



**Nation Media Group Ltd v Nanjira (Civil Appeal E030 of 2021)
[2024] KEHC 2576 (KLR) (1 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E030 OF 2021
PJO OTIENO, J
MARCH 1, 2024**

BETWEEN

NATION MEDIA GROUP LTD APPELLANT

AND

RASHID MAKOKHA NANJIRA RESPONDENT

*(Being an appeal against the Judgment of Hon. W. K. Cheruiyot (SRM) in
Mumias PM's Court Civil Case No. 90 of 2021 delivered on 11th June 2021)*

JUDGMENT

Case Background

1. The origin of this appeal is traceable from a civil suit no. 90 of 2019 which was filed by the plaintiff against the defendant vide a plaint dated 2/9/2021 seeking general damages, exemplary and punitive damages for defamation, costs of the suit as well as accruing interest.
2. It was pleaded that the defendant had published defamatory words against the plaintiff on 26th May 2019 during the 7:00 pm news and 9:00 pm news indicating that the plaintiff had been arrested over the infamous 2019 Matungu killings. The publication was headed "Bishop Rashid Makokha arrested over Matungu Killings."
3. Again on the 27th May 2019, by the publication called Taifa Leo newspaper, the defendant did in kiswahili language published "askofu akamatwa kuhusiana na mauaji ya Matungu". On the same day the defendant a story with the heading "preacher held after alarming information he posted on social media" in the Daily Nation Newspaper.
4. The plaintiff contended that the publications were false and inaccurate and had had the effect of lowering his reputation in the estimation of right thinking members of the society who had thus shunned him.



5. In resisting the suit, the defendant filed a statement of defense in which it denied all the allegations by the plaintiff including the allegations that it published the words complained about then mounted the defense of accurate reporting of what had transpired between the plaintiff and the police leading to the plaintiff arrest. It was also pleaded that the publication was made without malice and that it concerned a matter of great public interest given the plaintiff's standing in society hence all the particulars of malice were denied with the defendant demanding strict proof that the publication was made without justification or basis.
6. It was additionally denied that the words could mean or were intended to mean what was attributed by the plaintiff; that the plaintiff had been injured in his reputation or standing and strict proof invited. Receipt of demand was denied with a rider that it was in all event not liable in defamation. It was thus prayed that the suit be dismissed with costs.
7. At trial the plaintiff called and led evidence from four witnesses while the defendant called only one witness being the reporter who filed the report.
8. In his testimony, the plaintiff adopted his witness statement filed and produced the 13 documents filed which were then marked PEX 1-13. The gist of his evidence was that on the night of 25/5/2022, a contingent of police officers went to his house, conducted a search and collected items and arrested him. He revealed the reason for the arrest was the unintended message that had been sent to all his contacts following download for a link for free WhatsApp and not the then ongoing massive Matungu killings. However, the defendant had inaccurately reported the arrest and he only came to realize the following day through a friend who called and informed him that he had watched a news item on Nation TV purporting that he had been arrested over the Matungu killings. The news had been aired at 7.00 pm and 9.00 pm and came to learn later that the same story had been also published in both the Daily Nation and Taifa Leo Newspapers. He testified that the said publications were maliciously published being they contained falsehoods which should have been verified before being aired and that the same had caused him great injury and damage following his then position as a church minister being a bishop of Christian Prayer Warriors Ministry. He asserted being a key participant in community activities as well as a former police reservist. He stressed that his image and reputation to have been greatly tarnished and injured within the community including members of his church who had drastically reduced as most of his congregants believed the same publication was true. Several faithful, friends and community members had called seeking confirmation about the story and that some talked negatively about him and that he lost friends as a result of the publication.
9. The witness confirmed that the reporter did in fact visit him in the cells and he briefed the reporter about his arrest being related to social media posts and not the Matungu killings. He said he contacted the media house who promised to take action but nothing arose. On cross examination he insisted that while it was true that he had been arrested, the falsehood was that he had been arrested in connection with murder at Matungu and that after the report, some of his church members abandoned the church.
10. PW2 testified that on the 26th May 2019, at around 9:00 while he watched the NTV news bulletin, he was shocked with the news that Bishop Rashid had been linked to the Matungu Killings. Many people in the hotel where he was, got shocked being the little expected the Bishop to associate with in such cults and killings and even started discussing about the false prophets, claiming that people like Bishop Rashid who presented themselves in the name of Jesus Christ had other intentions as it was stated in the bible. The hotel people switched to Citizen TV and the same news was being aired. He indicated that on the material day in the evening, he decided to log into you-tube to get the full briefings because he had watched the news in parts during the 9.00 pm bulletins from the various stations. The item had been posted on YouTube and he indeed watched same.



11. PW3 testified that he attended a public baraza called by the assistant Chief in her village on 21/6/2019 and that in the said baraza, the assistant chief informed them that he had read from the Daily Nation Newspaper and heard from Citizen TV news that the plaintiff had been found with guns and pangas and was linked to the then ongoing Matungu killings. She indicated that she was shocked being that she had all along known the plaintiff as a man of God and a bishop. She then developed fear for the plaintiff as a killer.
12. On being cross examined, the witness denied having watched the news nor read the newspaper but said the assistant chief read it to them. She added that she visited the respondent after being released but thereafter withdrew her children from the church and never goes to the respondent's home since then due to fear of him.
13. PW4, plaintiff's wife testified that her husband had been arrested following the unintended text messages send from his phone to all his contacts. She denied having told DW1, the Nation correspondent, that the plaintiff had been arrested over Matungu killings as the witness alleged and stressed that the story aired in Nation TV and published in various newspapers about the plaintiff was not true. She denied that DW1 was their family friend nor that she ever told him that that the respondent was arrested in connection with Matungu killings. She then asserted that the reports had affected her and the facility in that people would harass them and that the church membership had gone down.
14. When cross-examined by the defense counsel, the witness told the court that she got to know DW1 in 2012 when he had gone to the church for an interview and bought land from her family in 2017. She added that she was present when the police visited and picked the respondent with some gadgets including a lap top and phone and that having been arrested on Friday night he was in custody till Sunday when he was arrested. He concluded that her and others had come to establish that the allegations by the appellant was a lie but that the neighbours had shunned the family as killers and the children abused at school.

The defense case

15. The only witness to testify on behalf of the appellant was Shaban Makokha, DW1, a news reporter for Nation Media Group attached to Mumias. He testified that he received a call from the wife of the plaintiff, PW4 informing him that her husband had been arrested by a contingent of GSU officers. The said wife, PW4, informed him that the said officers were looking for weapons and that they searched the entire house. He told the Court that thereafter he spoke to the accused at the police station as well as the OCPD who told him that the accused had been arrested over some alarming messages send from his phone to several people and social media users. He added that what made him make the story that the plaintiff had been arrested in connection to the then ongoing Matungu killings was what he had been told by PW4. However, he added, upon realization that that the story was not true and after confirming that the plaintiff had been released, he proceeded to prepare another story to that effect on 28/5/2019 to apologize for the initial publication. He produced a publication of 28.5.2019 as evidence that he published an apology. The court notes that the publication is indeed headed "Bishop Arrested Over Matungu Killings Freed with Warning".
16. The trial Magistrate upon considering all the facts of the case came to a conclusion that the defendant's actions action of publishing plaintiff's name and implicating him with the then alarming Matungu killings was defamatory. The court held that the fact that the said statement was false and directly referred to the plaintiff by name was not denied by the defendant before the trial court. The trial court then having considered the damage occasioned to the plaintiff and the relevant authorities relied



upon by parties assessed damages and awarded to the plaintiff general damages for defamation at Kshs 2,600,000/= The plaintiff was also awarded costs of the suit and interest.

17. The appellant was dissatisfied with the trial court's judgement delivered on 11/6/20219 and lodged the instant appeal and faulted the trial court on the grounds that:
- i) That the learned trial magistrate erred in law and in fact failing to evaluate the evidence on record and thus arrived at an erroneous conclusion that the plaintiff had been defamed.
 - ii) That the learned trial magistrate erred in law and fact in holding that the respondent had proved his case for defamation when the article complained of was true in substance.
 - iii) That the learned trial magistrate erred in law and fact in failing to consider the appellant's submission.
 - iv) That the trial magistrate failed to consider the existence of circumstances that mitigated any award of damages payable to the respondent.
 - v) The learned trial magistrate erred in law in awarding sums in damages which was/is manifestly and/or inordinately high, thus connoting an error in principle, taking into account past decisions of the courts and the current trend of awards.

Issues Analysis and Determination

18. Having considered the appellant's grounds of appeal, the evidence adduced before the lower court, the judgment appealed against and the submissions for and against this appeal, the court discerns that the appellant's grievances are collapsible into two broad issues for determination. The issues are therefore;
- i) Whether the respondent proved on a balance of probabilities that he was defamed to warrant judgment in his favour?
 - ii) Whether the trial court erred in failing to quantify properly the general damages awarded to the respondent?
19. Justifiably, the law of defamation is concerned with the protection of reputation. It recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements that injure his reputation. see *Selina Patani & another vs Dhiranji Patani (2019) eKLR*.
20. A defamatory statement' is defined to be a false statement against the person it concerns and which tends to lower his/her reputation in the estimation of right thinking members of society generally to whom it is published. It is also defamatory if it exposes the subject to public hatred, contempt or ridicule or if it causes him to be shunned or avoided by those to whom the statement is published. See *SMW vs ZWM (2015) eKLR*.
21. For a claimant in a defamation suit to succeed, he ought to prove three ingredients of the tort which are; the existence of a defamatory statement; the defendant has published or caused the publication of the defamatory statement; and that the publication is false and refers to the claimant.¹

a. Whether the publication by the appellant was defamatory

22. From the evidence on record, at no point is it disputed nor is it denied that the Nation Media Group published the alleged defamatory statements about the plaintiff in in its three news channels; Daily Nation Newspaper, Taifa Leo and NTV news bulletin on 27 May 2019 as well as in the social media

¹ *Musikari Kombo vs Royal Media Services Limited 156 of 2017 (2018) eKLR*



where a later application seeking adduction of additional evidence asserted it stands published. The defendant's TV station aired the information on 26th May 2019 in the 7:00 pm news and 9:00 pm news indicating that the plaintiff had been arrested over the infamous 2019 Matungu killings. The headline for the news item was "Bishop Rashid Makokha arrested over Matungu Killings" The same was published on Taifa Leo newspaper on 27th May 2019 in Kiswahili language as "askofu akamatwa kuhusiana na mauaji ya Matungu" and "preacher held after alarming information he posted on social media" in the Daily Nation Newspaper on the same date.

23. It is equally not in doubt that in the said publications, the appellant directly referred to the respondent's name as; "Bishop Rashid Makokha arrested over Matungu Killings". Evidence by PW2 affirmed to have on the 26th May 2019 at around 9:00 while he watched the NTV bulletin to come across the news that Bishop Rashid had been linked to the Matungu Killings. Many people in the hotel where he was got shocked being the little expected the Bishop to associate with in such cults and killings and even stated discussing about the false prophets, claiming that people like Bishop Rashid who presented themselves in the name of Jesus Christ had other intentions as it was stated in the bible. The hotel people switched to Citizen TV and the same news was being aired. He indicated that on the incident day in the evening he logged into you-tube to get the full briefings being he had seen the news in parts during the 9.00 pm bulletins from the various stations. In addition, the defendant admitted to the court to have published the statements in her three media outlets, two print and one electronic.
24. Tritely, for statement to qualify being defamatory, it must be proved to have been untrue and have the effect of lowering the respondent's reputation in the estimation of right-minded persons, or must tend to seclude him or be shunned or avoided.
25. The evidence by both sides, especially that by the reporter, DW1, is explicit that by the time he compiled and submitted the report for publication, he had spoken to both the Respondent and the police who told him the reason for the arrest. Both told him that the arrest was about abusing messages that had been sent from his phone. When the witness thus submitted the report alleging connection with Matungu killings, he was not being honest or indeed compliant with the duty to report accurately but was at least reckless if not malicious. The statement was false and unjustifiable.
26. The publication of the following day, touted by the appellant's witness to have been a retraction or apology and produces as exhibit did not in any way ameliorate the situation. The court reads that publication to be a reinstatement that that the respondent had been arrested in connection with the Matungu killings and was arrested with warnings. The court deems that to be the only import of the publication because the heading says so unequivocally and it refers the readers to read the previous article without seeking to qualify same or make any amends. The court takes the view that the two publications by the respondent were false and defamatory of the respondent.
27. The next question is whether the publication has had the effect of lowering the reputation of the respondent in the estimation of the right thinking members of the society. The respondent presented to the court that being a church minister and a bishop of Christian Prayer Warriors Ministry, a key participant in community activities as well as a former police reservist, the publication by the appellant greatly tarnished his reputation leading many of his congregants lacked trust in him. He presented that membership of his church had drastically reduced as most of his congregants had believed the same publication as true. Several faithful friends had called seeking inquiries about the story as some started talking in bad about him. That position was reiterated by the PW3 and 4 that neighbours no longer visit them but instead shun them.
28. Being an appellate court, there is nothing on record to justify any interference with the conclusions by the trier of facts that the said publication grossly affected plaintiff's reputation.



29. On whether the alleged publications were malicious, I find DW1 to have insinuated that the plaintiff was arrested over killings even after confirming from the police specifically the OCPD that he was arrested over other issues and not the Matungu Killings. It is clearly evident that the reason for arrest of the plaintiff wasn't as a result of the alarming Matungu killings. DWI testified to the trial court that when the plaintiff was released, he did another story in the online article titled as "Bishop arrested over matungu killings freed with warning" intended to correct his earlier story. I concur with the findings of the trial court in ascertaining that the same was not in any point close to what he calls an apology but a justification. The court thus finds the publication to have been made by the appellant maliciously with an aim of tarnishing the respondent's reputation. To court this was a clear case for award of exemplary and aggravated damages had the reporter been made a party to the suit.

b. Whether the trial court applied wrong principles in the assessment of damages thereby arriving at an erroneous quantum

30. The court is bound by the decision of the court of appeal in *Gitobu Imanyara & 2 Others vs Attorney General* (2016) eKLR where guiding principles were issued with regard to interference with trial court's award of damages that;

"...it is firmly established that this court will be disinclined to disturb the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

31. To guard against intrusion to privacy and violation of the right to dignity, Section 16A of the *Defamation Act* sets the minimum damages to underscore the need for protection of reputation and public standing of individuals. The provision reads

"In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings."

32. The court in *Savanna Saw Mills Ltd vs Gorge Mwale Mudomo* (2005) eKLR in line with the above provision held that; "It is the law that the assessment of damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court simply because it would have awarded a different figure if it had tried the case at the first instance."

33. In *Jobn vs MGM Ltd* (1997) the Court of Appeal stated 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 take account of the distress, hurt and humiliation which the defamatory publication caused."

34. From the re-evaluation of the evidence on record, the court finds that the learned trial magistrate made reference to the relevant authorities on record and that in awarding damages to the plaintiff worth Ksh. 2,600,000/= there was no error in principle committed just as much as the court finds that the damages



are not exaggerated but modest and commensurate with the injury inflicted on the respondent. The award is adjudged not to be inordinately low nor too high to merit interference on appeal.

35. The appeal is found to be meritless and is thus dismissed with costs.

DATED, SIGNED AND DELIVERED IN KAKAMEGA THIS 1ST DAY OF MARCH, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of

Ms. Asuna for the Appellant

Ms. Lugulu for the Respondent

Court Assistant: Polycarp

