



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CIVIL APPEAL NO. 64 OF 2002**

**PETER RUTTO.....1ST APPELLANT**

**ALICE RUTTO.....2ND APPELLANT**

**VERSUS**

**HENRY KIMETO.....RESPONDENT**

**JUDGMENT**

The appellants were the plaintiffs in Nakuru Chief Magistrate's Civil Suit No. 2468 of 1998 which they had filed against the respondent. They claimed that on 30/8/98 and 11/9/98 at Njoro area, Nakuru District, the respondent falsely and maliciously spoke and published of and concerning them in the presence of other people defamatory words.

The alleged defamatory words against the 1st appellant were as follows:-

***“My father used to lease land to them and when I refused they started hating me. When I was employed as an Assistant Chief spread rumours that I am unfit to rule and the Government can employ even a street boy” The particulars of defamation against the second appellant were as follows:-***

***“That you are rubbish, Njoka hii (you are a snake) mchawi (you are a witchcraft) (sic) why are you not driving yourself; if I find you in a bad place you will see me naked.”***

The appellants stated that the said words in the natural and ordinary meaning were understood to mean inter alia that they were bad people not fit to associate with right people of the society and that they were corrupt, dissolute, practising witchcraft, etc. They therefore claimed general damages.

The respondent in his defence admitted that he wrote a letter containing the words set out under the particulars of defamation in the plaint and that he published them to the District Officer, Njoro and the Officer in Charge of Njoro Police Station. He however denied that the said words bore or were understood to bear any of the meanings alleged in the plaint.

The respondent pleaded justification, saying that the alleged defamatory words were true of the appellants.

The respondent further claimed that the said defamatory words were published on an occasion of qualified privilege and he stated that:-

- (a) At the time of publication the Defendant was the Assistant Chief Njoro sub-location and

had difficulty discharging his duties due to threats and harrassment from the first appellant.

(b) He was under a duty to inform the District Officer, Njoro, and the officer in charge of Njoro Police Station about the problem.

(c) The said letter was written under a sense of duty and without malice towards the appellants and in honest belief that the statements made therein were true.

After a full trial, the trial court dismissed the appellant's case and held that the letter complained about by the appellants was a fair comment of what had transpired between the first appellant and the respondent. The appellants then preferred this appeal. In deciding this appeal, the main issues for determination are:-

(a) Whether the respondent spoke and/or published the alleged defamatory words.

(b) Whether the said words were defamatory or could be construed to be defamatory.

(c) Whether the defence of justification is available to the respondent.

(d) Whether the said words were published on an occasion of qualified privilege.

(e) Whether the appellants are entitled to any damages.

The first issue is expressly answered in the affirmative by the respondent in paragraph 2 of his defence where he admitted that he wrote a letter containing the words set out under the sub-heading "Particulars of defamation" and published them to the District Officer Njoro and the officer in charge Njoro Police Station. In my view the words complained of were plainly defamatory. The respondent, in his statement of defence stated that the said words were true in substance and in fact but in his testimony before the court he departed from his pleadings and never attempted to justify the said words. His defence that they were published on an occasion of qualified privilege is untenable. The concept of qualified privilege under Section 7 of Defamation Act Cap 36 of the Laws of Kenya applies only to Newspaper Publications.

I have carefully perused the judgment of the trial court and I am of the view that the trial magistrate was wrong in trying to justify the respondent's defamatory words when the respondent himself was unable to establish the defence of justification. I hereby set aside the said judgment.

The respondent, having admitted that he defamed the appellants should compensate them by way of general damages. I award to each of the appellants damages of Kshs.50,000/-.

The respondent shall also bear the costs of the lower court case as well as the costs of this appeal.

DATED at Nakuru this 24th day of September, 2004.

**DANIEL MUSINGA**

**AG. JUDGE**

**24/9/2004**