



**Macharia v Kinuthia & another (Civil Appeal 218 of 2023)  
[2025] KEHC 14659 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14659 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 218 OF 2023  
TW OUYA, J  
OCTOBER 16, 2025**

**BETWEEN**

**JOHN KIBE MACHARIA ..... APPELLANT**

**AND**

**PAUL KINUTHIA ..... 1<sup>ST</sup> RESPONDENT**

**WILSON GATUNI GIKUMA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of the honourable Christine Asuna Okello,  
Principal Magistrate dated 21st June 2023 in Ruiru Civil Case No. E 575 of 2021)*

**JUDGMENT**

1. The appeal herein emanates from a defamation claim instituted via a Complaint dated 6<sup>th</sup> December 2021. The Appellant sought refund of Ksh. 35,000.00 and an account of the monthly sum of Ksh. 1,500 paid to the Respondents, general and aggravated damages for defamation as well as a permanent injunction restraining the Respondents from illegally demanding or collecting money from the Appellant and or issuing threats.
2. The basis of the claim was that both the Appellants and the Respondents are residents of Shalom Street estate. The Appellant commenced construction of his house in Membley area, Shalom Street in the year 2019 and the Respondents informed him that they were the duly elected officials of Shalom Street Leaders Welfare Group. Therefore, the Appellant was therefore required to pay Ksh. 35,000.00 and Ksh. 1500.00 per month for security purposes. In 2020, the Appellant paid a total of Ksh. 25,000 to the Respondents via Mpesa and he was subsequently added to the area residents WhatsApp group.



3. When the Appellant demanded receipts for the payments that he had made, the 2<sup>nd</sup> Respondent posted messages in the WhatsApp group criticising him including calling him a liar. The message in question stated thus,

“ who is asking for receipts name names

None cos we never issue receipts

They pay what they can

No one has ever been brutalized

Brutality? This is a police case if not misunderstanding of issue

I am sure they are already on board. Either they can't afford, antisocial or plainly mean.

Am I'm. I justified to sight unaccountability if I cannot sight misappropriation?

Hey,

I thought I had taken you through some basics of the street. You lied by saying you were never briefed on what to pay. We do not beat those with unpaid monies rather it is expected they see the need to be part of the community, as young as it is. Ata ingawaje tumetoka bali (kabla) as a neighbourhood. Jia moja ya kubadilisha watu ni kutembea nao.

You remain a brother”

4. The said words construed in their literal meaning means that the Appellant is a mean person, pathological liar and a bad neighbour.
5. The Appellant discovered that the Respondents had been operating an amorphous unregistered group called Shalom Street Leaders Welfare Group which they have been using to extort citizens. When the Appellant served the Respondents with a demand and a notice of intention to sue, the Respondents posted the same on the group WhatsApp known as Shalom Court. Consequently, the Appellant's good image was tarnished and his esteem lowered before fellow residents.
6. The Respondents denied the claim through their Statement of Defence dated 24<sup>th</sup> January 2022. The crux of the response was that the WhatsApp messages were made in good faith. Also, the Appellant voluntarily joined the area residents WhatsApp group. Regarding the payments, the Respondent averred that the same were made for services rendered that the Appellant continues to enjoy.
7. The matter proceeded to trial where PW1 John Kibe Macharia testified that he is a HR director at the state department for East Africa. He adopted and relied on his witness statement in evidence while alleging that the Respondents had continued to tarnish his name in the WhatsApp group by portraying him as someone who cannot live in peace with others. He was forced to pay Ksh. 35,000.00 as he was told that if he failed to pay he would not be permitted to continue with the development of his plot. He maintained that no receipt was ever issued despite making payments. PW2 Damaris Muthoni Macharia, testified that she is the wife to the Appellant. It was her testimony that the Respondents painted the Appellant as one who cannot live in peace with others. Therefore, she felt that the family had been alienated.
8. PW3 Mark Wanjala testified that he is a casual labourer and that the Appellant had not paid him as he had not finished work. He was accordingly stopped and told that PW1 had not paid some development dues. He therefore feared that the appellant would not pay him if he had not paid the monies due for the street. He felt that the Appellant was untruthful.



9. Wilson Gatuni, the treasurer of the Shalom Street Estate, on the other hand testified as DW1 by adopting his witness statement and bundle of documents as exhibits. He denies asking the Appellant to stop development of his house if he did not pay Ksh. 35,000.00.
10. At the end of the trial, the court found that the defamatory statements alleged by the Appellant against the Respondents did not sufficiently meet the threshold, there was nothing in the statements that tended to lower the Appellant in the estimation of right-thinking members of the society generally to cut him off from society or to expose him to hatred contempt or ridicule. Regarding the issue of refund, the court held that it would not be logical to refund the amount in question as the Appellant was still a resident of the said estate. The Appellant's claim was therefore dismissed.
11. Aggrieved and dissatisfied with the decision of the trial court, the Appellant lodged the instant appeal vide a memorandum of the appeal dated 3<sup>rd</sup> July 2023 on the grounds that:
  - i. The learned magistrate erred in law and in fact in dismissing the appellant's case against the weight of the evidence
  - ii. The learned magistrate erred in law and in fact in ignoring the contradictory evidence of the respondents
  - iii. The learned magistrate erred in law and in fact in ignoring established precedent as regards proof in defamation suits
  - iv. The learned magistrate misdirected herself in law and in fact in holding that the respondents had a legal right to collect money from the appellant taking into account their organization was not registered at law as it was amorphous
  - v. The learned magistrate erred in holding that the defamatory statement alleged by the appellant against the respondent did not sufficiently meet the threshold
  - vi. The learned magistrate erred in law and in fact in holding that the appellant did not suffer any damages and in failing to make an award in favour of the appellant
  - vii. That the learned magistrate erred in law in her manner of writing the judgement by failing to state in the judgement amount she could have awarded if the appellant had succeeded in the suit
12. Therefore, the Appellant prayed that the appeal be allowed and the decision of the trial court be substituted with an award as the honourable court may deem fair and just.
13. By order of the court the appeal was canvassed by way of written submissions.
14. The appellant submitted that he had proved on a balance of probabilities that the Respondents defamed him. He relied on the case of Elisha Ochieng Odhiambo v Booker Ngesa Omole [2021]eKLR. He submitted that his reputation as a civil servant was ruined as a result of the actions of he Respondents.
15. The Respondents submitted that the trial courts decision was sound and thus should be adopted by the High Court as the court recognized that it was in the interest of every member to take part in all development projects and proposals to make the estate more habitable. Therefore, the Respondents never defamed the Appellant in any way.
16. It is settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions. (See Stanley



Maore -vs- Geoffrey Mwenda “the duty of the Appellate court is to re-evaluate the evidence, assess it and make its own conclusions...”

17. The appellant raised seven grounds of appeal which in my view can be addressed effectively by answering the following issues:-
  - a. Whether the Respondent established the necessary ingredients to prove the tort of defamation.
  - b. Whether there are grounds to interfere or set aside the decision of the trial court
18. The burden of proof lies with the Plaintiff to prove his case on a balance of probabilities as stipulated in Section 109 of the *Evidence Act* which provides that the burden of proof lies with that person who wishes the court to believe in its existence and that he who asserts a fact must prove, as stipulated in Section 107 of the *Evidence Act*. Under section 107 of the *Evidence Act*, Cap 80 Laws of Kenya, the burden of proof lies on he who asserts and in this case, the burden of proving that the alleged material was published and were defamatory lay on the Appellant.
19. In *Miguna Miguna v Standard Group Limited & 4 others* [2017] eKLR, the Court of appeal stated as follows regarding defamation, and I have no reason to differ.
20. In *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] KEHC 5119 (KLR) Mativo J. (as he then was) observed that the elements of defamation are:

“The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiffs 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.

Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice The defamatory words must be shown to have been published by the defendant.”
21. Thus, to prove defamation, the claimant must establish or demonstrate that the matter complained of was defamatory in nature, that the defamatory statement was uttered to someone else other than the person who was said to have been defamed and that the defamatory statement was published maliciously.
22. In other words, 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. 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.



23. In *Phinehas Nyaga vs Gitobu Imanyara* [2013] eKLR it was held that defamation was not about publication of falsehoods against a plaintiff but rather, the plaintiff must show that the published falsehood disparaged his reputation and lowered him in the estimation of right thinking members of the society generally. In *SMW vs ZVM* [2015] eKLR, the Court of Appeal held that in determining the words for purposes of defamation, the court does not employ legal construction but that the words complained of must be construed in their natural and ordinary meaning.
24. It is not in dispute that the words complained of were uttered by the Respondents. It is not disputed that the words were uttered in the Estate WhatsApp group that has a number of people. It is not disputed that the words complained of referred to the Appellant. What is disputed is that the words were defamatory of and concerning the Respondent.
25. The Respondents have maintained that the statements were made in good faith and without malice. Other than alleging that the statements in the WhatsApp group painted him in negative light yet he is a civil servant, Appellant did not lead any evidence to prove that the statement posted in the WhatsApp group was defamatory.
26. I have carefully considered the evidence, the literal meaning and possible interpretation of the words used as and the fact that the said words were posted in a WhatsApp group, hence publication is not in dispute. Applying the above principles to the instant case, I find that the words do not in any way amount to a defamatory statement.
27. I therefore concur with the finding of the trial court in this regard.
28. I have noted that the dispute between the appellant and the Respondents was precipitated by the Respondents failure to issue the appellant with receipts for payments made.
29. Although the Respondents have downplayed the importance of issuing receipts for payments made, courts have time without number required litigants to produce receipts as evidence of payment for any service rendered or goods purchased. Therefore, the Respondents failure to issue receipts of payment to the Appellant might bar him from genuine claims that might require receipts as proof of payment.
30. The Court of Appeal in *Great Lakes Transport Co. (U) Ltd v Kenya Revenue Authority* [2009] KLR 720 stated thus regarding proof of payment:

“Although the claim was pleaded at paragraph 7(b) of the amended complaint and prayed for in the prayers, the proof advanced in respect of it did not meet the required standard. There was no receipt produced to show that actual cash was paid, or any payment made for the alleged purchase of tyres. A mere invoice as the one produced in evidence was incapable of proving purchase. The claim could have been proved very easily by producing either a receipt from M/s General Tyres Sales Limited which was alleged to have supplied the alleged tyres or a witness from that company to confirm that indeed money changed hands when the alleged new tyres were acquired by and delivered to the appellant...”
31. In the face of such legal requirements for proof of payment, it is concerning that the Respondents opted to take the Appellant’s request for a receipt or proof of payment lightly. It is in the interest of justice that a receipt be issued to every customer or client who demands it upon seeking a service of any nature or purchasing any good.
32. While I concur with the trial court’s finding that the money paid so far ought not be refunded as the Appellant has been enjoying services accorded to the members of the estate, the Respondents should be accountable by acknowledging payment through issuance of receipts or any other proof of payment.



33. The upshot of the matter is that the appeal is disposed in the following terms:

- i. The finding of the trial court dismissing the claim for defamation is hereby upheld;
- ii. The finding of the trial court dismissing the claim for refund of monies paid to the Respondents is hereby upheld
- iii. The Respondents are directed to issue the Appellant with receipts or any such evidence for all the payments made by the Appellant
- iv. Each party to bear their costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

