



**Njogu v Jacob (Civil Appeal E056 of 2022) [2025] KEHC 11058 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11058 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E056 OF 2022**

**TW OUYA, J**

**JULY 24, 2025**

**BETWEEN**

**IRENE WAMBUI NJOGU ..... APPELLANT**

**AND**

**GEORGE MBUGUA JACOB ..... RESPONDENT**

*(Being an appeal against the Judgment of the Senior Principal Magistrate E.M Nyagah in Murang'a Chief Magistrates Court Civil Case No. 218 of 2019 delivered on 4th October 2022)*

**JUDGMENT**

1. This appeal arises from the judgment of the Senior Principal Magistrate's court at Murang'a delivered on 4<sup>th</sup> October 2022 in Civil Case No. 218 of 2019.
2. The Appellant, who had a tenancy relationship with the Respondent, filed a suit claiming that the Respondent had allegedly written a letter terminating tenancy on the basis that she was involved in illegal activities. She contended that the contents of the said letter were defamatory and meant to taint her name as a drug peddler despite being a law-abiding citizen.
3. The Respondent denied authoring the said letter and instead, maintained that the actions of the Appellant were marred with bad faith and were scandalous.
4. The trial proceeded whereby both the Appellant and the Respondent testified as the sole witnesses in their cases.
5. At the end of the trial, the trial court determined that the Appellant had failed to prove its case on a balance of probabilities. Consequently, the claim was dismissed with costs.



6. Aggrieved with the judgment of the court, the appellant filed the instant appeal urging the following grounds:
  - a. The learned Senior Principal Magistrate erred in law and in fact in finding that the requisite ingredients appurtenant to tort of defamation/ libel were not proved by the appellant on a balance of probabilities while the converse is true;
  - b. The learned Senior Principal Magistrate erred in law and in fact in finding that the ingredient of publication was not proved by the appellant whereas the libellous letter was written and copied to third parties;
  - c. The learned Senior Principal Magistrate erred in law and fact in misapprehending the law pertaining to defamation and in the process confused between slander and libel thereby arriving at a judgment that is not sustainable in law.
  - d. The learned Senior Principal Magistrate erred in law and fact in finding that the appellant did not prove that the respondent did write the libellous letter while the converse is true.
  - e. The leaned Senior Principal Magistrate erred in law and fact in failing to rule that the appellant had proved her case on a preference of preponderance and that she was entitled to the orders sought.
7. Therefore, the Appellant prays that the appeal be allowed, the orders of the Lower Court be vacated and set aside and the orders prayed in Plaint be granted. He also prays for the costs of the appeal and at the Lower Court.
8. By a Plaint dated 17<sup>th</sup> July 2019, the Plaintiff instituted a claim based on the tort of defamation, whereby the appellant alleged that the Respondent had written to her a letter seeking to terminate the tenancy on grounds that the Appellant sells bhang at the premises. The said letter was allegedly published and the community of Karuri village vigilante group became aware of the letter. The Appellant contended that the said letter depicted her as a criminal who deals in illegal businesses yet she is a business lady in Karuri market. It was the appellant's case that the said statements were defamatory in their natural meanings and in their innuendos. It was further averred by the Appellant that the words that she allegedly deals with bhang have exposed her as a business woman to contempt and have lowered her esteem to the right-thinking members of the public. As a result, she has suffered loss and damages due to the expletives.
9. By a statement of defence dated 23<sup>rd</sup> August 2019, the Respondent denied writing the said letter. He averred that the Plaint was filed in bad faith and is merely scandalous. The Respondent averred that he always acted in good faith while dealing with the Appellant and consequently denied all the particulars of defamation attributed to him.
10. The matter proceeded to trial, whereby the Plaintiff/ Appellant testified as the sole witness while the Defendant/ Respondent also testified as the sole witness. At the end of the trial, the Appellant's claim was dismissed and judgment entered in favour of the Respondent.
11. The trial court in its judgment observed that the Appellant did not know any of the members of Karuri village vigilante group. Moreover, in cross examination, the appellant confirmed that she did not see the Respondent write the said letter. Also, although the Appellant pleaded that the allegations in the



- letter were made known to members of the Karuri village vigilante group, no evidence was adduced to prove the same, nor were the persons who allegedly received copies of the said letter called to testify.
12. The appeal was disposed by way of written submissions.
  13. The Appellant filed submissions dated 14<sup>th</sup> January 2025. The Appellant submitted that the gist of the case was based on the allegedly defamatory letter terminating tenancy that was written by the Respondent and copied to the DCC, OCS Muthithi, DO Muthithi Division, Chief Muthithi and Assistant chief, Munguini Sub Location.
  14. It was the Appellant's submission that the said words were meant to portray the appellant to the right thinking members of the society as a drug dealer with undesirable character and unfit to lead the society, a situation that caused the appellant to be subjected to public ridicule, odium, contempt, embarrassment, immense pain, anguish and loss in that she was shunned and avoided by right thinking members of the society and her credit and reputation were lowered and injured in the eyes of the right thinking members of the society. despite demand made and notice of intention to sue having been issued, the respondent neglected and refused to apologize and make amends.
  15. The Appellant further submitted that the import of the law of defamation as entrenched in article 33 (3) of *the Constitution* is protection of every person's reputation from harm by false and belittling remarks. Therefore, the tort of defamation is not merely statutory but also constitutional. Reliance was placed on the case of *Phinehas Nyagah v Gitobu Imanyara* [2015] eKLR where the court held that:

“Accordingly, the law of defamation is not just anchored on a statutory enactment under the Law of *Defamation Act* but has been given a constitutional underpinning as well. In a claim predicated on the tort of defamation, the Court is therefore under a duty to balance the public interest with respect to information concerning the manner in which public affairs are being administered with the right to protect the dignity and reputation of individuals.”
  16. The appellant in her submissions expressed dissatisfaction over the failure of the Lower Court to reprimand the Respondent over the letter that he had allegedly written to the Appellant. Ultimately, the appellant prayed that the appeal be allowed.
  17. The Respondent on the other hand relied in the submissions dated 25<sup>th</sup> February 2025. He submitted that the appellant did not adduce any evidence in the trial court to prove her case on a balance of probabilities. Moreover, the letter upon which the defamation suit was founded was never authored by the Respondent.
  18. Citing the case of *John Edward vs Standard Ltd*, the Respondent submitted that the ingredients of defamation had not been met by the Appellant. The appellant had failed to fulfil the defamation threshold 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
  19. The Respondent further relied on the case of *Wycliffe A. Swanya vs Tunyuta ast Africa Limited & Francis Massai Nairobi CA No. 70 of 2008* which set out the essential components that a plaintiff must prove in order to succeed in an action for defamation. Therefore, the Appellant ought to have



submitted that the letter dated 28<sup>th</sup> June 2019 was authored by the Respondent, that the letter referred to her and that those words were false, that the words were defamatory or libellous and that she suffered injury as a result, that is, her reputation was injured as a result.

20. The defendant further submitted that for a defamation claim to succeed the words must be malicious. Reliance was placed on the case of *Ann Wairimu Njogu vs Radio Africa Limited* [2017] eKLR, where it was held that malice also had to be inferred from the alleged defamatory statement and that the defamatory words must be shown to have been published by the defendant.
21. It was submitted that the appellant did not table any evidence demonstrating that the respondent published the letter referenced by the appellant. The appellant neither saw the Respondent authoring the letter nor called any of the persons allegedly copied in the letter as witnesses. Also, no expert witness was called to prove that the signature appended on the said letter actually belonged to the Respondent.
22. Finally, the Respondent submitted that the Appellant failed to discharge the burden of proof on a balance of probabilities as stipulated under Section 109 of the *Evidence Act*. Therefore, the Respondent urged that the appeal be dismissed with costs.
23. Section 78(2) of the *Civil Procedure Act*, grants the appellate court the same powers and nearly the same duties as are conferred and imposed by the Act on courts of original jurisdiction in respect of suits instituted herein.
24. Being a first appeal, the court relies on a number of Principles as set out in *Selle and another vs. Associated Motor Boat Company Ltd & others* (1968) 1 EA 123:

“this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”

25. I have looked at the pleadings, the evidence, the submissions filed by the appellant and the respondent and the judgment appealed against.
26. From the proceedings at the Lower Court, it is evident that the Respondent denied ever publishing the letter in question in the first place. Also, the question whether the contents of the said letter were defamatory is also in dispute.
27. Therefore, the issue that arise for determination is whether the tort of defamation was proved.
28. The gravamen of the instant suit is based on the letter dated 28<sup>th</sup> June 2019 and reproduced hereunder:  
RE: NOTICE TO VACATE PLOT NO. 21 B, KARURI MARKET

“I George Mbugua Jacobs of ID No. 1890095 wish to inform you (Irene Wambui Njogu) that it has come to my attention that you are doing illegal business of selling bhang to the youth in my premises and for that reason I have given you up to midnight of 30<sup>th</sup> June 2019 to vacate my premises.”



29. The rationale behind the law of defamation was stated by the Court of Appeal in *Musikari Kombo v Royal Media Services Limited* [2018] eKLR:

“The law of defamation is concerned with the protection of a person’s reputation. Patrick O’Callaghan in the Common Law Series: *The Law of Tort* at paragraph 25.1 expressed himself in the following manner:

“The law of defamation, or, more accurately, the law of libel and slander, is concerned with the protection of reputation: ‘As a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporal sanction ...’ Defamation protects a person’s reputation that is the estimation in which he is held by others; it does not protect a person’s opinion of himself nor his character. ‘The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit’ and it affords redress against those who speak such defamatory falsehoods...”

30. Actions founded on the tort of defamation surface the tension between private interest and public interest. Article 33(1) of *the Constitution* guarantees every person’s right to freedom of expression including the freedom to seek, receive or impart information or ideas but sub-Article (3) states that

“In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others”.

31. These rights are reinforced by the provisions of the *Defamation Act*. Contemplating these competing rights Lord Denning MR stated in *Fraser v Evans & others* [1969]1 All ER 8:

“The right of speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise it without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed.”

32. In *Selina Patani & another v Dhiranji V Patani* (2019) eKLR the law of defamation is concerned with the protection of reputation of persons, that is, the estimation in which such persons are held by others. In that case, the Court of Appeal stated that:

“In rehashing, we note the ingredients of defamation were summarized in the case of *John Ward v Standard Ltd* HCC 1062 of 2005 as follows:

- i. The statement must be defamatory.
- ii. The statement must refer to the plaintiff.
- iii. The statement must be published by the defendant.
- iv. The statement must be false.”

33. The court must first establish whether the statement in question referred to the Appellant. The appellant identified herself as Irene Wambui Njogu. It is not disputed that the appellant herein is Irene Wambui Njogu, the tenant in the Respondent’s plot being Plot No. 21B Karuri Market. The letter, subject of this suit, was specifically addressed to Irene Wambui Njogu of Plot No. 21 B in Karuri market. Nothing much turns on this limb of the ingredients since the identity of the person to whom the letter is addressed is not in question. The court is therefore satisfied that the letter subject of this appeal was addressed to the appellant.



34. On whether the words referring to the appellant were false. The letter referred to the fact that one George Mbugua had received information that the appellant was doing the illegal business of selling bhang to the youth.
35. The main thing that stands out from this statement is the allegation that the appellant is involved in the business of selling bhang. The appellant disputed this statement on the basis that she neither sells bhang nor has she been charged in a court of law with the offence of possession of bhang.
36. Without any police record documenting a report, arrest or charging of the appellant with the offence of possession of bhang, the inescapable fact is that the said allegation was false.
37. Gately on Libel and Slander 6th Edn. states that:
- “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”.
38. Were the Defendant’s publications defamatory? A defamatory statement is defined in Halsbury’s Laws of England 4th Edition Vol 28 paragraph 10 as:
- “....a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business”.
39. Defamatory statement, publication or act is underpinned by malice. Malice for purposes of defamation
- “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” (Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR)
40. The Court in Elizabeth Wanjiku Muchira v Standard Ltd [2011] eKLR stated that:
- whether a statement is defamatory or not is not so much dependent on the intentions of the defendant but on the “probabilities of the case and upon the natural tendency of the publication having regard to the surrounding circumstances. If the words published have a defamatory tendency it will suffice even though the imputation is not believed by the person to whom they are published.”-Clerks & Lindsell on Tort 17th Edition 1995-page 1018.”
41. In Musikari Kombo (supra) the Court of Appeal stated that:
- “The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive.
- In Halsbury’s Laws of England 4th 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.”



42. Also, in *Onama v Uganda Argus Ltd (1969) EA*, the East African Court of Appeal stated as follows:

“In deciding whether the words are defamatory, the test is what the words could reasonably be regarded as meaning, not only to the general public, but also to all those “who have a greater or special knowledge of the subject matter”

43. The Appellant pleaded in his plaint that the said statement in their natural meaning or innuendo depicted her as a criminal who deals in an illegal business to wit, trafficking in bhang, which is an illegal narcotic drug in Kenya. Thus, exposing her to public spite and odium.
44. In proving that the words or publication or act was defamatory, the appellant ought to show that they lowered the appellant’s reputation in the estimation of right-minded persons in the society. The words complained of must be shown to have injured the reputation, character or dignity of the appellant.
45. The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. In determining whether words are defamatory there are two stages, first to decide what they mean and then to decide whether that meaning is Defamatory (See, *Gatley on libel and Slander* pg.37)
46. In the instant case, PW1 averred that the Respondent published false claims against her that she was involved in the business of selling bhang to the youth. The report was made via a letter which was copied to the DCC, OCS Muthithi, DO Muthithi Division, Chief Muthithi and Ass. Chief Munguni Sub Location. The nature of the publication was defamatory as they portend that the appellant is a criminal dealing in illegal narcotic drugs.
47. The appellant has not demonstrated the manner in which the said letter lowered her reputation in the eyes of right-thinking members of the society. Though the people who read the statement need not believe the same as true, the impression they might have received regarding the appellant upon reading the said letter would be necessary in establishing the defamatory nature of the statement. Nevertheless, the appellant did not produce any witness or member of the Karuri village vigilante group or person who upon gaining sight of the alleged defamatory statements perceived her as a criminal or of lowered esteem in the society. Furthermore, no report of police action against the appellant was presented to demonstrate the allegation that the letter painted the appellant as a criminal.
48. On whether the statements were published by the Respondent. The Respondent has vehemently denied authoring or publishing the letter in question.
49. The applicable law as to the burden of proof is found in Section 107, 108 and 109 of the [\*Evidence Act\*](#) which provides that:
- “(1) Whoever desires any court to give judgment as to any legal right or liability  
(2) dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side....



109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

50. In *Karugi & another v Kabiya & 3 others* [1987] KLR 347 the Court of Appeal stated that:

“[T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof....The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim .”

51. Moreover, the Court of Appeal in *Wareham t/a A.F. Wareham & 2 others v Kenya Post Office Savings Bank* [2004] 2KLR 91 stated that:

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.”

52. Therefore, the Respondent having denied authoring the letter in question, it was the role of the Appellant to prove on a balance of probabilities that the Respondent not only authored the said letter but also published it to the members of the Karuri village vigilante group.

53. A perusal of the Record shows that the appellant failed to call any person to whom the said letter was allegedly published by the Respondent.

54. In *Selina Patani & another v Dhiranji V. Patani* [2019] KECA 480 (KLR) the Court of Appeal stated that:

“In law, to constitute a cause of action, the alleged defamatory statement should be published to a third party. If the statement complained of has only been made to the person the letter is addressed to, this will not suffice....

The burden to prove publication is on the claimant, in this case the appellants. Nevertheless, in certain cases the law will presume publication to a third party unless evidence to the contrary is forthcoming.”

55. In *Carter-Ruck on Libel and Slander*, 4<sup>th</sup> ed. Butterworth’s at page 66 it is stated:

“Sometimes, for one reason or another, a letter gets into the hands of some other person other than the person for whom it was intended. The question then arises as to whether the writer or sender of such a letter is liable for this publication. Broadly speaking, the rule is that the sender of a letter is only liable for the publication of its contents to the person to who it was



addressed unless, at the time of sending the letter, he knew or ought to have known that it was likely to be opened by other persons.”

56. In the instant case, it is alleged that the Respondent herein sent a letter terminating tenancy to the appellant. The appellant has not led any evidence on the manner in which the letter was sent to her. She only said that the letter was published. Nevertheless, the mode or place of publication other than the writing of the letter has not been proven or demonstrated.

57. In the Patani Case (Supra) the Court of Appeal observed that:

In dispatching a letter containing matter defamatory of the addressee, there are three important considerations:

- (i) The method of delivery – the communication should be in a sealed envelope.
- (ii) The mode of address – this should be to the named addressee and marked personal.
- (iii) Knowledge on the part of the writer of the recipient’s procedure for opening letters. If the writer knows that all communications howsoever addressed are opened by the addressee’s secretary, there is no method of communicating in writing a matter defamatory of the addressee which would preclude publication to a third party. – (See Carter-Ruck on Libel and Slander, 4<sup>th</sup> ed. Butterworth’s at page 66)

58. In *Pullman -v -Walter Hill & Co* (1891) 1 QB 524, the English Court of Appeal explained what publication constitutes as follows:

“What is the meaning of ‘publication’? The making known the defamatory matter after it has been written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there is no publication of it; for you cannot publish a libel of a man to himself. If there was no publication, the question whether the occasion was privileged does not arise..... If the writer of a letter shows it to his own clerk in order that the clerk may copy it for him, is that a publication of the letter? Certainly it is, showing it to a third person; the writer cannot say to the person to whom the letter is addressed, ‘I have shown it to you and to no one else.’ I cannot, therefore, feel any doubt that, if the writer of a letter shows it to any person other than the person to whom it is written, he publishes it” (per Lord Esher, MR).

59. In this matter, there was no proof the impugned defamatory letter was publicized and read by a third party. No third party was called to give evidence that the letters were not sealed. Whether a letter is sealed or not sealed is a question of fact. Guided by case law on publication of a defamatory letter to the addressee, I find no reason to interfere with the finding of fact by the learned magistrate in the absence of evidence on record from a third party who claim to have read the defamatory letter.

60. In principle, defamation is actionable per se. This does not mean the ingredients of the tort must not be proved. It simply means you must prove the elements of the tort of defamation; what need not be proved is the damage suffered. If no damage is proved, a claimant may be entitled to nominal damages. In this case, the legal issue is whether the appellants proved there was publication to a third party and injury or damage suffered to their reputation.



61. The evidence on record is the testimony by the appellant that the letter was read by members of the Karuri village Vigilante group. PW1 in cross examination was clear that she never knew the members of the Karuri village Vigilante group, neither were any members of the group called to testify as to the publication and injury to reputation. As to whether the appellants character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the appellant's reputation and standing in society was injured.
62. It is trite 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, the claim for defamation cannot stand.
63. Having determined that there was no proof of publication nor proof of injury of the Appellant's reputation, the appeal cannot stand on any other ground.
64. The upshot of the matter is that the appeal herein is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> JULY 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....No Apperance

For Respondent.....Ms Waititu

Court Assistant.....Brian

