no reasonable man reading it in its plain sense and as a whole would understand it in a defamatory sense.

26. Moreover, the only person who testified in support of the Plaintiff's case was the Plaintiff. Defamation involves imputations that tend to cause injury to the reputation of a person, and a successful plaintiff must demonstrate the injury to his reputation or standing as part of the ingredients of defamation, and not merely rely on his own estimation of himself. In *SMW v ZWM* (2015) eKLR, the Court of Appeal observed:

“15. Black's Law Dictionary 8th Edition defines defamation as the act of harming the reputation of another by making a false statement to a third person. (emphasis added). 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: see Gatley on Libel and Slander (10th edition). A plaintiff in a defamation case must prove that the words were spoken /written; that those words refer to him/her; that those words are false; that the words are defamatory or libelous and that he/she suffered injury to reputation as a result. ...

19. The trial judge had considered the testimony of witnesses with a view to assessing their credibility and at no point did any of the Appellant's witnesses at trial consider the appellant to have been defamed by the contents of the letter. The witnesses who testified at trial constitute and pass the ordinary reasonable man test as they were not only neighbours but also people known to the disputants. There was no evidence of any public ridicule, hatred or even shunning experienced by the appellant."

The appellant had only testified at the trial court that he felt shy to interact with some of his friends in tea farming. The appellant appears to have had an apprehension of defamation on himself ostensibly based on how he himself considered his standing in the society. That is not what defamation is in law. The appellant himself further testified before the trial court that nothing had changed in his dairy farming business. Moreover, despite being a tea farmer in Gatundu, he had since relocated to his Karen home at the time of these proceedings where the chances of any possible defamation of him became slimmer based on the existing solitary and liberal lifestyle adopted by urbanites. As elucidated earlier, the test to be applied is that of the reasonable ordinary man, not the appellant or the respondent..." (Emphasis added).

27. The foregoing was reiterated in *Patani's* case (*supra*), where the same Court stated:

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- “26. The other issue for our consideration is whether the Judge erred in finding it was imperative to call a third party to prove the appellants claim for defamation. In principle, defamation is actionable per se. This does not mean the ingredients of the tort must not be proved. It simply means you must prove the elements of the tort of defamation; what need not be proved is the damage suffered. If no damage is proved, a claimant may be entitled to nominal damages. In this case, the legal issue is whether the appellants proved there was publication to a third party and injury or damage suffered to their reputation.
27. The evidence on record is the testimony by the 2nd appellant that her boss read the letter. The alleged boss was never called to testify. No other third party was called to testify as to the publication and injury to reputation. As to whether the appellant's character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the appellants reputation and standing in society was injured. It is in this context that we agree with the learned Judge that a person's own view about his/her reputation is not material in a claim for defamation; there must be evidence from a third party to the effect that the standing and reputation of the claimant has been lowered as a result of the defamatory publication. In



the absence of third party evidence, we find no error of law on the part of the Judge in arriving at the determination that the appellants did not prove their claim for defamation." (Emphasis added)

See also *Daniel N Ngunia v KGGCU Limited* (2000) eKLR and *Hezekiel Oira v Standard Limited & Another* (2016) eKLR.

28. Similarly in this case, the Plaintiff did not tender evidence through other witnesses that the words in the article complained of caused or had the tendency to cause injury to his reputation by way of public ridicule, hatred or even being shunned or that it tended to lower his esteem in the mind of right-thinking members of society. It was not enough for the Plaintiff to tender in that regard copies of emails and other correspondence by persons who were not called to testify. In the circumstances, even if the Defendant's defense of qualified privilege were to be found unsustainable, the Plaintiff's case would still fail as a key ingredient of defamation has not been proved.
29. In the circumstances, the Court finds that the Plaintiff has failed to prove his case on a balance of probabilities and will dismiss the suit with costs to the Defendant.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 28TH DAY OF OCTOBER, 2022.

C.MEOLI

JUDGE

In the presence of:

For the Plaintiff: N/A

For the Defendant: Mr Wepo

C/A: Carol

