



REPUBLIC OF KENYA



KENYA LAW
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**Ng'anga v Macharia (Civil Case 180 of 2019)
[2022] KEHC 15890 (KLR) (Civ) (18 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15890 (KLR)

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

CIVIL

CIVIL CASE 180 OF 2019

JK SERGON, J

NOVEMBER 18, 2022

BETWEEN

DANIEL NG'ANGA PLAINTIFF

AND

PAUL NG'ANGA MACHARIA DEFENDANT

JUDGMENT

1. The plaintiff herein filed a suit by way of the plaint dated 22nd August, 2019 seeking for general damages, exemplary and aggravated damages for defamation, costs and interest.
2. The plaintiff pleaded in his plaint that on November 14 2018 on live television interview at KTN News between 1039hrs to 1047hrs the defendant stated as follows:-

“.....what the MD MUWASCO did, he did a letter, purporting to have gone through the CEC water and irrigation; that is my office, and signed; you can see the forged signature and if you compare with my own signature you find there is a very big difference, so he forged the signature, he forged the stamp and this letter did not come to my office but when it went to WASREB, they contacted me and of course I objected and I did an official letter of objection saying that they should not be licensed because I did not approve ,so I think we need to be very genuine we need to be very clear because this is a criminal offence.....”

3. The plaintiff further pleaded in his plaint the defendant through KTN NEWS published the said live interview to viewers globally by uploading on YouTube; as a result, the same is still accessible to viewers worldwide through the link <https://www.youtube.com/watch?v=GoeOzL2Z5iw&t=492s>. That the aforementioned statement on a live television interview, so published the said words calculating thereby to increase the circulation of the allegation and with a view to disparage his good name.



4. The plaintiff avers that the aforementioned words referred to and were understood to refer to the plaintiff, and in their natural and ordinary meanings meant and were understood to mean by right thinking members of the public that he is an untrustworthy individual and that he had committed a crime of forgery of the defendant's signature and the stamp of his office as of that time, and was thus arrested for forgery by police.
5. The plaintiff further avers that the said words implied and implied that he is a criminal who uses or has used dubious means to get what he wants, that he is irrational and outrageous, manipulates the justice system and has no regard for the rule of law, that he is corrupt, that he is a coward boastful and arrogant, that he lacks honesty, professionalism, ethics, and prudent management, and that he was arrested by police for forgery.
6. It was also pleaded by the plaintiff in his plaint that His reputation, stature, and standing as a manager, director, leader, and in the eyes of right-thinking people in general have all decreased as a result of the aforementioned publications and broadcasting. That he sustained a major blow to his dignity and self-confidence, as well as a general loss in his career and calling.
7. The defendant was served with summons to enter appearance and all accompanying pleadings but they did not enter appearance and file a statement of defence. The plaintiff requested that interlocutory judgment be endorsed after the defendant failed to enter its appearance. Vide a court order dated 4th December 2019, interlocutory judgement was entered against the defendant. The matter proceeded by way of formal proof on 17th November 2021 with the plaintiff calling three witnesses to testify.
8. The plaintiff who was PW1 adopted his signed witness statement dated 7th November 2019 and stated that the words referred to himself because he was the Managing Director of Muranga Water and Sanitation Company, a position which I have served since 2007.
9. The plaintiff stated that he received several calls from friends and family asking him why he had to fake the defendant's signature. He had to explain to them that the information they had been given was false and that there had been numerous complaints made against him. There had also been a growing call for him to be fired as chairman of the Water Services Providers.
10. The plaintiff further stated that during some of the calls to the customer service department, he overheard a conversation between his colleague Jacob Mbuthia and a client who was disputing his water bill for the month and who said that the bills might be phony, exactly like the signature he had faked. That the customers' apathy about paying their water bills as a result of the aforementioned article decreased the company's revenue.
11. The plaintiff also stated that he received calls from the East African Water providers Association who told him that he has been unmasked through KTN News by the defendant and they urged him to step aside as the Chairman of the Association because he was going to hurt the association through his criminal act.
12. It is the testimony of the plaintiff that his eldest child at one time told him that he needed to repent because he had broken the law and therefore would go to hell and his family was also living in fear because they thought he was running away from the police.
13. Antony Ambungo (PW2) stated that he had called the plaintiff and informed him that there were several complaints about him and that there was a growing call for his removal as the chairman of Water Services Providers before adopting the contents of his signed witness statement dated 7th November 2019. He is the CEO of the Water Services Providers Association of Kenya.



14. Ndirangu Ngunjiri (PW3) wo stated that he acknowledged that he has known the plaintiff for 25 years and that the publications were intended to harm, discredit, intimidate, and destroy the plaintiff's reputation in all spheres of his life—personal, political, and professional—and that the timing of the publication was intended to cause the most political harm to his career. He is a water meter consultant. He then adopted the contents of his signed witness statement dated 9 November 2019 before stating that he has known the plaintiff since that date.
15. Up-on the close of the plaintiff case, the plaintiff filed its written submissions.
16. I have looked at the pleadings before me, the evidence and the comprehensive submissions by the plaintiff. This suit is undefended therefore all the evidence is uncontroverted. I adopt the plaintiff's issues for determination to be as follows
 - i. Whether the statements by the defendant were defamatory against the plaintiff
 - ii. Whether the said publication disparaged and discredited the plaintiff's reputation and injured his character and exposed him to hatred, ridicule, scandal, odium or contempt.
 - iii. Whether the general and aggravated damages are payable in the circumstances of this case and if so, how much?
 - iv. Who should bear the costs of this suit
17. On the first issue, the plaintiff submitted that the defendants made the statements against him and he made the statements to another person this being the very first step in proving that the statements were defamatory.
18. The plaintiffs further submitted that the aspect of publication being the second most important element is also present in this case as the defendant made the statements during a television programme during a live broadcast.
19. On the second issue, the plaintiff submitted that the defendant's words could not have been considered fair comment or the truth; as a result, the assertions they made were harmful to his reputation since they suggested that he was a criminal and that he employed questionable tactics to obtain his goals.
20. On the third issue, the plaintiff relied on the case of Miguna Miguna v Standard Group Limited & 4 others [2017] eKLR where the court awarded the plaintiff a total of Kshs.6,000,000/= in general damages and aggravated damages .Also in Elisha Ochieng Odhiambo v Booker Ngesa Omole (2021) eKLR the defendant was found liable at 100% for defaming the plaintiff and with malice ,general damages were awarded to the plaintiff against the defendants Kshs.6,000,000 and aggravated damages awarded to the plaintiff against the defendants Kshs.1,000,000/=.
21. The plaintiff submits that an award of Kshs.6,000,000/= would suffice.
22. I have considered the evidence tendered alongside the plaintiffs submissions and authorities relied upon. The following are the issues arising for determination:
 - a. Whether the plaintiffs have made a case for defamation against the defendant; and
 - b. Whether the plaintiffs are entitled to the reliefs sought.



23. On the first issue, I borrow from the Black's Law Dictionary, 8th edition definition of the term 'defamation' as follows:

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

24. The ingredients of a defamatory claim were laid out by the Court of Appeal in the case of Raphael Lukale v Elizabeth Mayabi & another [2018] eKLR and are that:

- a. The statement must be defamatory.
- b. The statement must refer to the plaintiff.
- c. The statement must be published by the defendant.
- d. The statement must be false.

25. In respect to the second and third ingredients which I wish to begin with, from my evaluation of the evidence tendered by and on behalf of the plaintiff, I established that the publications in question were made by the defendant and made reference to the plaintiff.

26. I am therefore satisfied that the plaintiff has established the two (2) referenced ingredients on defamation.

27. This brings me to the first ingredient to do with whether the impugned publications are defamatory of the plaintiff.

28. At the heart of a defamatory statement lies its tendency to lower the reputation of the claimant in question. This was the position held by 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.”

29. The legal position is that in order to determine whether a statement or publication is defamatory, one must seek to understand the meaning conveyed by the words in question to an ordinary/reasonable person.

30. On his part, the plaintiff under paragraphs 7 and 8 of his plaint pleaded that the words complained of in the impugned publications were defamatory of him in the sense that they could be inferred in their ordinary and natural sense to imply that he is inter alia irrational and outrageous, manipulates the justice system, corrupt, coward, he lacks honesty, professionalism, ethics and prudent management. The plaintiff also pleaded and testified that as a result of the impugned publications his reputation was lowered. This evidence was supported by that of PW2 and PW3 who were both independent witnesses.

31. I am satisfied that though the plaintiff did not set out verbatim the words published concerning him, he was able to set out the title of the said publications and describe in fair detail the nature of the publications made, as well as particularize their meaning in the ordinary and natural sense.

32. Upon considering the aforementioned particulars of defamation and innuendo pleaded in the plaint and in the absence of any contrary evidence, I conclude that the words published would ordinary sense be taken to have the meaning pleaded in the plaint.



33. Concerning the reputation of the plaintiff, credible evidence was tendered to support the claim that following the impugned publications, his reputation was negatively affected.
34. Further to the foregoing, I am alive to the existing legal principle that in instances of libel, the law presumes damage so long as a party has shown that the defamatory material was written or printed or in some permanent form. This was the position taken by the court in the case of Peter Maina Ndirangu v Nation Media Group Limited [2014] eKLR cited in the plaintiffs' submissions, where the court stated that in an action of libel damage suffered need not be proved. Such position was restated in the case of Alnashir Visram v Standard Limited [2016] eKLR.
35. In the premises, I am satisfied that the plaintiff has shown that the publications in question are defamatory of them.
36. 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.
37. Upon considering the nature, frequency and circumstances of the impugned publications coupled with the impact namely removal from his position as chairman of Water Services Providers, going by the evidence tendered, it is my view that the plaintiff has proved malice against the defendant. It is noteworthy that malice was not refuted by the defendant by way of evidence.
38. In respect to the ingredient to do with whether the publication 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.
39. In the present instance, I am satisfied that the plaintiff brought credible evidence to demonstrate the false nature of the impugned publications and which evidence was not countered by the defendant at the trial.
40. In view of the foregoing, I am satisfied that the plaintiff has established a claim for defamation against the defendant on a balance of probabilities.
41. This brings me to the second issue touching on whether the plaintiff is entitled to the reliefs being sought.
42. On general damages for libel, I considered the professional standing of the plaintiff who going by his testimony and supporting evidence, is the Managing director of Muranga Water Sanitation Company and Chairman of Water Services Providers with a well of experience in the Water Engineering field. I also took into account his evidence that he is a business man and a family man too.
43. I also considered the case of Miguna Miguna v Standard Group Limited & 4 others [2017] eKLR in which the Court of Appeal upheld an award of Kshs.5,000,000/= made under this head,
44. The more recent case of Michael Kamau Mubea v Nation Media Group Limited & 2 others [2019] eKLR in which this court awarded a sum of Kshs.7,000,000/= on general damages to a plaintiff who was both a lawyer and a journalist.
45. I therefore find the award of Kshs.3,000,000/= to be reasonable for the plaintiff, in the circumstances.
46. For exemplary and punitive damages, the same are only awarded by the court to show disapproval of the defendant's conduct when the court is satisfied that the publication was oppressive or arbitrary and propelled by the desire and as a way of drawing a financial benefit. The Court of Appeal in Board of



Trustees, National Social Security Fund VS Judy Wambui Muigai (2017) eKLR reiterated the position of the law when it held:

“Such damages are in our view called for in situations of oppressive, arbitrary or unconstitutional actions by servants of the government or wrongful conduct which has been calculated by the defendant to make a profit for himself, where such award is expressly authorized by the statute.....exemplary damages go beyond compensation and are meant to punish the defendant may well be ordered against a defendant who acts out of improper motive or where he is actuated by malice”

47. Exemplary damages, being aimed of punishing the defendants are also called punitive damages and therefore refer to one and the same remedy.
48. In this matter I do find that having had the opportunity to apologise but failed to do so, the defendant was in effect grand standing and therefore acted improperly. I do find that failure to apologise when demanded, justify and award of damages. With such determination, I do award to the plaintiff exemplary damages in the sum of Kshs 600,000/=.
49. I enter judgement in favour of the plaintiff and against the defendant in the following terms.
 - i. General damages for defamation Kshs.3,000,000/=
 - ii. Exemplary damages Kshs. 600,000/=
 - Total Kshs.3,600,000/=
 - iii. Costs of the suit.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 18th day of November, 2022.

.....
J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

