



**MM v NM (Civil Appeal E622 of 2022) [2024] KEHC 8867 (KLR) (Civ) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8867 (KLR)

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

**CIVIL**

**CIVIL APPEAL E622 OF 2022**

**AB MWAMUYE, J**

**JULY 4, 2024**

**BETWEEN**

**MM ..... APPELLANT**

**AND**

**NM ..... RESPONDENT**

*(Being an Appeal against the Judgment and Decree of the HIV and AIDS  
Tribunal delivered on 24th July, 2020 in Nairobi HAT Cause No. 21 of 2018)*

**JUDGMENT**

1. The undated Memorandum of Appeal in this matter states three grounds of appeal, namely:
  - a. That the Learned Members of the HIV and AIDS Tribunal erred in law and in fact by failing to find that the Respondent disclosed the Appellant's HIV status as per Section 22 of the [HIV and AIDS Prevention and Control Act](#); and
  - b. That the Learned Members of the Tribunal erred in law and fact by failing to find that there was a breach of confidentiality from the unlawful disclosure of the Appellant's HIV status by the Respondent; and
  - c. That the Learned Members of the Tribunal erred in law and fact by failing to find that the Appellant was entitled to compensation for emotional and psychological distress occasioned by the Respondent's disclosure.
2. The Appellant filed written submissions dated 22<sup>nd</sup> September, 2023; while the Respondent did not participate in this Appeal. The Appellant's Written Submission canvass the three grounds of appeal in a succinct manner.



3. On the first ground of appeal, the Appellant contends that apart from his family no one was aware of his HIV status. The Appellant then proceeds to state that only after the Respondent informed the Appellant that he (the Respondent) was aware of the Appellant's HIV status did the Appellant notice that he was getting strange looks from his neighbours.
4. After blaming the Respondent for the disclosing his HIV status to the neighbours, the Appellant argues that it is automatic that he was entitled to compensational for emotional and psychological distress as well as a finding or declaration that the Respondent had breached the applicable laws by disclosing the Appellant's HIV status without the Appellant's consent.
5. I have perused the Record of Appeal, and in particular the proceedings and the Judgment of the Tribunal dated 24<sup>th</sup> July, 2020. The Tribunal found that the Respondent herein did not disclose the Appellant's HIV status, but they were satisfied that another party to those proceedings had in fact disclosed the Appellant's HIV status to the Respondent herein. It was their finding that the other party, who was the 1<sup>st</sup> Respondent in the proceedings before them, unlawfully disclosed the Appellant's HIV status and breached the confidentiality provisions of Section 22 of the [HIV and AIDS Prevention and Control Act](#); and they proceeded to award the Claimant Kes.250,000.00 payable by the 1<sup>st</sup> Respondent before them.
6. I am satisfied that the Tribunal arrived at the correct decision. While the Appellant was able to prove a breach of the law by the other party, he was unable to do so as against the Respondent herein. The Tribunal correctly placed the entirety of the fault squarely on the shoulders of that other party in the proceedings before them, given the paucity of evidence against the Respondent herein; which evidence did not meet the required threshold for a finding of fault against the Respondent.
7. It was proved before the Tribunal that the Respondent herein received knowledge of the Appellant's HIV status from that other party who was the 1<sup>st</sup> Respondent before the Tribunal. It is far more likely that the neighbours came to know of the Appellant's HIV status in the same way that the Respondent herein came to know, from the 1<sup>st</sup> Respondent before the Tribunal, rather than the Respondent before this Court; a logical assumption that the Appellant needed to rebut through evidence but which he failed to do.
8. Having found no error of law or of fact on the part of the Tribunal in its Judgment dated 24<sup>th</sup> July, 2022; I dismiss this Appeal. The Respondent, who has not participated, shall not be entitled to any costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2024.**

**BAHATI MWAMUYE**

**JUDGE**

In the presence of:

MM present in person for the Appellant

N/A for the Respondent

Ms Achieng, Court Assistant

