



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL APPEAL NUMBER E135 OF 2021

THE PEOPLE MEDIA GROUP ----- 1ST
APPELLANT
ANNA WAIRIMU ----- 2ND
APPELLANT

VERSUS

WILLIAM KIMUTAI B. KEITANY -----
RESPONDENT

(Being an appeal against the entire Judgement and Decree delivered on 30th April 2020 at the Chief Magistrate's Court, Milimani Law Courts, by Honourable L.L. Gicheha (Mrs) CM)

Between

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NUMBER 3524 OF 2013

[The Standard Digital Case]

WILLIAM KIMUTAI B. KEITANY -----
PLAINTIFF

AND

THE STANDARD GROUP LTD ----- 1ST
DEFENDANT

LUKE ANAMI ----- 2ND
DEFENDANT

(CONSOLIDATED WITH OTHERS)
JUDGEMENT

1. On 30/04/2020 the trial court entered judgement for the Respondent against the Appellants as follows;-

- 1. General damages for defamation Kshs. 1,500,000/=**
- 2. Exemplary damages - Kshs. 500,000/=**
- 3. Aggravated damages - Kshs. 1,000,000/=**
- 4. The costs of the suit.**

2. Aggrieved by the decision, the Appellants preferred this appeal on grounds contained in the Memorandum of Appeal dated 9/2/2021 which are condensed into three as hereunder;-

- a) That the learned trial magistrate erred in law and fact by wrongly applying the law and legal principles governing the law of defamation.**
- b) That the learned trial magistrate erred in law and fact by disregarding the appellants' defence and**
- c) The learned trial magistrate erred in law and fact by determining the case in favour of the Respondent against the weight of the evidence.**

3. The Appellants therefore pray that the Appeal be allowed with costs and the impugned decision of the lower court set aside and/or vacated.
4. It is now settled that an Appellant Court has the duty of reviewing the evidence afresh with a view to reaching its own conclusions on both matters of fact and law while bearing in mind that it has no benefit of watching demeanour of witnesses unlike the trial court (See the often quoted case of **Selle Associated & Another vs Motor Boat Company Limited & Others (1968) EA 424**).
5. The background to this appeal is that the Respondent sued the Appellants before the trial court vide **Civil Suit No. 3318 of 2013** for general damages, exemplary damages, aggravated damages, the costs of the suit and interest. The cause of action was alleged defamation. This suit was consolidated with three other similar suits the Respondent instituted against others including other media houses as well. One of the suits (**Civil Suit No. 354 of 2013**) was selected as the lead file in which the claims were heard and the impugned judgement rendered.

6. In the relevant suit the Appellants are accused of authoring and publishing an article on the front page of their newspaper portraying the Respondent as having corruptly allocated himself 21 housing units belonging to the National Housing Corporation (NHC) of which he was the Legal Advisor. The Respondent averred *inter alia* that the published material insinuated that he is a dishonest and unethical lawyer not deserving of the office he held, hence the suit.
7. The Appellants filed a joint defence traversing the material claims in the suit. While admitting authoring and publishing the alleged offensive article, they contend that the statements they made in reference to the Respondent were neither false nor defamatory. The Appellants further asserted that the statements were their opinion and amounted to fair comment on a matter of public interest that was already in the public domain. According to the Appellants, they made several unsuccessful attempts to contact the Respondent to give his side of the story.
8. For the stated reasons *inter alia*, the trial court was urged to dismiss the suit with costs.

9. The Respondent reiterated the averments in the suit in his oral evidence before the trial court. He told the court that the defamatory publication also appeared on the Standard Newspapers headline of 24/7/2012 but that Media House appropriately apologized.
10. The Ethics and Anti-Corruption Commission (EACC) is said to have picked up the story and commenced criminal investigations. The investigations culminated in institution of criminal charges including abuse of office and fraudulent acquisition of wealth brought against the Respondent. The Respondent was allegedly subsequently suspended.
11. Upon hearing of the criminal case the Respondent was found with “no case to answer” and acquitted of the charges. He was also reinstated to his position as Chief Legal Officer of the NHC. The alleged defamation negatively affected his prospects of rising to the position of Corporation Secretary, having been acting in the position at the material time to which he was appointed in March 2017.

journalists. When the story complained of was published, the Respondent called the Managing Editor of the 1st Appellant protesting that he had not been adversely mentioned by the Minister. The 1st Appellant decided to offer an apology to the Respondent. The 2nd Appellant did not inquire if there was more than one legal officer at the NHC at the time, according to the Respondent.

15. The Appellants therefore denied liability contending that what was published were statements attributed to the Minister for Housing. The statements were admittedly not verified from the Respondent before publication of the story.
16. The alleged offending publication carried in the 1st Appellant's publication of 25/7/2012 claimed *inter alia* that the Minister had fired officials of the NHC over a houses allocation scandal. As is pertinent the, Respondent as the Legal Advisor to the Corporation was alleged to have unlawfully allocated himself 21 housing units.
17. In relation to the Appellants herein, the Learned Trial Magistrate noted that the 2nd Appellant did not sit through

the entire Press Conference but picked a copy of the Minister's Press Statement which she used as a basis for the 1st Appellant's front page story of 25/7/2012 the Respondent complains of. It was also observed that the 2nd Appellant obtained the name of the Respondent from an unnamed source at the NHC.

18. Further noting that the Appellants and all other sued media houses and journalists do not dispute publishing the story in issue, the trial court reached the conclusion that the story was defamatory of the Respondent and proceeded to assess and grant various awards in damages to the Respondent guided by legal authorities cited in the court's judgement.
19. Learned Counsel for the parties filed Written Submissions on the Appeal. The Appellants' advocates submit that the Respondent did not prove liability on a balance of probability. Counsel restated the elements or ingredients of defamation as laid down in the Court of Appeal case of **Elisha Ochieng Odhiambo vs Booker Ngesa Omole (2021) eKLR** among other judicial determinations. The Superior Court observed thus:-

“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 reputation of the person named in the estimation of right thinking members of society 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.”

20. The legal position is reiterated in **James Njagi Joel vs Junius Nyaga Joel (2020) eKLR** also relied upon by the Appellants. The court adds in this decision as follows;-

“It is trite law that the words complained of must be malicious. The term “malicious” 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.”

21. The Appellants maintain that the impugned publication was devoid of malice and thus not defamatory. They offer the defence of fair comment saying that the matter in issue was of “legitimate public interest”, expressing the honest opinion of the author (see further **Case Law in Janteo Construction Company Limited vs Enock Sikolia & 2 Others (2020) eKLR** relied upon by the Appellants).
22. The Appellants further submit *inter alia* that freedom of the media is at stake in this case that is of public interest. It is underscored that newspapers, the Press in general and everyone else are entitled to know or make known the truth as well as make fair comment as opined in **Jacob Mwango Nangora vs Hezron Mwando Kirario (2017) eKLR**.
23. The Appellants also put up the defence of qualified privilege contending that the statement made in relation to the Respondent was made in good faith “*Sans*” any improper motive. Reference is made to the case of **Charles Katiambo Musungu vs Dorine Lusweti (2021) eKLR** in which it was held as follows:-

“On grounds of Public Policy the law affords protection on certain occasions to a person acting in good faith and without any improper motive who makes a statement about another person even when that statement is in fact untrue, and defamatory. Such occasions are called occasions of qualified privilege.”

24. That the Publication was not malicious is demonstrated by the fact that the Appellants tendered an apology, add the Appellants’ Advocates, in accordance with the **Provisions of Sections 12 and 13 of the Defamation Act** before the suit was instituted.
25. The Appellants therefore deny defaming the Respondent, pointing out that the latter did not call witnesses to prove that the publication adversely affected his reputation. The court is urged to find that the Respondent did not prove his claim on a balance of probability.
26. The Respondent in his submissions wholly supports the trial court’s judgement maintaining that the Appellants defamed him. He asserts that the Appellants recklessly published the offending article without establishing the legal officer of NHC the Minister for Housing had referred to as

corrupt. The article was allegedly published without seeking clarification from the Respondent as to which legal officers among other lawyers in the NHC the Minister referred to. When they discovered the truth the Appellants belatedly published an apology in a manner the Respondent thinks was not done prominently compared to the defamatory statement.

27. Since the alleged defamatory statement turned out not to be factual, the Respondent's Advocates submit that the Appellants cannot avail themselves of the defence of fair comment on a matter of public interest.
- 28.** On the basis of cited Case Law, the court is urged to uphold the learned trial magistrate's judgement. I have considered the parties' respective cases. Their submissions correctly state the law relating to defamation as elucidated in the judicial and statutory authorities cited. The main issue for determination is whether, in my view, the lower court arrived at correct findings on both liability and the quantum of damages assessed under the various heads. I shall consider all the Grounds of Appeal together to reach my conclusion.

29. Superior Courts have restated the elements of defamation in many cases. In **Miguna Miguna vs Standard Group Limited & 4 Others (2017) eKLR** the following elements of the tort were set out;-

a) **That the alleged defamatory material was published.**

b) **The statement in question referred to the Plaintiff.**

c) **The defamatory material was false.**

d) **The statement referring to the Plaintiff is defamatory and**

e) **The statement is injurious to the Plaintiff's reputation.**

30. In **Veronica Wambui vs Michael Wanjohi Mathenge (2015) eKLR**, it was stated that specific alleged defamatory words must be pleaded and proven for reliefs to be granted.

31. It is not in dispute that the alleged defamatory statements were published in reference to the Respondent and the claim is properly pleaded. It is also common ground

that the Respondent was not the only Legal Officer serving at the NHC in the material period. The Appellants concede that the Minister did not specifically name the Respondent at the Press Conference in question as among the NHC staff who corruptly acquired the Corporation's houses. This is corroborated by video evidence regarding the Minister's Press Conference. To my mind, the fact that the Respondent was never contacted for his comments before publication smacked of recklessness and therefore malice on the part of the Appellants.

32. Moreover, the published statement caused the EACC to mount prosecution of the Respondent which resulted in his acquittal or exoneration. The Appellants' liability was therefore rightly determined by the trial court.
33. As regards the quantum of damages awardable, principles guiding exercise of the court's discretion have long been settled in **Johnson Evans Gicheru vs Andrew Morton (2005) eKLR** among many other decisions. They include;

a) Gravity of the libel and circulation of the publication in issue.

b) Prominence given to the defamatory statement and the defendant's conduct thereafter including during trial.

c) Mitigation of damages such as publication of an apology.

d) Matters tending to reduce damages and

e) Vindication of the Plaintiff's reputation, past or future.

34. The Court of Appeal opined in **Nation Newspapers Limited vs Peter Barasa Rapundo (2016) eKLR** that the character, status and standing of a person also influence the quantum of damages to be assessed and granted to him.

35. In **Kibui vs People Limited & Another (Civil Case 616 of 2006) [2022] KEHC 153 11 KLR (CIV) (11 November 2022 (Judgement))**, a School Principal was awarded Kshs. 2,000,000 in general damages for defamation of character. The same amount of damages was assessed in more or less similar circumstances obtaining in the case of **Alice Atieno vs Radio Africa Limited & Another (2020) eKLR**. It would be noted that the two cases relate to

persons of lower standing relative to the Respondent in the instant matter.

36. To sample another decision, in **Gitau vs Mbugua (Civil Suit 546 of 2010 [2024] KEHC 15751 (KLR) (CIV) (11 December 2024) (Judgement)** the Claimant was awarded Kshs. 2,000,000 and Kshs. 500,000 in general damages and aggravated damages respectively.
37. Although the Appellants tendered an apology, the Respondent complains that it was not published as prominently as the defamatory material.
38. Going by the comparable cases cited, the damages assessed and granted by the trial court under the various heads are found reasonable considering the Respondent's profession and work experience spanning 16 (sixteen) years after his admission to the Roll of Advocates as per the evidence. The learned trial magistrate's well reasoned decision may not therefore be faulted on both liability and the quantification of damages.
39. Consequently, the Appeal is dismissed in its entirety with costs to the Respondent.

J. M. NANG'EA, JUDGE.

**Judgement delivered virtually at Nakuru this 9th day October,
2025.**

In the presence of:-

Appellants' Advocate, Mr. Ojong'a

Respondent's Advocate, Mr. Kirima

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.