



**Rono v Equip Agencies Limited (Civil Case 510 of 2013)
[2024] KEHC 11172 (KLR) (Civ) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11172 (KLR)

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

**CIVIL
CIVIL CASE 510 OF 2013**

JN MULWA, J

SEPTEMBER 25, 2024

BETWEEN

VENESSA JEPCHUMBA RONO PLAINTIFF

AND

EQUIP AGENCIES LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff was at all material times an employee of the defendant upto 31st August 2013 when by an email communication dated 2nd September 2013 resigned from the said employment.
2. It is her claim that upon resignation the defendant threatened and published her name and photograph in the Daily Nation Newspaper of 12th November, 2013 at page 13 informing the public that she no longer worked with the defendant which in her statement contained malicious and defamatory remarks against her.
3. The impugned general notice to the public is reproduced as hereunder:

General Notice to the Public

“Take Notice that Venessa Jepchumba Rono of ID No. 27702817 is no longer an employee of Equip Agencies Limited. She is thus not authorized to act on behalf of Equip Agencies Limited or its sister companies in any manner whatsoever.

Equip Agencies Limited shall not be liable to any person, firm or institution for loss or damage incurred or suffered as a result of dealing with the said Venessa Jechumba Rono”



4. The plaintiff avers that the said remarks/publication was made in order to, and had purport of disparaging and/or caused her reputation to be disparaged and lowered her esteem in the eyes of the right-thinking members of the public friends, neighbours and colleagues.
5. By reason of the foregoing the plaintiff claims to have suffered disrepute, contempt and ridicule in the eyes of her friends, neighbours and colleagues as the remarks connoted that the plaintiff was :-
 - a. An immoral person
 - b. Untrustworthy, dishonest, deceptive, and slippery
 - c. Disloyal to the Defendant Company
 - d. Not worth employing
 - e. Involved in other illegal activities contrary to her line of duty, and/or
 - f. She committed an offence while in employment with the Defendant Company
6. Additionally the Plaintiff claims that by the above malicious publication, she lost her hand earned reputation and goodwill, respect and trust and useful friendships and have exposed her to untold embarrassment contempt hatred and ridicule considerable stress loss and damage.
7. By a plaint dated 27th November 2013 the plaintiff sued the Defendant seeking:
 - a. An order that the Defendant its servants employees representatives and/or agents do retract the defamatory publications/statements contained in the Daily Nation Newspaper of 12/11/2013
 - b. General damages for Defamation.
 - c. Exemplary damages for Defamation.
 - d. An order of permanent injunction restraining the Defendant whether by itself its servants employees representatives and/or agents from issuing any further defamatory statements against the plaintiff
 - e. Costs of the suit
 - f. Interest on (b), (c) and (c) above.
 - g. Any other relief this Honourable Court may deem fit to grant.
8. The Defendant denied the Plaintiff's claim by a Statement of Defence dated 3rd February 2014, but admitted receiving the resignation email dated 2nd September 2013 stating that the plaintiff failed to do a proper handover as was required by the Defendant as the Human Resource manager who was the custodian of the company documents and properties even as at the date of the defence by which actions the public notice became necessary.
9. The defendant admitted having authorized the publication in the Daily Nation Newspaper dated 12th November, 2013 but denied that it contained any malicious and defamatory remarks as claimed further stating that the publication was necessary in safeguarding the interests of the company as the plaintiff had failed to handover her office and vital company documents and that the action was intended to avoid misuse of the company documents and properties by unauthorized persons
10. The defendant further denied that the said publication disparaged and/or caused the plaintiff's reputation in the eyes of the right thinking members of the society as she claimed, and further denied



the innuendo thereto; and thus denied being liable in damages or at all, and urged for dismissal of the suit with costs.

11. Both the plaintiff and the defendant filed their witness statements and lists of documents.
12. The plaintiff testified as PW1. She adopted her witness statements dated 28th February 2020 and filed on 2nd March 2020 together with her documents.
13. On Cross-examination it was the plaintiff's testimony that she gave a letter of resignation due to what she called circumstances beyond her control. She denied having ever seen the company's Human Resource manual but admitted that she was required to handover documents reports and company property which she never did up to 7th November 2013 – about three months later, not by herself but through her Advocate.
14. On the General Notice to the Public authorized for publication by the defendant, the plaintiff testified that the publication was largely correct, but faulted paragraph 2 thereof to the extent that the company would not be liable to any person firm or institution for loss or damage incurred or suffered as a result of dealing with her and particularly her photograph that appeared alongside as defamatory.
15. On the innuendo at paragraph 12 of plaint, the plaintiff testified that in the November 2013 after 3 months of resignation she was employed by Burns & Travel Company and thereafter by Red Cross; and that the article did not suggest that she was not employable nor that she was involved in criminal activities, but only that it was suggestive.
16. It was her testimony that she sued the company, not the newspaper, but did not state particulars of malice by the defendant in her plaint. Additionally, she stated that generally the published words were defamatory by which she suffered mentally.
17. On re-examination PW 1 testified that she complained of the notice because anybody dealing with her would think she had committed a crime.

The plaintiff closed her case without calling any witness.

Defendant's case

18. The defendant called one witness, Rashminkumar Chanrakant Kapadia as DW1. He introduced himself as the General Manager of the defendant Company. He adopted his witness statement dated 24th May 2019 and his bundle of documents dated 23rd May, 2019.
19. He produced the company's Human Resource Manual and testified that the company is ISOS certified. He stated that it is not the company's policy that every employee who leaves its employment is published in newspapers, save for those who leave without handing over company documents and property like the Plaintiff.
20. He testified that the purpose for publication was to safeguard the company from liabilities that may be incurred due to misuse of important documents that may lead to company being held liable after the employee leaves and continues to use them.
21. Further it was the testimony of DW1 that it was a company policy to place a public notice about an employee who leaves its employment without handing over company property but only when it became necessary. The defendant did not call any other witness.



Analysis and Determination

22. The court has considered the parties pleadings documents and evidence as adduced and the plaintiff's submissions dated 20th February 2024.

Issues for determination

- a. Whether the publication in the Daily Nation Newspaper of 12th November 2013 of and concerning the plaintiff was defamatory of the plaintiff and is so, whether the plaintiff is entitled to the reliefs sought.
 - b. Who bears costs of the suit?
23. Defamation is defined in Gatley on *Libel and Slander*, 6th Edition page 2 as:

“A defamatory imputation is one to a man's discredit or which tends to lower him in the estimation of others or to expose him to hatred contempt or ridicule or to infuse his reputation in his office trade or profession or profession to injure his financial credit...”

It continued that-

“... to be defamatory an imputation need have no actual effect on a persons' reputation. The law looks only to its tendency. A true imputation may still be defamatory although its truth may be a defence to an action brought on it. Conversely, untruth alone does not render any imputation defamatory.”

Additionally

Halsbury's laws of England 4th Edition, Vol. 28 at page 23 states:

“... 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.”

24. The elements of defamation were stated by the Court of Appeal in the case of *Selina Patani & Another v Dhiranji V. Patani* (2019) eKLR and in *Raphael Lukale v Elizabeth Mayabi & another* (2018) eKLR thus-

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

See also *John Ward v Standard Limited* (2006) eKLR

25. There is no dispute that the notice to the public concerning the Plaintiff was not authorized by the defendant.



What is of concern is whether in the circumstances the said notice was malicious and/or defamatory of the Plaintiff.

26. In SMW v ZWM (2015) eKLR the Court of Appeal succinctly stated:

“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.”

27. Further a plaintiff must prove that the said publication was actuated by malice as held in Phinebas Nyaga v Gitobu Imanyara (2013) wherein Odunga J (as he then was) stated: -

“Malice here does not necessarily mean spite or ill-will but recklessness itself may be evidence of malice... Malice may be inferred from the relations between the parties before or after the publications of the conduct of the defendant in the course of proceedings... the failure to inquire into the facts is a fact from which inference of malice may properly be drawn...”

28. Additionally, in the case of Jamlick Gichuhi Mwangi v Kenya Commercial Bank Ltd (2016) eKLR the court stated that:

“A publication without justification or lawful excuse which is calculated to injure the reputation of another by exposing him to hatred contempt or ridicule... May amount to defamation if it tends to lower a person in the estimation of right thinking people generally...”

29. The Plaintiff in her submissions states that she did nothing wrong to leave the defendant's employment save that she failed to prepare a handover report and instructed her advocate to forward the same to the defendant which was done on 7th November 2013 three months after her resignation.

30. It is instructive that the Plaintiff also apologized in her resignation email to the defendant dated 31st August 2013 for not giving any notice due to circumstances beyond her control, and the need for immediate resignation.

31. In other words, in my view, the Plaintiff admits that her conduct before and after the resignation fell below the defendant's expectations more so as the Human Resource Manager who was expected to know Human Resource Policies in regard to resignation and termination of employment.

32. This resonates well with the holding in Jamlick Gichuhi Mwangi (Supra) wherein, a publication which is justified upon the circumstances of the matter cannot be held to have been malicious and/or defamatory.

33. The Plaintiff left employment of the defendant without any notice and for three months thereafter failed to handover her office including vital company documents and property of the defendant without guarantee that the documents and property would not be used to its detriment.

34. By all employment standards and policies, and the circumstances, the defendant was entitled to take action to protect its interests by authorizing the publication of the impugned notice to the public to warn the public, noting that for three months after her resignation, the plaintiff had failed to return to hand over her office.



35. The Plaintiff in her evidence testified that she did not have any problem with the notice except the statement that:
- “....Equip Agencies Limited shall not be liable to any person, firm or institution for loss or damage incurred or suffered as a result of dealing with the said Venessa Jepchumba Rono”
36. What the above means in my opinion is that the company took precautionary measure and statement to warn the public to be aware of unauthorized use of its documents and other vital property in the possession of the Plaintiff by herself holding herself as an employee or representative of the defendant or any other person or body by use (or mis-use) of the defendant’s documents and property.
37. In such circumstances it is difficult for any person, a right thinking member of the society whom *Kuloba J & Another v Eureka Educational & Training Consultants and 2 Others* (1993) eKLR held to be a fair-minded person with ordinary intelligence. The Defendant owned up to authorizing publication of the impugned notice to the public in its statement of defence, but denied that the publication was malicious nor made to disparage or infuse her reputation in terms of the innuendo the plaintiff pleaded.
38. While the Plaintiff suggests that the circumstances were not sufficient for the defendant to publish the notice together with her photograph in the Daily nation Newspaper, the Plaintiff failed to provide particulars of malice in her statement of claim as is required under the law . Notwithstanding, the plaintiff who had the burden of proof that the said publication was malicious also failed to discharge the said burden to the satisfaction of the court citing the case of *Nation Media Group v Gideon Mose Onchwah & Kenya Oil Company Limited* (2019) eKLR, for the proposition that there was no such need to publish the notice, yet she failed to demonstrate any justifiable reason for the inordinate delay and failure to prepare a hand-over report as well as handover of the company’s documents for a whole three months period after she left employment of the defendant.
39. In my opinion any right-thinking person with average intelligence could do what the defendant did to safeguard its interests and to avoid liabilities that could have been heaped on the defendant during the period by misuse or use of its property by unauthorized persons.
40. Handover by an employee leaving employment of an employer is a core requirement in Human Resource Manuals and Policies and publication to the public of employees leaving employment especially in Managerial Positions without notice and especially without hand-over reports is a necessary tool for protection of its interests. Such notices though rare are necessary when circumstances dictate so as held in the Nation Media Group Case above wherein the court observed that-
- “Now, people join organizations as employees and leave them all the time. Only in very rare cases does the onboarding of a member of staff get to be announced to the public generally. More rare indeed is the announcement of job transitions in the sense of someone having left his place of employment...”
41. It is therefore a prudent practice when circumstances dictate. I am persuaded that the notice by the defendant was one such rare notice.
42. By the definition in Gatley on *Libel and Slander* (cited above) a defamatory imputation is one to a man’s discredit or which tends to lower him in the estimation of others or to expose him to hatred contempt or ridicule and injure his in his office trade or reputation or profession or injure his financial credit.



43. In her testimony the plaintiff testified that soon after resignation from the defendant's employment she was employed at Burns & Travel Company and therefore at Red Cross International. In those circumstances the Plaintiff did not lose employability opportunities as she transitioned to other employment. She only stated that the publication was only suggestive of loss of reputation.
44. The plaintiff did not call any evidence to buttress her claim that she lost reputation from friends, neighbours and colleagues nor anyone to demonstrate that as a result of the publication she lost what she termed as useful friendships goodwill and/or respect and trust.
45. In the case of *Ochieng & 8 others v Standard Limited* (2004) IKLR 225, Lenaola J (as he then was) stated that defamation is a publication without justification or lawful excuse which is calculated to injure the reputation of another by exposing him to hatred contempt or ridicule.
46. Whereas the Plaintiff pleaded and testified that the impugned publication was defamatory, the defendant justified the publication as having been necessary and without malice and not calculated to injure the plaintiff in any suggested manner or at all. Referring to the definition of defamation at *Halsbury's Laws of England* (*supra*) the court holds the view that under the circumstances prior to the publication no defamation could be implied. See also *Joseph Njogu Kamunge v Charles Muriuki Gachari* (2016) eKLR.
47. In *Nagir Salfed Omar v Paramount Bank Limited & Another* (2015) eKLR, Rika J stated that :
- ... in employment related defamation is based on the old tort of defamation but with a new spin: the employees injured or damaged employability and not merely the personal stigmatization must be compensated. The decision resonates well with the Plaintiff's situation, that soon after her resignation and in the face of the impugned publication, employment opportunities came calling, and was employed and changed employment soon thereafter. The Plaintiff never experienced any un-employability or at all as a result."

Disposition

48. The court finds and holds that the Plaintiff has failed to prove to the required standard of proof upon a balance of probability that the impugned publication under the authority of the defendant was defamatory, and caused her to lose her hard earned reputation goodwill respect trust and useful friendships, nor that she was exposed to embarrassment contempt hatred or ridicule.
49. The upshot is that the plaintiff's suit against the defendant is devoid of merit. It is dismissed with costs to the defendant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH OF SEPTEMBER, 2024.

JANET MULWA

JUDGE

