



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL SUIT NO.27 OF 2013

PATRICK NGARI NJERU.....
PLAINTIFF

VERSUS

JOSEPH KALII & 24 OTHERS.....
DEFENDANTS

JUDGMENT

1. This is a claim for damages for libel, exemplary damages for malicious libel and malicious words injurious to the plaintiff, aggravated damages for refusal to offer an apology as well as a permanent injunction restraining the defendants from publishing further defamatory material against or concerning the plaintiff.

2. The claim arises from a letter written by the defendants and which the plaintiff alleges was delivered to his place of work at the Railways Housing Co-operative Society. The letter stated-

“It has come to our attention that on Friday, 20th July, 2021 accompanied by unknown people (allegedly police officers) you intimidated our security guards and threatened to pull down our main entrance gate. This is in addition to an earlier incidence where one Mr Mbogo (we are told he is your relative) harassed one of our watchmen when he was doing his duties assigned to him by us.

Considering that we as a court have invested a lot of resources to enhance security within our court, watchmen we feel very aggrieved by your actions and fail to understand your interest in the affairs of our court and what exactly are your motives.

Further, be advised that we treat you and your accomplices as a security threat not only to the water Point Residents but also to peace loving Kenyans as a whole.”

3. According to the plaintiff the contents of the letter were defamatory and amounted to libel. He averred that at all material times he was a director of the Railways Housing Co-operative Society Limited and that the letter was

instigated by an official visit he had made to the estate, where the Society owns a water point from which it sells water to residents, following allegations that the defendants had erected an illegal barrier on the road. He contended that he had made that visit together with other officers of the Society and that they were refused entry to the water point by a security guard who they found at the barrier.

4. The plaintiff avers that up until 24th July 2012 he was a person of good repute, name, courage, high moral standing and integrity and was deservedly held in high esteem by his friends, family, colleagues, business associates, neighbours and the public in general. According to him all that came to nought following the impugned letter. He contended that the letter which was delivered in an open envelop caused him a lot of embarrassment: The letter was copied to the police in Athi River and was threatening to him and his family.

5. At the hearing he called five witnesses. On his part he reiterated the averments in the plaint and further stated that although he had written to the defendants requiring to apologise they adamantly refused to do so. That instead,

they went and recorded a criminal report against him at the ATHI River Police Station on 13th June 2013 thereby causing him to be arrested.

6. PW2, PW3, PW4 and PW5 stated that the letter changed their perception of the Plaintiff as it led them to believe that he was a troublesome man, that he was of a criminal mind and associated with imposters, and was a threat to society.
7. By their statement of defence dated 8th August 2013, the defendants denied the averments in the plaint. They averred that the letter that was delivered to the plaintiff personally; that it consisted of a demand letter that he desist from unwarranted actions and was not defamatory but merely recounted the reasons leading to the demand.
8. The defendants averred that the plaintiff's suit was misconceived, bad in law and time barred which ought to be struck with cost.
9. Learned Counsel summed up their cases through written submissions.

DETERMINATION/ANALYSIS

10. I have carefully considered the evidence, the submissions the cases cited and the law. The main issue for determination is whether or not the plaintiff was defamed by the defendants' letter: whether the same amounted to libel and whether he is entitled to the reliefs sought.

11. The law of defamation is not just anchored on law but has a constitutional underpinning. Article 33(3) of the Constitution provides that in the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others

12. Defamation is defined as the publication of a statement which, tends to lower a person in the estimation of right-thinking members of the society generally or which tend to make him be shunned or avoided. When the defamatory matter is in writing then it becomes libel and is actionable without proof of damage. **Gatley on Libel and Slander, 8th Edition at page 15 paragraph 31:**

“The gist of the tort of Libel and slander is the publication of a matter (usually words) conveying a defamatory imputation. 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 injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right thinking people generally.”

13. For the contents of the impugned letter to be actionable it must be proved that it was written of and concerning the plaintiff, that the defendants published the words to persons other than the plaintiff, that the words were false and that they were malicious- see the case of **Samuel Ndung’u Mukunya v Nation Media Group Limited & anther [2015]eKLR.**
14. In the instant case the first element is not disputed. The letter was written of and concerning the plaintiff. It is however doubtful that the letter was published to persons other than the plaintiff since he himself admits that the letter was addressed to him and it was in an envelope. Other than stating that the letter was in an envelope which was not sealed, the plaintiff did not disclose how the contents became known to the persons he called as witnesses. Other than PW2 the other witnesses did not disclose how they came by the contents of the letter. Even

PW2 did not state why she read a personal mail. The letter was clearly intended for publication to other people otherwise it would not have been put in an envelope. If they learnt about the contents from the plaintiff then it cannot be said that the contents were published to those persons by the defendants. Publication to the police did not in my considered view amount to defamation since the defendants were merely lodging a complaint.

15. Furthermore, the letter merely narrated what had transpired on that day and whereas. It is also clear to this court that the contents of the letter were not defamatory since the plaintiff himself admits that he went to the estate albeit that he alleges that he went there officially. He also admitted that they encountered a guard at the gate. The contents of the letter were therefore true. Further, the words must be malicious. Malice here does not necessarily mean spite or ill-will as recklessness itself may be evidence of malice. In our case there was a dispute and the letter was written in regard to the dispute. The alleged defamatory words just give an account of what happened. They may have caused him embarrassment but legally speaking they were not malicious and defamatory.

16. I have said enough to demonstrate that the plaintiff did not prove his case and accordingly it is dismissed with costs to the defendants.

Judgment signed, dated and delivered virtually on this 25th September 2025.

E.N. MAINA

JUDGE

IN PRESENCE OF:

Mr. Gachuba, Advocate for the plaintiff.

Mr. Mutunga, Advocate for the defendants.

Geoffrey Court Assistant.