



**SBA v DF (Civil Case 302 of 2014) [2024] KEHC 14113 (KLR)
(Civ) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14113 (KLR)

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

**CIVIL
CIVIL CASE 302 OF 2014**

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

SBA PLAINTIFF

AND

DF DEFENDANT

JUDGMENT

1. SBA sued DF seeking the following remedies
 - i. Permanent injunction restraining the defendant, her agents, servants or any persons acting on her instructions from further publishing any defamatory statements directed at the plaintiff on the internet, particularly on www.complaintsboard.com or in any other forum or platform.
 - ii. Unconditional apology in the same forum and pulling down of the defamatory statements as published.
 - iii. General damages.
 - iv. Exemplary and aggravated damages.
 - v. Costs of this suit.
2. The plaintiff averred as follows in her plaint dated 23/2/2014.
3. That sometime in the year 2013, the Defendant published on a website www.complaintsboard.com words concerning the plaintiff that were false, disparaging and malicious in the following words:

“Ms SAB

Complaints & Reviews



-Has she declared all her income

Ms SAB Contacts & Informations

Ms SAB

Posted: DF

Has she declared all her income

Complaint Rating:

Contact information

DF

Kenya

Currently I have filed divorce under the Kenyan Laws. (my name DF) However, the matrimonial home purchased here in Kenya, is now claimed by husband JDF) to be under the ownership of a British citizen and resident of the UK (Ms SAB). She happens to be his lawyer, and confidant on all financial matters.

Now that I am seeking my share of the property-he claims he is not the owner by having changed the title deed documentation to prove she is the owner on titles signed here in Kenya without my consent. She also practices as a lawyer.

I am desperate as I am trying to support my two children currently studying in university - one is in UK, and the other is in Austria.

I would really appreciate help in establishing the facts so that my husband does not get away with this kind of harassment.

DF

xxxxx.xxxxxxxxxx@gmail.com

tel:+254733xxxxxx

Comments Kenya Law & Civil

Rights

Share with others:

Was the above complaint useful to you?.....”

4. The Plaintiff states that the above words and statements were published without verifying the correctness and true position of such malicious and spiteful allegations.
5. The Plaintiff further avers that the statements published as aforesaid were false, malicious and defamatory to the Plaintiff and the Defendant in so publishing the same was actuated by extreme malice and spite.

Particulars of Malice and Spite

- a) Knowingly publishing statements aired at injuring the Plaintiff's personal and professional image, reputation and standing in the eyes of the Plaintiff's clients, family, friends, professional colleagues and the general public.



- b) Knowingly publishing untrue statements concerning the Plaintiff online, where many people in Kenya and in the world would read the same and as a result the Plaintiff's image and professional standing would no doubt be adversely affected in the eyes of right thinking members of society.
6. In their natural and ordinary meaning, the statements complained of were meant and were understood to mean:-
- i. That a matrimonial home allegedly bought by the Defendant's husband, one Jose Dhania Femandes has been unduly claimed by the Plaintiff;
 - ii. The Plaintiff is dishonest and greedy;
 - iii. The Plaintiff has an illicit relationship with the Defendant's husband;
 - iv. The Plaintiff is a dishonest lawyer;
 - v. The Plaintiff is a liar;
 - vi. The Plaintiff is of wanting and questionable character and as such is not fit to practice as a lawyer;
 - vii. The Plaintiff is out to grab a share of the Defendant's property;
 - viii. The Plaintiff either singly or working in cahoots with the Defendant's husband changed the title deed of the property to prove the plaintiff is the owner;
 - ix. The Plaintiff is engaged in malpractices and unethical behavior;
 - x. The Plaintiff has intentions to steal the defendant's property or a share thereof;
 - xi. The Plaintiff is colluding with the defendant's husband to harass the defendant;
 - xii. Members of the society across the world ought to keep watch and investigate the plaintiff who is dishonest;
 - xiii. The whole world should rally against the Plaintiff.
7. By reason of the afore going, the Plaintiff's reputation and integrity has been seriously put to public scrutiny and as a consequence she has suffered considerable distress, agony, mental anguish, humiliation and embarrassment. The Plaintiff has also been brought into public odium, ridicule, distrust, contempt and has suffered loss and damage to her personal image for which the defendant is liable.
8. The defendant has failed, refused, neglected or otherwise omitted to retract the false, malicious and defamatory statements and has refused to publish a suitable apology despite demand and notice being issued to the Defendant to do so.
9. That unless restrained by an order of this Honourable Court, the defendant will continue to publish or cause to be published defamatory statements concerning the Plaintiff with intent to further injure and harm the Plaintiff's reputation.
10. There is no other suit pending between the parties hereto in respect to this matter.
11. The defendant filed a defence dated 18/5/2015 in which she stated in part it is true that she divorced her ex-husband JDF in High Court Divorce Cause Number xxx of 2008.



12. That during the pending of her marriage they made a purchase of the matrimonial property namely Apartment No x, Block B, LR No xxxx/IV/19x.
13. Further, that the plaintiff is attempting to evict her from the said property.
14. The hearing proceeded on 02/05/2024. The plaintiff adopted her witness statement dated 23/2/2014 as her evidence in chief.
15. The plaintiff stated in the said statement that sometimes in 2013 she came across statements made by one DF, the Defendant herein on a blog website www.complaintsboard.com words which were malicious, disparaging and calculated at injuring her reputation in the eyes of right thinking members of the society.
16. That the statements caught her by surprise and were laced with innuendo to the effect that the plaintiff is dishonest, greedy and of questionable character both as a private person and as a professional in the legal field.
17. That the Defendant has given the public and the world at large the wrong, false and defamatory impression that the plaintiff is engaged in immoral behavior and unethical conduct and as such not fit to practice as a legal practitioner.
18. That the plaintiff has suffered humiliation, embarrassment and untold distress as a result of the said false and unjustifiable statements and she has also been subjected to public scandal and ridicule among her peers and other right thinking members of society the world over.
19. That the plaintiff has made several attempts to have the Defendant pull down the said false statements but her efforts have been ignored thus necessitating this suit.
20. That the plaintiff is in distress as the statements continue to injure her reputation each passing day and she stands to suffer irreparable loss and damage if the said statements continue to be published on the said website.
21. In cross examination the plaintiff said she resides in the UK. She said she does not know where the website is domiciled.
22. The defendant also testified as DW1. She adopted her witness statement dated 18/3/2015 as her evidence in chief.
23. DW 1 stated in the said statement that the Plaintiff is known to her as she handled her ex-husband's and finances and related instructions in the United Kingdom before she fell out with him.
24. The defendant said that she is not the publisher of the alleged complaint on the website.
25. That it is true that the defendant divorced her ex-husband JDF in High Court Divorce Cause Number xxx of 2008.
26. That during the pending of her marriage they made a purchase of the matrimonial property namely Apartment No x, Block B, LR No xxxx/IV/19x.
27. That the property was for reasons known to all the parties registered in the Plaintiff's name.
28. That the defendant's ex-husband left the matrimonial home in 2008.
29. That as he left he swore to lock the defendant out of the matrimonial home.



30. That he is the one who has instigated the plaintiff to file this claim to harass and intimidate her from pursuing her claim in the property.
31. That the Plaintiff herein has also filed a separate suit seeking to evict the defendant from her matrimonial home.
32. That there are two suits pending which were consolidated by the Court and in which the defendant is seeking the Court's determination on the ownership of the matrimonial property.
33. That the suits are Nairobi ELC No xxx of 2014 *DF v SBA* and Nairobi ELC Number xxx of 2014 *SBA v JDF & DF*.
34. That this suit is nothing but a continuation of the Plaintiff and her ex-husband campaign of harassment, intimidation and coercion.
35. The parties filed written witness submission as follows; the plaintiff submitted that the published statement was signed out by the defendant in her full names. The published statement contained the defendants email address which she uses to date.
36. That the published statement also contained the defendants phone number which was confirmed by the defendant during cross examination. The plaintiff further argued that some of the facts in the said articles were only in the defendant personal knowledge and it was clear that the defendant was indeed the publisher of the impugned statement.
37. The plaintiff submitted that the statement referred to the plaintiff as it mentioned her full name, stated where she stayed in the United Kingdom and described what she did for a living. It was therefore clear that the publication was directed at the plaintiff who was clearly identified and described in great detail.
38. On whether the publication was defamatory in nature the plaintiff argued that it is clear from the publication that said statement were meant to tarnish the plaintiff's name and defame her character.
39. That the publication in its ordinary meaning was to the effect that the plaintiff had unlawfully through a corrupt manner changed title documents of property from the defendant and her former husband's name to her name so as to disenfranchise the defendant.
40. The fact that the defendant chose not to first get the true position from the plaintiff before going to publish the same on the internet was clearly intended to defame and assassinate the character of the plaintiff.
41. On whether there was malice in the said publication the plaintiff submitted that the fact that the defendant chose to attack the plaintiff by first questioning her income declaration and compliance status was clearly meant to be seen and consumed by the United Kingdoms Tax Agency so as to have them re assess the plaintiff tax documents and investigate her income and her life.
42. That the defendant further published the statement in the world wide web so as to reach as many people as possible.
43. The plaintiff proposed an award of Kshs. 10,000,000 and in support cited *Philomena Mbete Mwilu v Standard Group Limited* [2022] eKLR where the court awarded Kshs. 15,000,000 as general damages.
44. The defendant alternatively submitted that suit herein is statute barred. The plaintiff testified that the publication was done on 27/5/2013 and the claim herein was filed on 30/9/2014 which is outside the limitation period of one year as provided by Section 4 (2) of the *Limitation of Actions Act*.



45. The defendant submitted that the plaintiff failed to demonstrate that she published the defamatory content. The defendant submitted that the mere fact that the defendant's email address and phone number was posted on the website is not conclusive proof that it was the defendant who posted as the same could easily have been done by any other person aware of the said details.
46. The defendant submitted that the plaintiff failed to demonstrate she suffered injury related to the alleged defamatory content. It was argued that the plaintiff simply invited the court to infer injury from the alleged defamatory material which is insufficient.
47. It is the duty of the plaintiff to prove her case to the required standard in civil cases which is on a balance of probabilities.
48. The issues for determination are as follows;
- i. Whether the plaintiff's suit is statute time barred.
 - ii. Whether the plaintiff has proved her case to the required standard.
 - iii. Whether the defendant has a valid defence to the plaintiff's case.
 - iv. Whether the plaintiff is entitled to the remedies she is seeking against the defendant.
49. On the issue as to whether the plaintiff's case is statute time barred, the defendant testified that the publication was done on 27/5/2013 and the claim herein was filed on 30/9/2014 which is outside the limitation period of one year as provided by Section 4 (2) of the [Limitation of Actions Act](#).
50. The plaintiff did not contest this evidence and I find that the same has not been rebutted.
51. In the circumstances, I find that this suit is statute time barred and the court cannot entertain the same.
52. In the case of [Bosire Ogero v Royal Media Services](#) [2015] eKLR the court stated as follows;
- “.....The issue of limitation goes to the jurisdiction of court to entertain claims and therefore if a matter is statute barred, the court has no jurisdiction to entertain the same. And even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the court cannot entertain a suit which it has no jurisdiction over. See the case of *Pauline Wanjiru Thuo v David Mutegi Njuru* CA 2778 of 1998.”
53. I find that the plaintiff's case barred by statute.
54. If the suit was not statute time barred, the plaintiff is duty bound to prove that she was defamed by the defendant.
55. The following are the elements of defamation;
- 1) That the defendant made a defamatory statement to a third person.
 - 2) That the statement was false.
 - 3) That the defendant was legally at fault in making the statement; and
 - 4) That the plaintiff suffered harm.
56. I find that there is evidence that the defendant published the impugned article concerning the plaintiff.



57. Although the defendant denied that she published the article, she said in her defence and in her evidence that there are two suits pending which were consolidated by the Court and in which the defendant is seeking the Court's determination on the ownership of the matrimonial property.
58. The said suits are Nairobi ELC No xxx of 2014 *DF v SBA* and Nairobi ELC Number xxx of 2014 *SBA v JDF & DF*.
59. Further, the defendant said that this suit is nothing but a continuation of the Plaintiff and her ex-husband's campaign of harassment, intimidation and coercion.
60. I find that the issue of ownership of the suit property is still pending adjudication in court in the pending cases and in the circumstances, and the plaintiff has not proved that the allegations by the defendant are false.
61. The plaintiff also failed to call a character witness to prove that the impugned article injured her reputation, character or dignity.
62. In the case of *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR, the court stated as follows;
- “The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiff's reputation in the estimation of right minded persons in the society or they must tend to cause the plaintiff to be shunned or avoided by other persons. In other words, the words complained of must be shown to have injured the reputation, character or dignity of the plaintiff. Abusive words may not be defamatory per se. The words must be shown to have been construed by the audience as defamatory and not simply abusive. The burden of proving the above is upon the plaintiff to demonstrate that a reasonable man would not have understood the words otherwise than being defamatory”.
63. I find that the plaintiff failed to demonstrate that she suffered any injury related to the alleged defamatory material. She merely asserted that she was alerted of the alleged defamatory material by a potential client but did not provide any further particulars of the alleged person who alerted her and the nexus with her standing as a person and a professional.
64. The plaintiff did not call for or tender evidence demonstrating injury to her reputation but instead invited the court to infer injury from the alleged defamatory material.
65. In the case of *Oira v Standard Limited & another* (Civil Appeal 57 of 2017) [2022] KECA 1361 (KLR) (2 December 2022) (Judgment), the court stated as follows;
- “Having failed to call any witness in this regard, there was no evidence to prove that the words used in the publication were defamatory of him or caused him to be shunned, ridiculed or avoided by right thinking members of the society”.
66. In a nutshell, I find this case is statute time barred and further that the plaintiff has not proved her case to the required standard in civil cases.
67. I dismiss the plaintiffs at this stage with no orders as to costs.
68. Had the plaintiff proved her case, she would have been entitled to general damages of Kshs. 5,000,000.
69. However, the plaintiff did not prove her case and the same is dismissed.



70. Each party to bear its own costs of the suit for reasons that the defendant published the impugned article.

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

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

