



**Shimoka v Attorney General & another (Civil Appeal
E179 of 2024) [2025] KEHC 9949 (KLR) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E179 OF 2024**

S MBUNGI, J

JULY 9, 2025

BETWEEN

PATRICK SHIMOKA APPELLANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

GREGORY MASINGILA 2ND RESPONDENT

*(Being an appeal against the judgment delivered on 15th October
2024 by Hon. Z.J. Nyakundi – SPM in CMCC No. 45 of 2023)*

JUDGMENT

Background

1. The appellant herein, Patrick Shimoka, was the plaintiff in Kakamega CMCC No. 45 of 2023, wherein he instituted a suit against the respondents seeking general damages for defamation, costs of the suit, interest thereon at court rates, and any other relief the trial court deemed just and expedient. The claim before the subordinate court arose from an alleged defamatory publication made by the 2nd respondent, Gregory Masingila, a probation officer. The appellant contended that the said publication damaged his reputation in the eyes of the public.
2. At trial, the appellant relied on his witness statement and documentary evidence but failed to plead the exact defamatory words or demonstrate how his reputation had been harmed. The court found that the alleged publication, made in the course of official duties, could not be considered defamatory and that no supporting evidence was adduced. The trial court dismissed the claim for lack of proof with each party bearing its own costs.



The Appeal

3. Being dissatisfied with the trial court's decision, the appellant lodged this appeal on the following grounds:
 - a. That the Learned Trial Magistrate erred in law and in fact in failing to find that the Appellant had successfully proven his case by comprehensively setting out the particulars of defamation perpetrated against him by the 2nd Respondent which have caused and continue to cause him and his household immense public ridicule in the eyes of the right-thinking members of the society of which he is a well-respected and highly regarded individual.
 - b. That the Learned Trial Magistrate erred in law and in fact in failing to find that none of the Respondents filed a defence to his Complaint that set out the particulars of defamation and the damage to his personal reputation particularly the vile and unproven allegation that he is a murderer and is in possession of a fake title deed and in this respect the Appellant was denied a chance to cross-examine the 2nd Respondent on the contents of the impugned letter dated the 18th day of September 2019
 - c. That the Learned Trial Magistrate erred in law and in fact in disregarding evidence presented before him by the Appellant regarding the defamatory aspects of the 2nd Respondent's letter dated the 18th day of September, 2019.
 - d. That the Learned Trial Magistrate erred in law and in fact in issuing a one sided decision that completely failed to take into account the pleadings, evidence and submissions by the Appellant and in effect denying the former the right to a fair trial that is expressly guaranteed vide the dictates of Article 50 of *the Constitution* of Kenya, 2010.
 - e. That the Learned Trial Magistrate erred in law and in fact in holding that the defamatory statements that held the Appellant in disrepute that were authored by the 2nd Respondent in his impugned letter dated 18th day of September, 2019 were in the form of a report made by a person discharging his official duties by virtue of the office that they held and as such cannot be considered defamatory through a publication.
 - f. That the Learned Trial Magistrate erred in law and in fact in failing to find and hold that in authoring the defamatory statements in the impugned letter dated the 18th day of September, 2019, the 2nd Respondent grossly abused his position and station as a public officer charged with the responsibility to respectfully, diligently and fairly serve the public of whom the Appellant is a respected member of.
 - g. That the Learned Trial Magistrate erred in law and in fact in failing to find and hold that the actions of the 2nd Respondent encapsulated in authoring the defamatory statements in the impugned letter dated the 18th day of September, 2019 was in blatant disregard of his calling as a public officer and that the same exposed the Appellant and his family to great disrepute even causing him to lose his daily livelihood and means of survival.
4. The appeal was canvassed by way of written submissions. At the time of writing this judgment, only the appellant had filed.

Appellant's Case

5. Vide submissions dated 26th February 2025, the Appellant reiterated the grounds of appeal and submitted that the learned trial magistrate erred by failing to consider the totality of the evidence



- presented before the lower court, including the authenticity of his title deed and previous judicial pronouncements confirming his ownership of land parcel No. Butsotso/Shikoti/16383.
6. The Appellant emphasized that the impugned letter dated 18th September 2019, authored by the 2nd Respondent, contains serious and defamatory allegations, including claims that the Appellant holds a fake title deed, a fraudulent succession confirmation, and that he is involved in criminal conduct. The Appellant maintained that no evidence was produced in support of these allegations and that no criminal proceedings have ever been instituted against him in relation to the same.
 7. It was the Appellant's submission that both Criminal Case No. 2718 of 2014 and ELC Case No. 103 of 2016 were conclusively determined in his favor. He asserted that the 2nd Respondent, having been present during the delivery of the judgments, had knowledge of their contents and should have respected the judicial findings therein. Any dissatisfaction with those decisions, the Appellant argued, ought to have been pursued through the appellate process rather than through defamatory publications.
 8. The Appellant contended that the 2nd Respondent acted ultra vires, without any authority or lawful justification, and that his conduct in issuing the impugned letter amounted to an abuse of office. Further, the Appellant submitted that the 2nd Respondent convened unauthorized meetings, purported to make binding findings against the Appellant, and issued misleading reports to various government offices, all of which negatively impacted the Appellant's reputation and livelihood.
 9. The Appellant submitted that the allegations contained in the letter were false, unverified, and made recklessly, with the consequence that the Appellant was subjected to unjustified police scrutiny and public ridicule. He contended that the letter does not meet the legal threshold of a privileged communication, and that the defence of qualified privilege does not arise in circumstances where malice and recklessness are evident.
 10. He prayed that the appeal be allowed with costs and the trial court judgment be set aside.

Analysis and Determination

11. This being a first appeal, this Court has the duty to analyze and re-examine the evidence adduced in the lower Court and reach its own conclusion but bear in mind that it neither saw nor heard the witnesses testify and make due allowance for the said fact. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the Court stated as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
12. I have carefully considered the Record of Appeal, the lower court file, the Appellant's written submissions, and the applicable law. The central issue for determination is whether the trial magistrate erred in law and fact in dismissing the Appellant's claim for defamation against the Respondents.
13. In *Halsbury's Laws of England*(Supra), a defamatory statement is defined as follows:

“...a statement which tends to lower a person in the estimation of the right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt ridicule to convey any imputation on him disparaging or injuries to him in office, profession, calling, trade or business.”



14. The tort of defamation seeks to protect a person's reputation from unjustified attack. To succeed in an action for defamation, the claimant must establish the following elements:
 - That the defendant made a statement;
 - That the statement was defamatory;
 - That the statement referred to the plaintiff;
 - That the statement was published to a third party; and
 - That the publication was without lawful justification or excuse.
15. These requirements have been restated in various judicial authorities, including *John Ward v Standard Ltd* [2006] eKLR, where the Court held that the onus lies on the claimant to prove that the impugned words were defamatory of them, referred to them, and were published without legal justification.
16. In *Phinehas Nyaga vs Gitobu Imanyara* [2013] eKLR it was held that defamation was not about publication of falsehoods against a plaintiff but rather, the plaintiff must show that the published falsehood disparaged his reputation and lowered him in the estimation of right-thinking members of the society generally.
17. In the present case, the Appellant contends that a letter authored by the 2nd Respondent dated 18th September 2019 contained false and malicious allegations against him; specifically, that he held a fake grant, fake title deed, and that he was fraudulently in possession of land forming part of an estate. The Appellant argues that these allegations were not only untrue but also calculated to injure his reputation in the eyes of the public and relevant authorities.
18. It is not in dispute that the 2nd Respondent authored the letter in question and shared it with a public office. However, publication alone is not sufficient. The Appellant was required to demonstrate, by way of evidence, that the impugned statements were false, made without justification, and malicious. The burden of proof lies with the person alleging defamation. This is in line with Sections 107 and 108 of the *Evidence Act*, which place the burden of proof on the party who desires the court to give judgment in their favor on a balance of probabilities.
19. The Appellant relied primarily on the existence of a title deed registered in his name and judgments rendered in prior proceedings namely; Criminal Case No. 2718 of 2014 and ELC Case No. 103 of 2016 as proof of his lawful ownership of land parcel Butso/16383. However, the nexus between those judgments and the defamatory allegations was not sufficiently developed. For instance, while the prior decisions may confirm ownership, they do not necessarily negate the 2nd Respondent's stated concerns or motives for writing the letter especially if the letter was authored in his official capacity and on the basis of information available to him at the time.
20. The Appellant's reliance on the Respondents' failure to file a defence is misplaced. While it is true that the Respondents neither entered appearance nor filed any defence in the lower court or this Court, that procedural default does not relieve the Appellant of his legal duty. Under civil procedure, the trial court must still assess the strength of the Appellant's evidence and determine whether, on a balance of probabilities, his case has been proven. Judgment cannot be automatically entered in his favor simply because the Respondents defaulted.
21. The trial magistrate found that while the Appellant may have felt aggrieved by the 2nd Respondent's letter, he had not led sufficient evidence to demonstrate malice, falsehood, or reputational damage rising to the legal threshold for defamation. I find no reason to fault the trial court's reasoning in that regard.



22. Having reviewed the record, I am persuaded that the trial magistrate correctly directed himself on the applicable principles of law and came to the right conclusion.
23. Accordingly, the appeal is hereby dismissed.
24. Given that the Respondents did not file any response or participate in these proceedings, I make no order as to costs.
25. Right of appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 9TH DAY OF JULY, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Elizabeth Agong'a*

