



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mogaka & 3 others v Ndung’u (Civil Appeal E010 of 2023)  
[2023] KEHC 23707 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E010 OF 2023  
WA OKWANY, J  
OCTOBER 5, 2023**

**BETWEEN**

**JOSEPH MOGAKA ..... 1<sup>ST</sup> APPELLANT  
THOMAS OKERO ..... 2<sup>ND</sup> APPELLANT  
JOSEPHINE OKERO ..... 3<sup>RD</sup> APPELLANT  
JARED NYAKWEBA ..... 4<sup>TH</sup> APPELLANT**

**AND**

**BETH WANGECI NDUNG’U ..... RESPONDENT**

*(Being an Appeal from the Judgment of the Hon. Nyigei, Principal Magistrate at Nyamira delivered on 16th March 2022 in the Chief Magistrate’s Court, Civil Case No. 137 of 2018)*

**JUDGMENT**

1. The Respondent herein, Beth Wangeci Ndung’u, and her husband one Dominic Munene were members of a church christened, Christian Life Centre M-COG, where they served as pastors. The Respondent and her said husband however disagreed with the church’s leadership over the style of worship and preaching. The disagreement culminated in the excommunication of the couple from the said church. They then moved out of the church with some congregants, church instruments and offerings.
2. The church building at Gekendo M-COG, where the Respondent and her husband ministered was demolished on 16<sup>th</sup> July 2018 under unclear circumstances and it was suspected that the Respondent and her husband were responsible for the said demolition.
3. The Standard Newspaper got wind of the church’s leadership and published an article over it in its 30<sup>th</sup> July 2018 edition. The Respondent and her husband were aggrieved by the publication of the said



article. They claimed that the article had ruined their reputation and filed 2 separate but identical suits before the lower court, namely; Nyamira CMCC 137 of 2018 and 138 of 2018 filed by the Respondent herein and her husband respectively. In the said suits, the couple claimed, inter alia, damages for defamation.

4. The lower court heard the two suits separately and rendered identical judgments in favour of the couple as follows:
  - a. General Damages – Kshs 1,000,000/=
  - b. Aggravated Damages – Kshs 300,000/=
  - c. Damages in lieu of Apology – Kshs 500,000/=
  - d. Costs and interests at court rates.
5. The Appellants herein were dissatisfied with the decision in the twin cases and instituted appeals. The Respondent's case gave rise to the instant appeal while the suit filed by her husband resulted precipitated the appeal Nyamira HCCA E012 of 2022 (hereinafter "the Related Appeal").
6. Having noted that the Respondent is the wife of the Respondent in the related appeal, I find that it would have been prudent and cost effective for them to file one suit for defamation considering that the cause of action arose from the same publication.
7. Be that as it may and having already rendered itself in the related appeal which this court allowed in a judgement delivered on 25<sup>th</sup> May 2023, I find that it will be pointless for this court to rehash the similar grounds of appeal, arguments and findings in this appeal. Suffice is to say that this court wholly adopts its reasoning, findings and decision in respect to the said related appeal in this appeal as they are premised on similar facts. I therefore direct that the judgment in the related appeal be placed on this file for ease of reference and for record purposes.
8. For avoidance of doubt, having found that the appeal in the related appeal (Nyamira HCCA E012 of 2022) is merited, I make a similar finding in this appeal. In a nutshell, I find that the instant appeal is merited and I therefore allow it with costs to the Appellants.
9. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS  
THIS 5<sup>TH</sup> DAY OF OCTOBER 2023.**

**W. A. OKWANY**

**JUDGE**

