



REPUBLIC OF KENYA



KENYA LAW
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**Nation Media Group Limited v Njuguna (Civil Appeal E068 of 2023)
[2025] KEHC 14197 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14197 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E068 OF 2023
RM MWONGO, J
OCTOBER 8, 2025**

BETWEEN

NATION MEDIA GROUP LIMITED APPELLANT

AND

WINNIE KARIMI NJUGUNA RESPONDENT

*(An Appeal from the Judgment of Hon. Lucy Ambasi, CM
delivered on 19th October 2023 in Embu CMCC No. 214 of 2019)*

JUDGMENT

The Appeal

1. Through a memorandum of appeal dated 16th November 2023, the appellant is seeking:
 - a. That the Appeal herein be allowed and the judgement of the Subordinate Court be set aside and the suit in the Subordinate Court be dismissed with costs;
Or alternatively: -
 - b. That the award of damages made by the Lower Court be varied and reduced to the extent that this Honourable court deems fit; and
 - c. That the costs of this Appeal be awarded to the Appellant.
2. The appeal is premised on grounds that:
 1. The Learned Magistrate erred in law and in fact in holding that the Respondent had been defamed by the Appellant yet the evidence adduced did not support the Respondent's claim;
 2. The Learned Magistrate erred in law and in fact in failing to take into account the Defense raised by the Appellant;



3. The Learned Magistrate erred in law and in fact in failing to find that the Respondent did not discharge her burden of proving or establishing malice on the part of the Appellant;
4. The Learned Magistrate erred in law and in fact in awarding general damages of Kenya Shillings Fifteen Million (Kshs.15,000,000/=) to the Respondent, which is inordinately high and excessive in the circumstances and not founded on any outlined legal principles;
5. The Learned Magistrate erred in law and in fact by failing to take into account and fully consider the various authorities submitted by the Appellant before arriving at the sum of Kenya Shillings Fifteen Million (Kshs.15,000,000/=) which award was not founded on any outlined legal principle or precedent and was inordinately high;
6. The Learned Magistrate erred in law and in fact in awarding the sum of Kshs.3,000,000/= as exemplary damages and Kshs.2,000,000/= as aggravated damages respectively as different heads of damages contrary to established legal principles;
7. The Learned Magistrate erred in law and in fact in awarding the sum of Kshs.3,000,000/= as exemplary damages and Kshs.2,000,000/= as aggravated damages respectively which awards were inordinately high taking into consideration the evidence adduced and all other relevant factors when assessing the same (which in any event should not have been awarded); and
8. The Learned Magistrate erred in law and in fact by basing the award on extraneous considerations and factors.

Background in the lower court

3. The respondent filed a plaint dated 13th December 2019 seeking judgment against the appellant for the following: General damages for libel for publishing words concerning the Plaintiff without taking any sufficient steps or precautions to establish whether they were true or not; Exemplary damages for malicious libel for publishing words concerning the plaintiff with reckless disregard as to whether or not they were injurious to the plaintiff; Aggravated damages arising from the defendant's refusal to apologize after demands to do so; Costs of the suit and any other relief deemed fit.
4. It was the respondent's case that on the 08th February 2019, the appellant's Daily Nation newspaper falsely and maliciously authored, printed and published or caused to be written and printed and published on page 2 of the issue of the said newspaper, the following concerning the plaintiff in the way of herself and her profession:

“20 bank officials face charges for laundering billions in NYS scam”.

“Co-operative bank handled Kshs. 250 million which went to Sambeat Investment and Kirinyaga Woman Representative Winnie Karimi Njuguna. Our sources described Ms. Njuguna as “politically connected” but did not substantiate”.
5. The Plaintiff averred that the impugned statement referred to was directed at her and targeted at damaging her credit, reputation and profession. She claimed that the natural and ordinary meaning of the published words is intended to portray her as corrupt, unethical, unprofessional and unscrupulous and condones corrupt practices and is involved in unlawful practices and activities; one whose integrity is questionable and she has acquired her wealth through unlawful means; one who has no regard for the rule of law and instead, she uses her political connections to get away with her illegal practices; one who is a criminal and not worthy the trust and reputation of a leader and not fit to hold public office.



6. She stated that the published words were injurious to her reputation given her extensive contribution to the community. She is also a teacher by profession and she stated that the words have discredited her in such light yet she has made big steps to grow this career over the years.

Statement of Defense

7. In its defence, the appellant stated that the words published were not inferring defamation against the respondent. That the natural and ordinary meaning of the published words means fair comment which is a matter of public interest as far as the respondent's holding of public office is concerned. That it was necessary for the information to be in the public domain. The appellant denied having caused the respondent any distress, depression, personal, social and financial embarrassment as a result of the publication. It denied receiving any demand letter from the respondent.

Summary of the Evidence in the Trial Court

8. PW1 was the respondent who produced documents in support of her claim as evidence. She stated that on the day when the publication was made, she received a call from her brother asking whether she had seen it. She said that she had not seen it and she sent for the newspaper. She read the libelous publication about her and she received numerous messages from people asking what the allegations were about. Later, she sought legal advice before filing the suit. She never received an apology from the appellant who also did not acknowledge receipt of the respondent's demand letter.
9. On cross-examination, she stated that the harmful words were written about her as her name was expressly written in the article. That the publication caused damage to her reputation and profession to the extent her bank accounts were frozen by the Asset Recovery Authority but they were reopened. The publication indicated that more than Kshs.200 Million had been deposited into her Co-operative Bank Account and that she was involved in the NYS scandal through her corrupt practices. This publication has affected her political career as the public questioned her integrity.
10. PW2 was Hezekiel Muriithi Ireri, the respondent's brother, who stated that when he saw the article, he was shocked since he knew his sister to be a person of high moral standing. He called the respondent to find out what the article was about and realized that she had not seen it. She later called to tell him that she had seen the article and that the allegations were not true. From that point, the respondent and members of her family received many calls regarding the article. On cross-examination, she stated that at the time of the publication, the respondent was a sitting MP and the allegations against her were false. He was the first person to call her about the publication.
11. PW3 was Beatrice Wanjiku Njuguna, the respondent's daughter. She stated that she saw the article and was shocked. She called her mother to ask what it was about and she told her that they were false allegations. Both she and the respondent received many phone calls from family members and friends inquiring about the article, and it was overwhelming. On cross-examination, she stated that when she asked her mother about the allegations, she stated that they were lies.
12. DW1 was Brian Wasuna, an investigative journalist at the appellant's Daily Nation newspaper. He stated that the article was written using credible information gathered from various investigative agencies including the ODPP and DCI. He said that the editor of the article informed him that he gathered the information from the investigative bodies working on the 1 billion shillings NYS scandal. The article was developed from a detailed brief of the investigative works by the Asset Recovery Authority, DCI and ODPP and he verified the information before it was captured in the publication. These agencies confirmed that the information is accurate and that the agencies were working on prosecuting the bank officials and CEOs over the NYS scandal.



13. He stated that the respondent was among the people who were being watched by the investigative agencies over the NYS scandal for money received into her bank account. That there was nothing defamatory about the publication since it was a status update of an investigation that was ongoing. On cross-examination, he stated that he authored that article which includes the words 'criminal' and 'loot' in the newspaper which has a nationwide circulation of 50,000 copies daily. That the article was written after he verified the information with the DCI and ODPP but he did not have an OB from the complainant.
14. These investigative agencies had indicated to him that they were investigating Cooperative Bank for receiving Kshs.250Million of the NYS money. He stated that the respondent was investigated and her accounts frozen over this scandal. He also had court documents to show that action was taken against the respondent. He refused to name his sources because they would be compromised. He said he was not apologetic for telling the truth which was verified by the investigative bodies.

Findings of the Trial Court

15. The trial court considered the evidence and written submissions by the parties. It tested the published words against the legal meaning of defamation and found that they were defamatory to the respondent. The appellant was found to have acted maliciously, negligently and recklessly in publishing the said article. The respondent was awarded general damages of Kshs.15,000,000/= with interest, exemplary damages of Kshs.3,000,000/=, aggravated damages of Kshs.2,000,000/= and costs of the suit.

Submissions on Appeal

16. The appellant, in its submissions, relied on the case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR and urged that the court revisits the facts and law. It stated that the onus was on the respondent to prove that the words were damaging and reliance was placed on the case of Selina Patani & another v Dhiranji V. Patani [2019] KECA 480 (KLR). Further reliance was placed on the cases of J Kudwoli & another v Eureka Educational and Training Consultants & 2 others [1993] eKLR, Raphael Lukale v Elizabeth Mayabi & another [2018] KECA 668 (KLR), Kagwiria Mutwiri Kioga & another v Standard Limited & 3 others [2015] KECA 349 (KLR), Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) (Civil Appeal 21 of 1984) [1985] KECA 137 (KLR) and Wangethi Mwangi & another versus J.P Machira t/a Machira & Company Advocates Civil Appeal No. 269 of 2018 (2024) eKLR. The appellant contested the award of damages as made by the trial court and urged this court to reconsider the same.
17. The respondent submitted that the finding of the trial court is proper and need not be disturbed. She stated that the award of damages was also fair and was more lenient compared to the existing jurisprudence in the cases of Christopher Ndarathi Murungaru v John Githongo [2019] KEHC 8259 (KLR), Biwot v Clays Ltd (200) 2EA 334 and Alnashir Visram v Standard Ltd 2016 eKLR.

Issues for Determination

18. From all the foregoing, the issues for determination are the following:
 - a. Whether the publication by the appellant was libelous against the respondent; and
 - b. If the publication was indeed libelous, was the trial court correct in its award of damages?



Analysis and Determination

19. This appeal raises issues of both facts and law. It is essential, therefore, to re-examine the evidence adduced before the trial court in order to reach an independent finding. This is the role of the first appellate court as discussed in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court.. is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

20. Article 33 of *the Constitution* provides for the freedom of expression which may be limited under certain circumstances. It states:

“

“(1) Every person has the right to freedom of expression, which includes—

- (a) freedom to seek, receive or impart information or ideas;
- (b) freedom of artistic creativity; and
- (c) academic freedom and freedom of scientific research.

(2) The right to freedom of expression does not extend to—

- (a) propaganda for war;
- (b) incitement to violence;
- (c) hate speech; or
- (d) advocacy of hatred that—
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - (ii) is based on any ground of discrimination specified or contemplated in Article 27(4).

(3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.”

21. The 9th Edition Black’s Law Dictionary defines libel and defamation as follows:

Libel: “A defamatory statement expressed in a fixed medium, especially writing but also a picture, sign, or electronic broadcast.”

Defamation: “The act of harming the reputation of another by making a false statement to a third person. If the alleged defamation involves a matter of public concern, the plaintiff is constitutionally required to prove both the statement’s falsity and the defendant’s fault. A false written or oral statement that damages another’s reputation.”



22. In Gatley on Libel and Slander 6th Edition the legal meaning of defamation is stated as follows:

“A man commits the tort of defamation when he publishes to a third person words (or matter) containing an untrue imputation against the reputation of another.”

23. The elements of defamation can thus be said to be the following:

- a. That the defamatory statements were made to a third party(publication);
- b. The statements are made against the plaintiff;
- c. The statements are false; and
- d. The plaintiff suffered as a result of the statements.

We deal with these elements in the following paragraph.

24. In this case, the respondent claimed that the appellant published an article in its Daily Nation newspaper under the heading "20 bank officials face charges for laundering billions in NYS scam". A part of the article indicated that "Co-operative bank handled Kshs. 250 million which went to Sambeat Investment and Kirinyaga Woman Representative Winnie Karimi Njuguna. Our sources described Ms. Njuguna as "politically connected" but did not substantiate". A copy of the complete article was exhibited and annexed as evidence being part of the respondent's bundle of documents.

25. She stated that the article portrayed her under such bad light that she suffered injury to her credit, reputation and profession yet she was, until then, a person of moral integrity in the community. She stated in her evidence, as did her 2 witnesses, that after the article was published, her family received numerous calls inquiring about the article and what it meant. She had to ward off the speculations by clearing the air and telling the people that the article was a lie. However, by that time, the damage had already been done and at some point, the Assets Recovery Agency froze her accounts because the article alleged that she had obtained her earnings by corrupt means.

26. In its defense, the appellant's investigative journalist who published the article testified that his editor had gathered a detailed brief of the investigative works by the Asset Recovery Authority, DCI and ODPP. He stated that he called these 3 agencies to verify the information before using the detailed brief to author and publish the article in question. He did not deny using the words 'criminal' and 'loot' when writing about the respondent.

27. As to whether the standard of defamation has been met in this case, it is clear from a reading of the article that: first, the respondent's name was actually indicated by the appellant in its publication. Secondly, DW1 testified that the Daily Nation newspaper has a nationwide circulation of 50,000 copies daily and so the publication was made available to numerous 3rd parties. In fact, PW1 got to know about the publication from PW2, her brother who is a third party among many others in this case. Third, is the need to establish whether the statements were false. PW1 stated that the Asset Recovery Authority (ARA) acted on the publication and froze her accounts but they were later restored, although there was no evidence availed that the ARA acted as stated or relied on the newspaper report. Fourthly, PW1 testified that this act of freezing her accounts caused her embarrassment in various spheres of life given that she was a holder of a public office. This notwithstanding, the Asset Recovery Authority was not enjoined in the suit as a co-defendant, nor was any connection established between the publication and the alleged actions taken by the Asset Recovery Authority.

28. DW1 testified that he was not apologetic for publishing the article which he believes is true because the information was verified from the investigative agencies, he called on the phone. However, he did



not avail any proof that he verified the information collected by his editor before he used it to compile the article, on the alleged grounds that he would be revealing manner and source of his information. One of the methods by which a journalist can easily do this is to contact the subject of the information for a prior interview or response. That is a method of responsible journalism which was not taken advantage of here.

29. From the foregoing, one thing becomes clear. That the appellant through DW1 failed to take sufficient steps or precautions to establish whether the information provided by the editor allegedly from the investigative agencies was true or not true, before publishing it. In order to determine whether or not words are defamatory, the test on meaning of words was stated in the East African Court of Appeal in the case of *Onama v Uganda Argus Ltd* [1969] EA 92. That court held that the meaning of the words should be able to be regarded by the general public as well as people who are knowledgeable on the subject. Therefore, on a balance of probabilities, the appellant is liable for the libelous words published against the respondent.
30. It follows that the respondent is entitled to damages for injury occasioned by the appellant's libelous publication. Injury to reputation is not different from other forms of injury as was stated in the text by T. Sharkie, *A Treatise on the Law of Slander, Libel Scandalim Magnatum and False Rumours* where the concept of reputation was described thus:

“Reputation itself, considered as the object of injury, owes its being and importance chiefly to the various artificial relations which are created as society advances. The numerous gradations of rank and authority, the honours and distinctions extended to the exertion of talent in the learned professions, the emoluments acquired by the mechanical skill and ingenuity, under the numerous subdivisions of labour, the increase of commerce and particularly. The substitution of symbols for property in commercial intercourse all in different digress, connect themselves with credit and character, affixing to them a value, not merely ideal but capable of pecuniary measurement, and consequently recommending them as the proper objects of legal protection.”

31. Before the trial court, the respondent had prayed for damages and in its judgment, the trial court assessed them as indicated. At the time of the publication, the respondent was holding public office and she stated that her credibility for that office was questioned by the public. Courts have previously awarded damages for defamatory words published against persons who were holding public office at the time of the publications. Here are some examples to go by:
- a. In *Alnashir Visram v Standard Ltd* 2016 eKLR (supra), an award of Kshs.18,000,000/= was made to a sitting Judge as general damages for defamation;
 - b. In *Samuel Ndung'u Mukunya v Nation Media group Ltd & another* [2015] eKLR, an award of Kshs.15,000,000/= was made as general damages;
 - c. In *Daniel Musinga t/a Musinga & Co. Advocates v National Nation Newspapers Ltd* [2005] eKLR, the court awarded damages in the sum of Kshs.10,000,000/=;
 - d. In *Hon. Uhuru Muigai Kenyatta v Baraza Limited T/A Kenya Television Network (KTN)* [2011] eKLR, the court awarded Kshs.7,000,000/=;
 - e. In *Phineas Nyagah v Gitobu Imanyara* 2013 eKLR, the court would have awarded Kshs.3,000,000/=;
 - f. In *Miguna Miguna v Standard Group Ltd & 4 others* [2017] eKLR, an award of Kshs.5,000,000/= was made as general damages;



- g. In Kenya Tea Development Agency Ltd v Benson Ondimu Masese [2008] eKLR, where an award of Ksh.7,000,000/= general damages and Kshs.3,000,000/= exemplary damages were reduced by the court of Appeal to a composite figure of Kshs.1.500,000/=;
 - h. In Johnson Evans Gicheru v Andrew Morton & another Civil Appeal No. 314 of 2000, a sum of Ksh.6,000,000/= was made as general damages to the then Chief Justice; and
 - i. In Kiarie v Kanyira & 2 others [2024] KEHC 5554 (KLR), the court awarded Kshs.10,000,000/= as general damages to a sitting Judge.
32. The respondent is entitled to general damages for libel and for the publication of words concerning her without the appellant taking any sufficient steps or precautions to establish whether or not they were true. Under this head and given recent jurisprudence, an award of Kshs.6,000,000/= is appropriate and fair.
33. The appellant denied any wrongdoing and stated that, in any event, it did not receive the respondent's demand letter either demanding an apology or threatening to sue. Although in her testimony PW1 said the demand letter was not acknowledged, the 'demand' letter annexed in the plaintiff's list of documents in the pleadings showed a rubber stamp impression of the Nation Media Group dated 24th June, 2019. This means that the demand letter was in fact received although it may not have been acted on. This failure to act on the demand letter crystallizes an award for aggravated damages since the apology demanded for the libel was casually ignored by the appellant.
34. In the case of John v MG Limited [1997] QB 586 the court held:
- “Aggravated damages will be ordered against a defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize”.
35. In this case, the trial court awarded aggravated damages of Kshs.2,000,000/- although it noted that in the case of Alnashir Visram v The Standard Limited [2016] eKLR the Court gave an award of Kshs.8 million for aggravated damages. This was a high award. The Court also noted that on the lower side in the case of Jakoyo Midiwo v Nation Media Group & Another [2018] eKLR Kshs.1 million was awarded for aggravated damages.
36. Aggravated damages are awarded to cover the defendant's actual malice, the defendant's subsequent conduct, the failure to apologize and the failure to prove a plea of justification. Even the conduct of a defendant's case may increase or aggravate the damages.
37. Here, it was well stated by the learned trial Magistrate:
- “there was hardly any evidence linking the plaintiff to the scandal at the story was published, but that notwithstanding, the defendant went ahead to publish the story and thereby failed to uphold the highest standards of journalism in carrying out his duties. They also failed to apologize when called upon to do so”.
38. I am in agreement with the learned Magistrate on this issue and decline to interfere with the award made of aggravated damages of Kshs.2,000,000/-.



39. As for the award of exemplary damages, the scope of this award is limited as discussed in the case of Godfrey Julius Ndumba Mbogori & another V. Nairobi City County [2018] eKLR where it was held:

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute”.

40. In this case, there was no basis for awarding exemplary damages, given its limited scope of application. I am therefore unable to agree with the learned trial Magistrate on the award of exemplary damages.

Disposition

41. In light of all the foregoing, the appeal partially succeeds, and I make orders as follows:

- a. The trial court’s findings on liability are hereby upheld;
- b. The trial court’s findings on quantum are set aside and substituted with an award of Kshs.6,000,000/=, with interest at court rates from the date of this judgment, as general damages to the respondent for libel and for publishing words concerning her without the appellant taking any sufficient steps or precautions to establish whether they were true or not; and
- c. The trial court’s finding and award on aggravated damages of Kshs.2,000,000/- is upheld.
- d. The respondent is awarded costs at the trial court and half of the costs of this appeal.

42. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 8TH DAY OF OCTOBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ms. Olunga for Appellant

M. Njage for Respondent

Francis Munyao - Court Assistant

