



**CBG v Star Publication Limited & another (Civil Case 23 of 2014)  
[2025] KEHC 2620 (KLR) (Civ) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2620 (KLR)

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

**CIVIL**

**CIVIL CASE 23 OF 2014**

**JN MULWA, J**

**MARCH 13, 2025**

**BETWEEN**

**CBG ..... PLAINTIFF**

**AND**

**STAR PUBLICATION LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ALPHONCE MUNGAHU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein filed a Petition for nullification of his marriage with his wife, JLW dated 5/2/2013. In response, the wife filed an Answer to the Petition, and a Cross-Petition seeking for dissolution/ divorce of the said marriage. These were at all material times proceedings pending hearing and determination by the court. For complementment of the record, upon the court hearing the cause, the Plaintiff's petition was ultimately dismissed and the Cross- Appeal allowed.
2. Meanwhile while the dispute was still pending determination in court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the Star publication dated 29/8/2013 published the impugned article of and concerning the parties, under the title.

‘Wife fights for Ksh.75.4M property.’

‘A woman has vowed to fight for property she assisted her husband to acquire before he filed for a divorce. In response to the case filed by BG, JL says she assisted him acquire properties worth millions while she was away in Europe. L says she entrusted her husband with the acquisition and maintenance of matrimonial property. She believed he was holding them in her trust. L says G made her believe that he was doing everything in the interest of their marriage. She wants to keep all the property they acquired together. L has accused her



husband of exploitation and malice. She said G had been intimidating her so that she could give up her rightful share. G filed for divorce two weeks ago. He asked the court to nullify the marriage which they solemnized on June 2, 2010. G said they briefly cohabited before tying the knot. L has not opposed the nullification of the marriage. She however wants the court to direct G to pay the costs of the suit. L accuses him of adultery and cruelty. She said G humiliated and embarrassed her when he slept with another woman during the burial of her mother in Mumias on April 6. "It constitutes a serious taboo within the Dholuo culture with the sole purpose of having the Respondent's family dehumanised and ostracized by the community", reads L's reply. She named the woman as a respondent in the case. L says she assisted her husband to secure contracts worth Sh 75.4 million early this year. She says that she identified the projects, worked on documentation and awarded him the contracts. The proceeds were used in acquiring and developing their matrimonial properties and other expenditures. She says G married her with full knowledge but for dishonorable purposes contrary to what he made her believe. L said he had ulterior motives..."

3. In addition, on 31/9/2013, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants further published and/or caused and/or authorized to be published in the 1<sup>st</sup> Defendant's edition of The Weekend Star, under the title "Photographer roped into divorce case", the following further words of and/or concerning the Plaintiff:-

"... A woman entangled in a divorce case in which a couple is fighting for the control of Sh. 75.3 million properties has been served with court papers naming her as a respondent in the dispute. JL, who is fighting to keep the property she allegedly acquired with her husband BG, roped in MW in the case. L accused W of having an affair with her husband. She said W, a photographer in Mumias, had been sent to record the funeral proceedings of her late mother but ended up in a club with G. L said W later accompanied G to their matrimonial home in Nairobi as she stayed behind mourning her mother. Although she is not opposed to the nullification of the marriage, L wants the court to order G to pay for the costs of the suit. She has accused G of adultery and cruelty. L said he has humiliated and embarrassed her. "G intentionally committed adultery on the day of L's mother's funeral while well aware that it is a taboo in Dholuo culture," reads a court document...."

4. The above publications are the subject of the suit herein filed by the Plaintiff by a plaint dated 3/2/2014 against the Defendants jointly and severally, in which the plaintiff sought several reliefs claiming that the publications as reproduced above were understood to refer to him, and that in their natural and ordinary meaning meant and were understood to mean that:
  - i. That the Plaintiff is of loose morals.
  - ii. That the Plaintiff is brutish.
  - iii. That the Plaintiff is selfish with no regard to family values.
  - iv. That the Plaintiff is sly and a conman.
  - v. That the Plaintiff is an unscrupulous fellow who engages, and;
  - vi. That the Plaintiff is fraudulent in his dealings.
5. Fore the impugned articles, the plaintiff sought orders from the court from the Defendants;
  - a. An Apology.



- b. A Permanent Prohibitory Injunction to restrain the Defendants whether by themselves, their servants, agents and/or employees from re- publishing the articles complained of, or any other defamatory publications, malicious misstatements and /or injurious falsehoods against the Plaintiff in respect of High Court Nullity Cause Number 166 of 2013 and any other case before the court.
  - c. General damages for Defamation in favour of the Plaintiff.
  - d. General Damages for Injurious Falsehoods and/or Malicious Misstatements.
  - e. Damages on the footing of aggravated and/or exemplary damages in favour of the Plaintiff.
  - f. Costs of this suit.
  - g. Interest on (c), (d) and (e) above.
6. The Defendants' filed their joint statement of defence dated 10/9/2014 in which the Defendants plead that the source of the information contained in the publications were court proceedings and pleadings filed in High Court Nullity Cause No.166 of 2013 CBG versus JLW & MW, and that the substance of the publications were contained in the Amended Petition dated 8<sup>th</sup> August, 2013 filed by the Plaintiff and the Answer to the Petition and Cross- Petition dated 23<sup>rd</sup> August 2013 filed by JLW, thereby urging the court to dismiss the suit with costs.

**Plaintiff's case.**

7. The Plaintiff testified as PW1.  
His testimony was that he is a consultant employed by a consultancy firm as the Director programme he recorded a statement dated 3/2/2014 which he adopted as his evidence in chief.
8. He testified that the publications complained of contained various averments that were not extracted from and/or founded in any of the court pleadings filed in court as at the date of the subject publications, adding that the publications complained of are not matters of public interest and that they constitute private affairs and further that the Defendants never sought to discuss with him the pleadings before publication but solely relied on extraneous distorted information obtained out of malice from the Respondent in the subject nullity cause before the High Court.
9. In his testimony, PW1 told court that his reputation had been harmed together with personal relations with his family, friends and peers and that it had also affected his work, consultancy businesses as business continuity depends on reputation claiming further that his business had significantly reduced since the publications were made.  
The plaintiff further stated that at the time of the publication he had put in a proposal known as 'pafper' consultation and was shortlisted for the consultancy but did not get the job and proceeded to add that his reputation before and after the articles showed that consultancy assignments reduced.
10. Upon cross-examination, the Plaintiff stated that the publications were about divorce proceedings whereas he had filed a nullity case. It was his testimony that his consultancy business suffered since the date of the publications.  
The plaintiff closed his case without producing any witness.

**Defence case**

11. The 2<sup>nd</sup> Defendant Alphonse Mung'ahu testified as DW1.



His testimony was that he was a journalist, currently working with Media Max but at the material times in 2013 he was working with the Star Newspaper as court reporter. He adopted his witness statement dated 24/6/2015 as his testimony in chief together with a list of documents dated 10/3/2014.

In cross examination, DW1 admitted that on 29/8/2013 and 31/8/2013 he made the impugned publications related to private matters in respect of a marriage dispute between the plaintiff and his estranged wife, that the matters covered marital disputes, and as such, they remained private so long as the disputes were not subject of court proceedings and that once in court, the dispute was of public interest and that he did not engage the plaintiff as he was covering Court proceedings.

12. In relation to the publication of 29/8/2013, it was DW1's testimony that at the time there was a case in court over an application for nullification of the marriage and that he relied on the Answer to the Petition and the Cross- Appeal.
13. Further DW1 explained that his article had no malice against the plaintiff; that the Respondent (wife) of the plaintiff did not seek for property and that the article does not contain all the documents filed in court; that when handling a court story, court reporters report not only report on what is in the application but also what is within context, including the property matter and what is covered by the pleadings as filed by all parties.
14. The justification of the publication and motivation on the sensational title, DWI testified that the same was chosen by the senior managers of the 1st Defendant after reading the story and facts from the court pleadings of the High Court Nullification Cause No.166 of 2013, and so no malice could be implied in the publication as his articles were not biased against either of the parties and that he did not ignore either parties when the petitioner BG demanded an apology it was done and the paper apologised.

At close of their rival cases, both parties filed their respective submissions that the court has duly considered.

#### **Issues for determination:**

15. In the case of Musikari Kombo v Royal Media Services Limited [2018] eKLR the court reiterated the test as to when a statement may be held to be defamatory rendering that;

“It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive”

16. It was the plaintiff's submission that the impugned publications had wide circulation, and reached a significant number of people in Kenya, were not only false but also erroneous, and that a defamatory statement is presumed to be false unless the defendant can prove its truth. The onus to prove the truth of the defamatory statement solely lies on the Defendants as ably rendered in the case of Hon. Uhuru Muigai Kenyatta v Baraza Limited. While pleading defence of justification or qualified privilege in the Case, the Defendants were required by law to establish the true facts and the Plaintiff had no burden to prove the defence as raised.

The Plaintiff cited the case of Phineas Nyagah v Gitobu Imanyara [2013] eKLR where, Odunga J held that;

“Malice herein does not necessarily mean spite or ill will but recklessness itself may be evidence of spite. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of



malice.....Malice may also be inferred from the relations between the parties.... The failure to inquire into the facts is a fact from which inference of malice may properly be drawn."

17. According to Black's Law Dictionary, 9<sup>th</sup> Edition page 479 defamation is defined as:

"The act of harming the reputation of another by making a false statement to a third person."
18. These elements are that statements complained of must be:
  - a. defamatory,
  - b. refer to the plaintiff,
  - c. published by the defendant and
  - d. must be false, as elucidated in the case of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR, Civil Appeal 42 of 2014, while citing with approval the case of John Edward v Standard Ltd.
19. Further in the case of Elisha Ochieng Odhiambo v Booker Ngesa Omole [2021] eKLR, Civil Suit E1 of 2020 the court at paragraph 67 stated that:

"Furthermore, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice."
20. Upon the above backdrop, it is the duty of the court to interrogate the totality of the pleadings and evidence adduced before it to find out whether the plaintiff meets the criteria stated above.
21. This court has perused Court proceedings in respect of the Nullification cause between the plaintiff and his wife and a co- Respondent MW filed vide HCCC NO. 166 OF 2013 as well as the Answer to the Petition and Cross Petition filed by the Respondent and co- Respondent on 23/8/2013. Without a doubt, the impugned publications refer to, and are court proceedings which the defendants and more specifically DWI admitted to have published as a court reporter as assigned by the 1<sup>st</sup> Defendant.
22. Cross-Petition and the Plaintiff admitted it during cross-examination, and fortified by the fact that ultimately the Court dismissed the Petition and allowed Ms. L cross-petition.
23. Secondly, the defendants' submitted that defamation is viewed from the perspective of right-thinking members of society. It is unlikely that ordinary right-thinking members would see any malice ill will or spite in the articles and more particularly in the words nullification and dissolution of marriage. What a right member of society would deduce from reading of the impugned articles for all-purpose and intent would mean there are marital disputes between the couple and that they have filed divorce proceedings in court. In the courts view, whichever word either used, the end result would culminate to a divorce and that both terms mean that the marriage is coming to an end.
24. Lastly, it is the Defendants' testimony that it apologized in the Star Newspaper issue of 5th December 2013 for referring to the nullification proceedings as divorce proceedings and clarifying that the Plaintiff was seeking the nullification of his marriage.
25. In relation to the second allegation on the fight for the Kshs 75.4 million property, the Defendants' submitted that the source of this information can be inferred from the Answer to Petition and Cross-



Petition filed in the proceedings instituted by the Plaintiff as may be seen from paragraph 9 of the document wherein the plaintiff's wife pleaded that:

The Respondent also avers that the Petitioner's prayers for annulment instead of divorce are made with the intention by the Petitioner to use the judicial process to deprive her of her rightful share to the matrimonial property and which amounts to abuse of process.

In the case of *Wilfred Nyaundi Konosi v Standard Group Limited & another [2022] eKLR, Civil Case 01 of 2020* while citing with approval *Phineas Nyagah v Gitobu Imanyara [2013] eKLR* the court stated that:

“Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice...”.

26. It was submitted that the language used was not beyond or disproportionate with the facts. It accurately reported, to a reasonable degree, the case, which was being made to the Court.

27. On whether there exists justification for the publication, the Defendants sought to rely on Section 6 of the *Defamation Act* (the Act) which provides that:

“A fair and accurate report in any newspaper of proceedings heard before any court exercising judicial authority within Kenya shall be absolutely privileged: Provided that nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.”

28. In adding weight to the above provision, it was submitted that there are elements that must be proved before its invocation. Citing the case of *J.P. Machira t/a Machira & Co. Advocates v Wangethi Mwangi & another [2018] eKLR, Civil Case 1338 of 2000*, wherein it was held that;

“It is clear that, to qualify for the protection of absolute privilege under section 6, a newspaper report must have the following characteristics:

- i. it must be a report of proceedings heard before a court exercising judicial authority;
- ii. it must be a fair report of those proceedings;
- iii. it must be an accurate report of those proceedings and
- iv. it must not contain any blasphemous, seditious or indecent matter.”

29. In confirming accuracy in the report of the court proceedings, there is no dispute that the publication was not from or did not emanate from the pleadings filed by the parties in the said nullity cause. As such, the court is satisfied that the article was an accurate report of the pleadings as filed and lastly, the articles complained of did not contain any blasphemous, seditious or indecent matter. or at all.

30. As held by the court in the case of *J.P. Machira t/A Machira & co. Advocates (supra)*, the articles to the courts evaluation meets the standard test applied in the said case; that the proceedings were before the court; that the publication was fair report of the proceedings; that the report was fairly accurate and finally that the report it did contain any blasphemous seditious or indecent matter. The Plaintiff did not demonstrate any other meaning that could be read therein by a fair minded person of average intelligence. The further finds that the innuendo stated in the plaint could not be attached and or implied in the words found in the pleadings or at all.



31. Articles 33, 34 and 35 of *the Constitution* of Kenya respectively deal with the fundamental rights to the freedoms of expression, media and access to information. Consideration also is to be inevitably granted to Article 28 in respect of the inherent dignity of every person which dignity must be respected and protected. Article 33(2) and 33(3) further provides that every person has the right to freedom of expression which does not extend to, among others, propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination specified or contemplated in Article 27(4) and that in the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others. The plaintiff has not demonstrated that the above provisions were violated by the defendants in any manner particularly by publication of the court proceedings in respect of the marital dispute subject of the nor that the publication by the defendants were malicious.

32. In *S M W v Z W M* [2015] eKLR the Court of Appeal stated as follows:

“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.”

In Halsbury’s Laws of England 4<sup>th</sup> 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.”

33. While the plaintiff submitted that his local, global and national reputation were badly damaged by the publication, no witness or evidence was tendered to corroborate the assertions. As such the allegation remains as such with no evidential value- Section 107-109 of the *Evidence Act*.

For the foregoing, the court finds that the Plaintiff has not proved their case on a balance of probability against the Defendant.

### **Whether the plaintiffs are entitled to the reliefs sought.**

34. The Plaintiff implored court to fairly award the Plaintiff with the aim of trying to compensate him to the extent of injury inflicted unto him by the Defendants allegedly defamatory words stating that the compensation will aim at trying to compensate for the harm done with regard to his reputation; attempt to vindicate his good name and character; and also take into account the distress, hurt, and humiliation which the alleged defamatory publications caused him.

35. In *Nation Media Group Limited & 2 others v Joseph Kamotho & 3 others* observed that:

“In actions of defamation or in any other actions where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily or even more highly subjective element, such action involved a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a by-stander of the baselessness of the charges”



36. The Plaintiff sought to rely on the case of Standard Limited v G.N. Kagia t/a Kagia & Company Advocates [2010] EKLK, where it was stated that:

“the level of damages awarded should be such as to act as a deterrence and to instil a sense of responsibility on the part of authors and publishers of libel. Personal rights freedoms and values should never be sacrificed at the altar of profiteering by authors and publishers”.

37. In the end the Plaintiff submitted that it was entitled to damages as his substantive reputation was greatly damaged by the publications, his career short-lived, his exposure to ridicule, odium, despise and hatred from members of the society and his livelihood greatly tampered and affected.

38. The Defendants’ submitted that Plaintiff is required to demonstrate that his reputation has been harmed by the articles and further demonstrate the harm caused to him as a consequence of the publication. Nobody was called by the plaintiff to testify on the harm that the plaintiff went through as a result of the alleged defamation.

39. In Selina Patani & another v Dhiranji V. Patani [2019] eKLR, the Bench held that:

“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.”

40. Further In Patrick Nyaga & another v Sanitam Services (EA) Limited [2021] eKLR held:-

“Furthermore, no third-party evidence was called that pointed to damage of reputation or that depicted a lowering of the respondent’s reputation in the customers’ minds as a consequence of the letters. In effect, the evidence in its totality fell far short of the standard required to prove defamation. Absent such evidence, as was the case here, there would be no basis for a court to reach a finding that the claimant was defamed.”

41. The Defendants’ submitted that the Plaintiff’s testimony by itself is insufficient to meet the standard required to prove defamation and that he had failed to produce any material evidence to show how his reputation was affected by the publications. The court agrees with the defendants submission above, as the law of defamation does not and cannot rely on one’s own self view about one’s reputation. Such a reputation must come from a third party as held in the case of Selina Patani above.

42. In Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR, Mativo J. cited the case of John v MG Ltd [1996] 1 ALL E.R the English Court of Appeal held that;

“...The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will compensate him for the wrong he has suffered. That must compensate him for damages to his reputation, vindicate his name, and taken account of the distress, hurt and humiliation which the defamatory publication caused...Exemplary damages on the other hand had gone beyond compensation and are meant to “punish” the defendant. Aggravated damages will be ordered against a defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize.”



Having found that the Plaintiff failed to qualify the two publications as defamatory, I find that he is not entitled to the reliefs sought under this limb.

43. The court having made a finding that the plaintiff has not made out a case for defamation against the Defendants, it is evident that no compensatory damages are available to the plaintiff. The case cannot be sustained and is therefore dismissed with costs to the defendants.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH, 2025**

.....

**JANET MULWA.**

**JUDGE**

