

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Civil Appeal 68 of 1998

JOSHUA MWANGI MAINA APPELLANT
VERSUS
HANNAH MUTHONI CHEGE RESPONDENT

(Appeal from original judgment in District Magistrate's Court at Kigumo in Civil Case No. 76 of 1993 dated 8th December 1997 by P. Mwangulu – D.M. – Kigumo)

J U D G M E N T

Joshua Mwangi Maina hereinafter referred to as the Appellant is aggrieved by the judgment of the District Magistrate Kigumo delivered on 8th December 1997 in which the magistrate gave judgment for the Respondent as against the Appellant and awarded her damages of Kshs.10,000/= for defamation.

It is the appellant's contention that the Respondent did not prove her case to the required standard and that no independent witnesses were called to support the Respondent's case.

During the trial the respondent testified that the applicant abused her in the presence of one Mwangi Gatiba calling her a prostitute and also alleging that she had bewitched his son. The Respondent did not call any witnesses as Mwangi Gatiba in whose presence the remarks were made had unfortunately died before the trial.

The appellant on his part gave evidence denying having abused the Respondent but maintained she was making the allegations because of a grudge as the appellant had reported the Respondent to Kigumo Police Station over the disappearance of his child.

The appellant called one witness Boniface Gitau an elder who confirmed that the Respondent had complained to him about being defamed by the appellant and asked him to go and warn the appellant.

From the above it is evident that the person in whose presence the defamatory remarks were alleged to have been made was Mwangi Gatiba whom it was accepted by both parties had died before the hearing of the suit. The appellant cannot therefore be blamed for failing to call a witness who was no longer accessible.

It is evident that the trial magistrate who had the benefit of seeing the witnesses and assessing their demeanour chose to believe and accept the appellant's evidence that the defamatory words were uttered and published to a 3rd party. I have no reason to depart from the finding of the trial magistrate in this regard. Moreover, the evidence of the defence witness Boniface Gitau was consistent with the evidence of the Respondent in that he confirmed that the Respondent had complained to him that she was defamed by the appellant. I am satisfied and do find that on the evidence which was before the trial magistrate, there was sufficient evidence to prove that the appellant was liable to the Respondent for defamation. I do therefore uphold the judgment of the lower court and dismiss the appeal. I award costs of this appeal to the Respondent. Orders accordingly.

Dated signed and delivered this 27th day of July 2005.

H. M. OKWENGU

JUDGE