



**MM v Standard Group Limited (Civil Case 3 of 2015)  
[2023] KEHC 18815 (KLR) (Civ) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18815 (KLR)

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

**CIVIL**

**CIVIL CASE 3 OF 2015**

**AA VISRAM, J**

**JUNE 15, 2023**

**BETWEEN**

**MM ..... PLAINTIFF**

**AND**

**THE STANDARD GROUP LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff, Mrs. MM, was the wife of JPM, deceased, and a business woman operating a salon in Homabay County. She filed this defamation suit on 7<sup>th</sup> January, 2015, against the Defendant, The Standard Group Limited.
2. The Plaintiff alleged that on or about September 29, 2014, the Defendant maliciously, contemptuously, and disparagingly printed and published of and concerning her the following words:-

“A primary school head teacher has committed suicide over his wife’s suspected infidelity. JPM, 53, a teacher at [particulars withheld] Primary school in Suba Sub County reportedly took his life in a maize plantation in [particulars withheld] Village, Gwassi Central location. M opted to kill himself after suspecting that his 45 year old wife who operates a salon in Magunga town was involved with a young man, an age mate of his children. It all started when the head teacher decided to visit his wife at her salon after he left school to have a haircut at the local shopping centre. Upon arrival at the salon, he found a young man in his early 20s, seated on his wife’s lap.”

Suicide Note

“He stared at them without saying anything .He then left the salon and the young man disappeared soon thereafter...”



3. The Plaintiff averred that the aforementioned publication, taken in its natural and ordinary meaning, implied and was understood to mean, that the plaintiff was a dishonest wife, an adulterous and unfaithful wife, committed a civil wrong, was guilty of infidelity, and, through her actions, purposefully caused her husband to commit suicide. She averred that the article implied that she was morally unfit to be a wife, and was untrustworthy, even to her customers and the general public.
4. The Plaintiff claimed that her reputation, personality, and credibility as a person, a wife, a mother, and a businesswoman have all been seriously and irreparably damaged as a result of the aforementioned publication. She claimed that she has experienced great distress; extreme embarrassment; and was the target of public scandal; hatred; contempt; suspicion; and odium arising from the said article.
5. The defendant filed their statement of defence on February 20, 2015 denying the plaintiff's allegations.
6. The Defendant averred that the publication complained of was a fair comment; made in good faith; and without malice; and in relation to a matter of great public interest. It relied on the defence of justification.
7. When the suit came up for hearing, the Plaintiff prayed that the court adopt her witness statement as her evidence in chief and admit her list and bundle of documents, which were duly produced and marked as Exhibits. The Defendant did not participate in the hearing.
8. The Plaintiff called one further witness, PW2, Ms QAO, who adopted her witness statement dated September 27, 2016 as her evidence in chief.
9. At the close of the hearing, the court called upon the parties to file and exchange written submissions. The Plaintiff filed her submissions dated March 13, 2023.

#### **Plaintiff's submissions**

10. The Plaintiff submitted that the Defendant's publication is circulated nationally and internationally.
11. In relation to the law of defamation, the Plaintiff cited *Halsbury Laws of England* 4<sup>th</sup> Edition Vol.28 at paragraph 22, in the following terms:-

“The proper purpose of an action of libel or slander is to vindicate the reputation of the person defamed, and accordingly the proper and the only party to bring the action is the person actually and personally defamed. This is not enough that the words reflect on the persons properly, there must also be imputation against the plaintiff personally...”
12. In relation to the above, the plaintiff submitted that the defendant had admitted publication of the article and had not denied that Plaintiff was the subject of the article. The Defendant had only claimed 'fair comment', but had not adduced any evidence to prove the defence.
13. As regards the defence of fair comment, the Plaintiff submitted that the same ought to fail because the publication was not an accurate and fair source of information. The article was libellous, wilful falsehood, and had damaged the Plaintiff's reputation in the eyes of her entire family and the right-thinking members of society.
14. The Plaintiff emphasized that the newspaper is widely read not only in Kenya, but also in East Africa, and around the world through its digital platform.
15. Further, that a private matter of this nature could not qualify as privilege or fair comment, and in any event, section 7 (1) of the [Defamation Act](#) states that such privilege is destroyed if malice is demonstrated, which she submitted was the case in the present matter.



## Analysis and Determination

16. I have considered the evidence and the submissions of the Plaintiff. The issues which emerge for my determination are as follows:-
- i. Whether the publication was defamatory of the Plaintiff?
  - ii. In the event the above is affirmative, what is the appropriate measure of damages?

### Whether the publication was defamatory of the Plaintiff?

17. The *Black's Law Dictionary* 8th Edition defines defamation as:-

“The act of harming the reputation of another by making a false statement to a third person. A false written or oral statement that damages another's reputation”.

18. Further to the above, Halsbury Laws of England 4th Edition Vol. 28 at paragraph 22, states that the defamatory words in question must also refer to the Plaintiff. It states the following:-

“The proper purpose of an action of libel or slander is to vindicate the reputation of the person defamed, and accordingly, the proper and the only party to bring the action is the person actually and personally defamed. This is not enough that the words reflect on the persons properly; there must also be imputation against the Plaintiff personally...” (emphasis mine)

19. The test to establish defamation was articulated in the Court of Appeal decision of *Miguna Miguna v Standard Group Limited & 4 others* [2017] eKLR, where the court stated as follows:-

“Speaking generally, a defamatory statement can either be libel or slander. Words will be considered defamatory because they tend to bring the person named into hatred, contempt or ridicule or the words may tend to lower the person named in the estimation of right-thinking members of society generally. The standard of opinion is that of right-thinking persons generally. The words must be shown to have been construed or capable of being construed by the audience hearing them as defamatory and not simply abusive. The burden of proving the defamatory nature of the words is upon the Plaintiff. He must demonstrate that a reasonable man would not have understood the words otherwise than being defamatory. See *Gatley on Libel and Slander* (8th edition para. 31).

The ingredients of defamation were summarized in the case of *John Ward V Standard Ltd*, HCCC 1062 of 2005 as follows:-

“...The ingredients of defamation are:-

The statement must be defamatory.

The statement must refer to the plaintiff.

The statement must be published by the defendant.

The statement must be false.”

20. Applying my mind to the test as set out above, I am persuaded that the publication referred to the Plaintiff. She testified that she was the wife of the deceased, and produced a death certificate of the late Joshua Mangira. Further, PW 2, testified that she knew the Plaintiff to be the wife of the deceased.



21. As regards whether the publication was defamatory, the stating point is the title to the article, which reads as follows: “Head teacher kill self over wife’s infidelity”, the balance of the article has been produced above. Was the publication defamatory? I am guided by the decision of the Court of Appeal in *S M W v Z W M* [2015] eKLR, where the court stated as follows:-
 

“ 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.”
22. The Plaintiff testified that she was shunned after the publication and lost business. This was further corroborated by PW2, who testified that “clients who used to visit the plaintiff for manicure and pedicure and to make their hair reduced significantly.”
23. Further, that “my friend became depressed and spent most of her time in the house to avoid the jeers, sneers and the public scorn” arising out of the article.
24. Based on the evidence as set out above, I am satisfied that the publication was defamatory.
25. As regards whether or not the same was false, no evidence was put forward by the defendant to show any basis or foundation for the truth of the allegations against the plaintiff.
26. Accordingly, I am satisfied that the plaintiff has proved that she was defamed by the defendant on a balance of probabilities.

#### **What is the appropriate award of damages?**

27. The Plaintiff claimed general damages and aggravated damages. She did not however, make any submissions relating to the appropriate quantum of damages. Nor did the Plaintiff submit any authorities in support of her claim for damages.
28. *Gatley on Libel and Slander* 12th Edition para 9.18 at page 353 states the following in respect of a claim for aggravated damages:-

“The conduct of the defendant, his conduct of the case, and his state of mind are all matters which the claimant may rely on as aggravating the damages in so far as they bear on the injury to him.

...

It is very well established that in cases where the damages are at large the judge can take into account the motives and conduct of the defendant, where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the Plaintiff’s proper feelings of dignity and pride. These are matters which the jury can take into account in assessing appropriate compensation.”

29. Further, in *Miguna Miguna v The Standard Group Ltd & 4 others* [2017] eKLR while quoting the case of *John v GM Limited* [1993] QB 586, the Court of Appeal stated the following:-

“Aggravated damages will be ordered against a Defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize.”



30. Based on the evidence. I do not think that the above conditions have been satisfied. Accordingly, I disallow the claim for aggravated damages.
31. As regards the claim for general damages; in the absence of any submissions relating to the appropriate quantum, the court takes note of some of the following factors to arrive at a reasonable award of damages:- the position of the Plaintiff in her community, and society generally; the gravity; medium of publication; effect on the feelings of the plaintiff, such as mental anguish and depression; conduct of the defendant, before and after, absence of any mitigating factors, such as lack of publication of an apology; and the need to vindicate the plaintiff's reputation.
32. Further to the above, the court will bear in mind that while an award for damages in such a matter is discretionary, the awards for damages are not intended to enrich a litigant. Accordingly, based on the reasons above, I find that an award in the sum of Kshs 350,000 is reasonable in the circumstances.
33. I hereby enter judgment for the Plaintiff in the sum of Kshs 350,000 together with costs and interest from the date of judgment until payment in full.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 15TH DAY OF JUNE 2023**

**ALEEM VISRAM**

**JUDGE**

**In the presence of;**

.....**For the plaintiff**

.....**for the defendant**

