



**Wangai v Mugambi & another (Civil Case 433 of 2010)
[2024] KEHC 12726 (KLR) (Civ) (8 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12726 (KLR)

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

**CIVIL
CIVIL CASE 433 OF 2010**

AN ONGERI, J

OCTOBER 8, 2024

BETWEEN

DR KIAMA WANGAI PLAINTIFF

AND

JOHN N MUGAMBI 1ST DEFENDANT

MUGAMBI & COMPANY 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case Dr. Kiama Wangai (hereafter referred to as the plaintiff only) filed the plaint dated 21/9/2010 seeking general damages for defamation against the two defendants John N. Mugambi and Mugambi & Company Advocates (hereafter referred to as the 1st and 2nd defendants respectively).
2. The plaintiff averred as follows in the plaint dated 21/9/2010;
3. The plaintiff avers that on or around April 2009 the defendants approached the plaintiff and asked to be sublet office space at Maendeleo House 7th floor.
4. The plaintiff avers that he agreed to sublet office space to the defendants at a monthly rent of Ksh.10,000 to be paid in arrears. The defendants took the office space.
5. The Plaintiff avers that the defendants paid the said rent upto the month of November 2009.
6. The plaintiff avers that the defendants vacated the premises on 15th January 2010 with rent owing and due.
7. The plaintiff avers that a demand of the monies from the defendants continued to be ignored, prompting the plaintiff to make a formal demand on 9th February 2010 and 27th July 2010.



Particulars of Claim

8. That on 15th February 2010 and 16th August 2010 in writing in response to the above mentioned demand, the defendants maliciously and without color of right wrote letters that portrayed, insinuated and referred to the plaintiff in an extremely libelous and defamatory manner.
9. That the plain meaning and innuendo of the written words is that the plaintiff is a conman, a criminal who unlawfully procures payment from the public.
10. The actual defamatory and libelous words in the defendants' letter dated 15th February 2010 included: Relegate to the contents of your letter dated 9th February 2010 which the undersigned..... in view of your obvious oblivion and ignorance. Concerns raised in the alluded letter are masked with ignorance and lies. Ignorance is a vice that has brought shame to many. Fell free to seek a counsels opinion on the same. The undersigned urges you to conduct yourself in a professional manner, candid in every way..... effective communication is needed to avoid juvenile behavior in dealing with issues.. Maybe a little outside help can shed light to the apparent ignorance.
11. The actual defamatory and libelous words in the defendants' letter dated 16th August 2010 included:.. Maligned with false Malicious accusations... intended to deceive.... intended to vex.. you are hereby advised to desist..... you are hereby advised... making false aspersions that are malicious in nature..... intended to defame..... Retract all false allegations contained.
12. That the aforesaid letters which were copied widely were unwarranted, caused the plaintiff great distress, calculated to disparage him and to bring his character into disrepute and expose him to public ridicule and hatred in the eyes of right thinking members of the society and caused him injury and damage.
13. The 1st and 2nd defendants filed an application dated 4/11/2010 denying the plaintiff's claim.
14. The 1st and 2nd defendants averred as follows in their statement of defence dated 4/11/2010.
15. The defendants aver that they were merely exercising their right to reply to issues raised in the plaintiff's demand letters and that does not amount to libel or defamation.
16. The defendants further maintain that it is common knowledge that communication that is merely, unflattering, annoying, irksome or embarrassing or that only hurts the Plaintiff's feelings is not actionable. People should be tough enough not to be injured by such statements which would flood the courts if actionable.
17. The contents of paragraph 12 are denied in toto and the plaintiff is put to strict proof thereof.
18. Further without prejudice to the above the defendants add that defamation is the publication of false statements about an individual that can cause personal injury to an individual's, reputation or character received by at least one other person. The defendants' letter dated 16th February 2010 was addressed to and received by the plaintiff and was only copied to the defendants' advocates E. K Njagi and not to any other person for obvious reasons and the same cannot have been said to be circulated hence not in the ambit of the true definition of defamation.
19. The contents of paragraph 13 of the plaint are denied.
20. The jurisdiction of this honourable court is admitted.
21. The defendants further state that the plaintiff's suit as drawn against them is fatally defective in many respects. The 1st and 2nd defendants reserve the right to strike out the plaint.



22. The defendants further state that the present suit filed by the plaintiff is frivolous and therefore an abuse of the court process merely intended to vex the 1st and 2nd defendants, and a deliberate attempt by the plaintiff to cunningly delay and obstruct the course of justice in High Court Industrial Cause number 1175 of 2010 where the defendants have filed their bill of costs against the plaintiff for professional services rendered.
23. The plaintiff gave evidence on 24/1/2018 that on or about February 2009, he met the 1st defendant who requested him to sublet his office at Maendeleo house 7th floor.
24. The plaintiff who testified as PW 1 said he gave the 1st defendant space at his office for ksh.10,000 per month.
25. The plaintiff said all went well until December 2009 when he discovered that the 1st defendant was taking away some of his clients especially one Mr. John Okal.
26. The plaintiff said the 1st defendant left on 15/1/2010 without clearing rent.
27. He said the 1st defendant also took his personal file of case he had filed at the Industrial court through the 2nd defendant.
28. The plaintiff said he wrote to the 1st defendant on 9/2/2010 demanding the unpaid rent and return of the personal file.
29. The plaintiff said the 1st defendant insulted him in a letter in response to the said letter.
30. The plaintiff said on 3/3/2010 he wrote another letter 15/2/2010 asking the 1st defendant to focus on the issues he had raised.
31. The plaintiff said he sued for rent arrears and obtained judgment.
32. He also said he taxed the bill in the personal file.
33. In cross-examination PW 1 said the Advocate Complaint Commissions does not handle issues of defamation.
34. He said the letter dated 15/2/2010 was given to the 1st defendant's clerk who took it to the 1st defendant.
35. He also said it was given to his secretary called Sabina and his court clerk called Stanley.
36. The defendant testified as DW 1. He adopted his written witness statement dated 1/3/2018 as his evidence in chief.
37. In the said statement he said he is the 1st Defendant and the Managing Partner of the 2nd Defendant.
38. That the Plaintiff was in deed his Sub-Landlord from whom he had leased office space at Maendeleo House, Nairobi, from where he operated his young law firm sometimes in the year 2009.
39. That in the ordinary course of business, and as an Advocate of the High Court of Kenya, the Plaintiff would instruct him to act for him in various undertakings, briefs among them to act for him in a matter that he intended to file against the University of Manitoba and which assignment he did by inter alia doing extensive research work as concerns the brief, drafting pleadings and carrying out numerous consultations. The case was later filled in court as Industrial Cause Number 751(N) of 2009.
40. That differences arose between them along the way as a result whereof, they could hardly neither work together nor share the same office.



41. That the foregoing notwithstanding, the Plaintiff started demanding that they should share the office rent equally despite the fact that he had sublet him a small room. Upon consideration it dawned on him that that he had no option but to seek an alternative office.
42. That upon leaving his office, the plaintiff did not take it well. He embarked on writing numerous letters to him and sending him text messages to the effect that he owed him money on account of office rent and that further, he should hand over to him all the files which he was acting for him as well as the ones he had referred some clients to him.
43. That in response to numerous letters, he responded via his letters of 15/2/2010 and 16/8/2010, which letters taken in their ordinary meaning or at all, are not in any way defamatory in either words or publication or otherwise and thus the claim by the plaintiff is a hopeless attempt to blackmail and threaten him.
44. That his aforesaid letters to the plaintiff contain fair comments of the Plaintiff and were made directly to himself and none of them were ever published to a third party, least of all by himself. In any event, I personally effected service of the letter dated 15/2/2010 directly to the plaintiff in his office in a sealed envelope which service he accepted.
45. That as for the second letter of 16/8/2010, he again personally took it to the Plaintiff in his office and this time round, after seeking to see him in his office, he declined and came out of his office to the reception where he took the letter, opened it and received it himself by signing and stamping personally and he retreated to his office with it. No one at all saw the letter until it was filed in court by himself.
46. That the letter of 16/8/2010 was intended to be copied to the Law firm of E. K. Njagi, Advocate who is his elder brother and whom he had given notice that there was an imminent threat of a malicious prosecution suit by the plaintiff against him and as such should be aware of it in the event that it was filed. Nonetheless, no copy of the said letter was ever delivered to the said Advocate.
47. That subsequently and without any reasonable cause, and in an attempt to coarce him to withdraw a taxation case against him in High Court Miscellaneous Application 142 of 2010, the plaintiff instituted a plethora of suits against him being inter alia;

Case No. Parties Status

- (1). CMCC No.5135 of 2010 (Kiama Wangai v John Mugambi) Dismissed in my favour.
 - (2). CMCC No.5136 of 2010 (Kiama Wangai v John Mugambi) Ruling on 20/03/2018.
 - (3). CMCC No.5137 of 2010(Kiama Wangai v John Mugambi) Ruling on 23/03/2018.
 - (4). HCCC No.432 of 2010 (Kiama Wangai v John Mugambi) Stayed.
 - (5). HCCC No.433 of 2010 (Kiama Wangai v John Mugambi) Ongoing.
 - (6). HCCC No.434 of 2010 (Kiama Wangai v John Mugambi) Stayed.
 - (7). HC Misc.No.499 of 2010 (Kiama Wangai v John Mugambi) Dismissed in my favour.
48. That it is apparent from the numerous suits filed by the plaintiff against him, the plaintiff is a vexatious litigant one with the sole aim of undermining both his integrity and generally that of this Honourable court.
 49. Further to the foregoing, the plaintiff cunningly and in an effort to frustrate and scare him with costs, opted to file three (3) separate suits which clearly emanated from the same cause of action the same



being: HCCC No.S 432,433 and 434 of 2010. Needless to state, he has come to this Honourable court with dirty hands.

50. That the sole aim of prosecuting this defamatory case is to arm-twist him into withdrawing his bill of cost filled against the plaintiff in High Court Misc. Application Number 310 of 2016 that was scheduled to be heard on 12th March 2018.
51. That he denies having defamed him or at all and state that he correctly depicted him for what he was and this was directly to him without the involvement of a Third Party.
52. That he prays that this suit against him and all other suits filed by the plaintiff emanating from the same cause of action be dismissed with costs.
That is all he wished to state.
53. In cross-examination the 1st defendant denied that he defamed the plaintiff.
54. The parties filed written submissions as follows; the plaintiff submitted that the words used in the letters after a genuine demand were defamatory as the communication was false, malicious with the intent to defame the plaintiff.
55. It is further not in dispute that the defendant authored the letters. The letters were circulated to third parties, the firm of E Njagi & Co. Advocates as they were hand delivered unsealed by Mr. Willis Agayi.
56. The plaintiff on damages proposed a sum of Kshs. 5,000,000 as adequate compensation and relied on *Biwott v Clays Ltd* [2002] EA 334 in which the court awarded Kshs. 30,000,000.
57. The defendant submitted that the plaintiff had a fallout with the defendant that culminated in the defendant leaving his premises. The letters dated 15/2/2010 and 16/8/2010, the defendant was merely replying to the plaintiff while addressing the alleged rent arrears and the return of files he was undertaking for the plaintiff.
58. The defendant argued that the letters were not published to a third party but were personally effected to the plaintiff. In the absence of this element the defamation suit herein has no grounds. The plaintiff has additionally failed to reveal if he lost any clients or income as a result of the alleged publication of the letters.
59. The defendants submitted that the plaintiff did not reproduce the contents of the letter verbatim but instead picked out passages that he felt were injurious to his reputation which does not give a clear picture of the intention of the letters. The plaintiff has not sufficiently proved that he was defamed and therefore he is not entitled to any damages.
60. It is the duty of the plaintiff to prove his case against the defendants. The standard of proof is on a balance of probabilities.
61. The issues for determination in this case are as follows;
 - i. Whether the plaintiff has proved his case against the defendants to the required standard.
 - ii. Whether the defendants have a valid defence against the plaintiff's claim.
 - iii. Whether the plaintiff is entitled to the remedies he is seeking against the defendants.
 - iv. Who pays the costs of this suit?
62. On the issue as to whether the plaintiff proved his case against the defendants, he must establish that the impugned words contain the ingredients of defamation.



63. 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:

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

64. I find that the 1st defendant was replying to a letter written to him by the plaintiff.

65. In the case of *Miguna Miguna v Standard Group Limited & 4 others* [2017] eKLR, the Court of appeal stated as follows regarding defamation;

“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).”

66. There is no evidence that the letter was published to a 3rd party. The plaintiff who testified as PW1 did not call any witness to testify in support of his case.

67. The Court of Appeal in the case of *Selina Patani & another v Dhiranji v Patani* [2019] eKLR stated as follows on the said issue;

“No other third party was called to testify as to the publication and injury to reputation. As to whether the appellants character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the appellants reputation and standing in society was injured. It is in this context that we agree with the learned Judge that a person’s own view about his/her reputation is not material in a claim for defamation; there must be evidence from a third party to the effect that the standing and reputation of the claimant has been lowered as a result of the defamatory publication.”

68. The plaintiff said that the letter was published to his secretary called Sabina and his court clerk called Stanley. However, the plaintiff did not call any of the said witnesses to testify in support of his case.

69. I find that the communication contained in the letter to the plaintiff was only seen by the plaintiff’s secretary and court clerk and in the circumstances, the same was not published by the defendants.



70. In the case of *David Chege Mwangi v Mugambo Wa Gachocho Co. Limited* [2010] eKLR ,the court held as follows concerning a letter of complaint written to the Registrar;

“The communication does not amount to publication since only the Registrar’s staff or personnel has access to the communication”

71. I find that the plaintiff has not proved his case to the required standard and therefore he is not entitled to the remedies he is seeking against the defendants.

72. I dismiss the suit at this stage.

73. On the issue as to who pays the costs, I find that the 1st defendant owed the plaintiff rent and when demanding the same, the 1st defendant was rude in his correspondence to the plaintiff.

74. There is evidence that the plaintiff sued and got a judgment in respect of the unpaid rent.

75. For that reason, the defendant is not entitled to costs. He cannot be allowed to benefit from his own wrong doing.

76. Had the plaintiff proved his case, he would have been entitled to general damages of ksh.2,000,000/=.

77. However, the plaintiff did not prove that the defendants defamed him. The plaintiff’s case is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF OCTOBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

