



**Macharia v Edelvale Trust Jamaa Home & Mission Hospital (Civil Case
254 of 2018) [2022] KEHC 14118 (KLR) (Civ) (21 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14118 (KLR)

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

**CIVIL
CIVIL CASE 254 OF 2018**

**JK SERGON, J
OCTOBER 21, 2022**

BETWEEN

NELSON WERU MACHARIA PLAINTIFF

AND

EDELVALE TRUST JAMAA HOME & MISSION HOSPITAL DEFENDANT

JUDGMENT

1. The plaintiff in the present instance lodged a suit against the defendant *vide* the plaint dated October 31, 2018 and sought for the following reliefs:
 - a. General damages.
 - b. Damages on the footing of aggravated or exemplary damages.
 - c. An injunction restraining the defendant and each of them by themselves, their servants or agents or otherwise howsoever from further publishing or causing to be published words defamatory of the plaintiff.
 - d. Costs of the suit.
 - e. Interest on (a) and (b) above.
 - f. Any further relief the court deems fit to grant.



2. The plaintiff pleaded in the plaint that on the issue of the Daily Nation Newspaper dated Saturday the 18th of August, 2018 the defendant caused to be published the following defamatory publication concerning him:

“CPA Nelson Weru Macharia ID No 22836337. This is to notify the general public that the above named person is no longer a staff of Edelvale Trust Jamaa Home and Mission Hospital and is not authorized to transact any business on our behalf. Any transactions entered into will not be honored.”

3. The plaintiff pleaded in the plaint that the aforesaid statement could in its natural and ordinary meaning, be taken to infer that he is a dishonest person with questionable integrity.
4. The plaintiff further pleaded that the impugned statement/ words were actuated by malice since he had already left the employment of the defendant and hence the content of the abovementioned statement was untrue.
5. It is pleaded in the plaint that as a direct result of the impugned publication, he suffered injury to his credit and reputation and for which he claims damages.
6. Upon being served with summons, the defendant entered appearance and put in its statement of defence dated March 21, 2019 to deny the assertions made in the plaintiff's claim.
7. At the hearing, the plaintiff testified while the defendant called one (1) witness.
8. In his chief testimony, the plaintiff adopted his signed witness statement as evidence and produced his bundle of documents as exhibits.
9. In cross-examination, the plaintiff stated that he was employed at the senior level of management and that he did not oversee the role of a payable account.
10. The plaintiff further stated that communication was made between the defendant and external auditors through its internal auditors.
11. In re-examination, it is the plaintiff's testimony that he received a call from a friend in respect to the impugned publication since his photograph was published therewith and that he felt defamed.
12. For the defence, Victor Nemasu who was DW1 similarly adopted his signed witness statement as evidence and testified that the publication was part of standard procedure upon a senior member of staff exiting following termination of employment.
13. In cross-examination, the witness gave evidence that he works as a Human Resource Manager and that the plaintiff was terminated from employment in the year 2018 and that his exit was published.
14. The witness further gave evidence that the defendant did not give notice of publication to the plaintiff.
15. Upon close of the hearing, the parties were directed to put in written submissions.
16. On his part, the plaintiff submits that he has brought sufficient evidence to prove that the impugned words were published by the defendant and that the said words are defamatory of him.
17. The plaintiff further submits that the impugned publication is unjustified since it disclosed unnecessary information pertaining to the plaintiff and in addition, included his photo, thereby exposing him to ridicule and contempt. To buttress this point, the plaintiff makes reference to the case



of *Nation Media Group Ltd & 2 others v John Joseph Kamotho & 3 others* [2010] eKLR where the Court of Appeal rendered itself in the following manner:

“The 2nd respondent, an ambitious medical doctor, had his career cast in bad light. Obviously, reputation is an integral and important part of the dignity of the individual and once besmirched by an unfounded allegation a reputation can be damaged forever, especially if there is no opportunity to vindicate one’s reputation.”

18. On the reliefs sought, the plaintiff contends that he is entitled to an award of general damages as well as aggravated damages since the impugned publication was not retracted or mitigated in any manner whatsoever.

19. In response, the defendant submits that the words published cannot be said to be defamatory of the plaintiff since they are true in nature and were made without malice, citing the case of *Jacob Mwanto Wangora v Hezron Mwando Kirorio* [2017] eKLR in which the court held thus:

“...It is that the words should be defamatory and untrue and should be published if and concerning the plaintiff. That is the plaintiff should aimed at or intended by the defendant.....”

In the scholarly by Gatley on Libel and Slander 6th Edition the legal meaning of defamation is stated as follows:

“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.”

20. The defendant further submits that the words published are fair comment and on a matter of public interest, since the plaintiff had left the employment of the defendant.

21. On damages, the defendant takes the view that the plaintiff is not entitled to an award of damages in the absence of proof of defamation and therefore pleads with this court to dismiss the plaintiff’s claim with costs.

22. Upon considering the evidence tendered and the competing 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 defences of truth/justification and fair comment are available to the defendant; and
- iii. Whether the plaintiff is entitled to the reliefs sought.

23. In order to establish a defamation claim, a plaintiff is required by law to prove certain specific ingredients. In addition to a few of the authorities cited by the parties, the relevant ingredients were also laid out in the cases of *Samuel Ndungu Mukunya v Nation Media Group Limited & another* [2015] eKLR and *Brian Odhiambo Oluoch v Standard Chartered Bank Limited* [2017] eKLR and are as follows:

- a. That the libel was published by the defendant.
- b. That the published words refer to the plaintiff.
- c. That the statement as published is false and defamatory of the plaintiff.



- d. That the publication was malicious.
24. The above ingredients were reaffirmed by the Court of Appeal in the recent case of *Musikari Kombo v Royal Media Services Limited* [2018] eKLR cited in the submissions by the plaintiff.
25. From my analysis of the pleadings and evidence placed before me, it is not in dispute that the defendant caused to be published the impugned words in its capacity as the former employer of the plaintiff, and that the same was in reference to the plaintiff. I am therefore satisfied that the plaintiff has satisfied the first and second ingredients above.
26. On the third ingredient to do with whether the publication was false and defamatory of the plaintiff, I considered the definition of what constitutes a defamatory statement as demonstrated by the Court of Appeal in the authority of *S M W v Z W M* [2015] 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.”
27. As stated hereinabove, the essence of a defamatory statement lies with its tendency to lower the reputation of the claimant in question. Furthermore, *Black Law's Dictionary* 8th Edition defines defamation as:
- “The act of harming the reputation of another by making a false statement to a third person.”
28. The courts have unanimously held that in order to determine whether a statement or publication is defamatory, one must seek to discover the meaning conveyed by the words in question to an ordinary/ reasonable person. In so stating, I will borrow from the reasoning of the Court of Appeal in the authority of *S M W v Z W M* (supra) thus:
- “According to Halsbury's Laws of England 4th Edition volume 28 at page 23;”
- “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.”
- “Thus, in determining the meaning of words for purposes of defamation, the court does not employ legal construction, it will consider the layman's understanding of the same. The question is not what the defendant intended. The mere fact that the hearers understood the language in a defamatory sense does not make it defamatory unless they were reasonably justified in so understanding it. The words complained of should be considered in their natural and ordinary meaning: see *Gatley on Libel and Slander* (8th edition) paragraphs 88-93.”
29. From the foregoing, it is evident that the test applicable in defamation cases is objective in nature and is dependent on what the words would mean to a reasonable person.
30. It therefore rests with a plaintiff to demonstrate to this court that the words published by the defendant would naturally be taken to have a defamatory meaning.
31. In the plaint, the plaintiff set out the natural and ordinary meaning of the words associated with the impugned publication in the manner indicated earlier in this judgment.



32. Upon considering the same alongside the contents of the publication in question and the evidence tendered, I am however not convinced that the plaintiff has demonstrated by way of credible evidence the manner in which the publication were aimed at or served the purpose of defaming him, or that his reputation was lowered in the manner pleaded, as a consequence.
33. On the ingredient of malice, upon my examination of the pleadings and evidence, I have not come across anything to indicate that the impugned publication was actuated by malice on the part of the defendant.
34. Consequently, I am of the opinion that the plaintiff has not proved his case for defamation against the defendant to the required standard.
35. On the second issue concerning whether the defences of truth/justification and fair comment are available to the defendant, upon my examination of the pleadings and evidence, I am satisfied that the defendant has brought credible evidence to show that the publication in question bore truthful facts, since it is undisputed that the plaintiff had left the employment of the defendant at the time the publication was made.
36. On the defence of fair comment on a matter of public interest, in order for the defendant to succeed, it would be required to meet the following threshold set out in the case of *Jacob Mwanto Wangora v Hezron Mwando Kirorio* [2017] eKLR cited in the submissions by the defendant, thus:

“ In Peter Carter – Rucks Treatise on Libel and Slander stated as follows:

“...For the defence of fair comment to succeed it must be proved that the subject matter of the comment is a matter of legitimate public interest; that the facts upon which the comment is based are true and that the comment is fair in the sense that it is relevant to the facts and in the sense that it is expressed of the honest opinion of the writer.”
37. Upon my examination of the pleadings, material and evidence on record, I find that the defendant has satisfied me that the impugned publication was derived from true facts and on a matter of public interest, given the nature of work that the plaintiff undertook during his time in employment with the defendant.
38. Consequently, I am of the view that the defences pleaded above are available to the defendant, in the circumstances.
39. Upon my finding that the plaintiff has not proved his claim for defamation against the defendant, I hereby dismiss the plaintiff's case with costs to the defendant.
40. Suffice it to say that I am enjoined by law to assess damages and consider the reliefs that I would have awarded had the plaintiff succeeded in his case, which brings me to the third issue for determination.
41. On general damages for defamation, I observed that none of the parties cited any guiding authorities in this respect.
42. Nonetheless, I would have considered the professional standing of the plaintiff who going by his testimony and supporting evidence, worked as a professional certified accountant.
43. Upon considering the case of *Geoffe & Associates v Fred Black Insurance Brokers Limited* [2019] eKLR in which the court awarded the sum of Kshs 500,000/= on general damages in respect to an accounting firm. I equally considered the case of *Simon Mwago v Kellen Maina* [2020] eKLR where the court made a similar award under this head to a financial assistant director.



- 44. I however note that in both instances above, the circulation of the impugned publications was limited in nature, in comparison to the present instance where the publication was made to a local newspaper with wider circulation.
- 45. Upon taking those factors into account, I would have awarded the plaintiff the sum of Kshs 1,000,000/ = on general damages.
- 46. In respect to an award of aggravated damages, while the plaintiff sought damages under this head, I find that he did not bring credible evidence of aggravating factors that would entitle him to such an award. Consequently, I would have declined to make any award under this head.
- 47. Concerning the prayer for injunctive orders, upon considering the foregoing circumstances, in the absence of any credible evidence to indicate the risk of subsequent publications of that nature, I would have been hesitant to award the same.
- 48. In the end therefore, the plaintiff's case is hereby ordered dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

.....
J. K. SERGON
JUDGE

In the presence of:
..... for the Plaintiff
..... for the Defendant

