



**Nyagudi v Ochieng (Civil Case E056 of 2024)
[2025] KEMC 142 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEMC 142 (KLR)

**REPUBLIC OF KENYA
IN THE SIAYA LAW COURTS
CIVIL CASE E056 OF 2024
JP MKALA, RM
JUNE 13, 2025**

BETWEEN

WILFRED OUMA NYAGUDI PLAINTIFF

AND

MICHAEL OCHIENG DEFENDANT

JUDGMENT

1. The Plaintiffs, commenced this suit by way of a Plaint dated 27th March, 2024. The Plaint is seeking for orders to wit: That the Defendant does make full and unequivocal apology and withdraw statement published against the Plaintiff and such apology and withdrawal given the widest possible circulation via the same media, the Defendant's facebook page; A permanent injunction be issued to restrain the Defendant either by themselves, servants, agents or otherwise howsoever from further making or publishing defamatory allegations against the Plaintiff; Both general and exemplary damages or aggravated damages; Costs of the suit and Interest on the C and D at Court rates.
2. The Plaint is opposed by the Defendant vide the defense dated 29th April, 2024. The defendant denies all and every allegation contained in the Plaint and puts the Plaintiff to strict.

Background.

3. The Plaintiff avers that the Defendant through his social media platform (Facebook) using his Facebook Page with the name "MIKE OCHIENG" posted a photo of the Plaintiff captioned with the following defamatory words:

"Let's pray for Siaya Public Board CEO Mr Wilfred Nyagudi this Palm Sunday."

"Siaya Employment Cartel"



4. He further avers that same defamatory information was also circulated in different WhatsApp groups and that the above posts are, singularly and collectively, prima facie defamatory.
5. The Plaintiff avers that the said words, as used by the Defendant, in their ordinary meaning, and further by necessary imputation and innuendo, sufficiently induce any ordinary and reasonable right-thinking members of the society to think ill of him and make it appear to them that he lacks integrity and an immoral person that know no bounds. That in the natural and ordinary meaning of the offending words meant and were understood to mean, inter alia the following: -
 - a. That the plaintiff is not a person of integrity.
 - b. That the plaintiff is of dubious character and is unfit to hold any public office.
 - c. That the plaintiff is a fraudulent and corrupt person;
 - d. That the plaintiff is unethical and unscrupulous; and
 - e. That the plaintiff engages in criminal and illegal activities.
6. He avers that as a result of the Defendant's libellous publications, the Plaintiff's image and reputation in his profession as the Chief Executive Officer of Siaya County Public Service Board has suffered grave injury and his image lowered in estimation of right-thinking members of the society, exposing the Plaintiff to loss and damage.
7. The Defendant submits that it is clear that the WhatsApp and Facebook screenshot that were produced in Court were not accompanied by the certificate of production and the said evidence is of no probative value as the particulars of the gadget that was used to make the said documents was not proved the said evidence is not therefore credible. The Plaintiff has not therefore proved that the Defendant published the words as was contained in the screenshot.
8. That the source of the screen shot was disputed whether it is the Defendant who posted the alleged defamatory statement looking at the screen shot that was produced in court no evidence was produced further to confirm whether the number that posted the said words belonged to the Defendant or whether the said facebook page that was used to publish the said words belonged to the Defendant.
9. That the Defendant in his testimony indicated to Court that the said words were true and a fair comment which was not done in bad faith.
10. That the Defendant indicated to Court that the Plaintiff is the Siaya County Chief executive officer whose main roles include ensuring effective and service delivery and leading the departments by overseeing its operations and staffs. That is very evident from the documents that were produced in Court by the Defendant that there were several employment issues within Siaya County especially where the excess staffs were being employed under the watch of the Plaintiff and no action was ever taken by the Plaintiff being the leader of the County department to rectify the same. There are some things which are of such public concern that everyone is entitled to now the truth and make comment on it and this is the integral part of the right of speech and expression and it must not be whistled away.

Issues for determination.

11. I have considered the Pleadings and submissions by parties and I find these are the issues germane for determination.
 - a. Whether the words complained of in their natural meaning or by way of innuendo or both are defamatory of the Plaintiff;



- b. Whether the publication complained of makes any reference to the Plaintiff;
- c. Whether the words complained of contain issues of great public interest;
- d. Whether the publication is true in substance;
- e. Whether the suit discloses any reasonable cause of action.
- f. What orders commend themselves?

Analysis and determination.

12. The issues shall be addressed in turn.

Whether the words complained of in their natural meaning or by way of innuendo or both are defamatory of the plaintiff;

13. Defamation has been defined by various people in numerous ways and form, however, Justice R. E. Aburili in *Miguna Miguna v Standard Group Limited & 4 others* [2016] eKLR at paragraph 106 Defamation is a tort and is defined variously with not one agreed single definition that fits it all. It all depends on the circumstances of each case. Generally, however, the case of *J. KUDWOLI V EUREKA EDUCATIONAL AND TEACHING CONSULTANTS & 2 OTHERS* HCC NO. 126 OF 1990 sets out the issues a plaintiff in a suit founded on defamation be it libel or slander must prove and these are:

- i. the matter of which the plaintiff complains was published by the defendant;
- ii. the publication concerned or referred to the plaintiff
- iii. that it is defamatory in character
- iv. that it was published maliciously and;
- v. that in slander, subject to certain exceptions, that the plaintiff has thereby suffered special damage.

14. Justice R. E. Aburili further goes ahead to explain what the tort of defamation according to her understanding mean in the same case of *Miguna Miguna* (Supra) at paragraph 110. (emphasis is placed on the words highlighted in bold font)

15. “From the understanding that a defamatory statement is a false statement of fact or publication that exposes a person to hatred, ridicule, or contempt, causes him to be shunned, or injures him in his business or trade, it follows that statements that are merely offensive are not defamatory (e.g., a statement that John smells badly or is a cow would not be sufficient (and would likely be an opinion anyway)). Courts generally examine the full context of a statement’s publication when making this determination. It emerges that the publication to a plaintiff alone is not enough, because defamation is an injury to one’s reputation and reputation is what other people think of a person who alleges he was defamed and not his own opinion of himself. In addition, in order for the plaintiff to prove that he was defamed, he must tender evidence to prove that the published words tended to cause other people to was shun or avoid or treat him/ her with contempt following the defamation. Thus, since the defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of the right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem (typical examples are an attack upon the moral character of a plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, cruelty and so on); it therefore follows that Defamation is not about publication of falsehoods against a person; it is necessary to show that the



published falsehood disparaged the reputation of the plaintiff or tended to lower him in the estimation of right thinking members of society generally. However, whereas mere abusive words may not be defamatory, the speaker of the words must take the risk of his audience construing them as defamatory and not simply abusive, and the burden of proof is upon him to show that a reasonable and right thinking person would not have understood them in the former sense. In libel, however, the words cannot be protected as mere abuse since it is presumed that the defendant had time for reflection before he wrote them”.

16. The Defendant in his submission claims that the Plaintiff has not produced a certificate contemplated under the Evidence, therefore the publication has not been proved that they were actually made by the Defendant. However, a read through the Defendant’s witness statement which was adopted as the his evidence in chief, the defendant admits to making such publication albeit qualifying them that they were a fair comment.
17. He further submits that the words publicized were of great public concern therefore they can not be said to be defamatory in nature. From the above it is clear that the Defendant has admitted to publishing the aforementioned words. He can not hide behind a certificate of production of electronic evidence.
18. Even though the Defendant claims that the words were a fair comment and made in public good, this court views the statement to the contrary. The statement was made after the defendant failed to secure employment with the County Government of Siaya where the Plaintiff is the CEO of the board mandated to hire people. The defendant made the said statement not to raise awareness to the public but rather to show that the Plaintiff was a corrupt person with lose morals.
19. In *S M W v Z W M* [2015] eKLR W. KARANJA, P. M. MWILU, F. AZANGALALA Appellate Judges had this to say “[...]statement is defamatory of the person of whom it is published if it tends to lower him/her in the estimation of right thinking members of society generally or if it exposes him/her to public hatred, contempt or ridicule or if it causes him to be shunned or avoided”.

The Plaintiff being a public figure and holding a public office, I hold that the words in their natural meaning demonstrate the Plaintiff as corrupt and unfit to hold a public office. That he is there to benefit himself out of public funds.

20. Any rational and right-thinking member of the public reading through the publication will automatically feel that the Plaintiff was corrupt. In *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR Mativo J stated ”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.”
21. In *Musikari Kombo v Royal Media Services Limited* [2018] eKLR ALNASHIR VISRAM, W. KARANJA, M. K. KOOME JUDGES OF APPEAL had this to say “The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive”. It is clear from the forgoing that the statement in its ordinary meaning can be impugned to mean that the Plaintiff is corrupt, unscrupulous, fraudster and a criminal with dubious character and were made in reference to the Plaintiff.

Whether the publication complained of makes any reference to the Plaintiff;

22. The Defendant does not deny that the publication makes reference to the Plaintiff. In fact he states the publication was a fair comment.



23. The Plaintiff to succeed in his claim for defamation he must prove that the words complained of referred to him and no other person than him. In the case of Musikari Kombo at para 21 stated (supra) “[...] We agree with the learned Judge that the general rule as to who can sue in a claim for defamation is that it is the person against who the defamatory words have been published. This much was appreciated by Lord Atkin in *Knupffer vs. London Express Newspaper Ltd.* [1944] 1 ALL ER 495 thus:-“The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff.”
24. I have no doubt in my mind that the said publication referred to the Plaintiff and members of the Plaintiff’s society thought as much.
- Whether the words complained of contain issues of great public interest;
25. Public interest has been defined by Macmillan English Dictionary as the fact that the public has a right to know about something because it affects them. Further for the Defendant to plead Public interest, there is a plethora of things which they must prove which were developed in the common law and have since been adopted by our courts.
26. In the case of Musikari Kombo (Supra) the Judges of Appeal had this to say [...]The essence of this defence is an attempt to balance two competing but vital interests in society; the individual’s right to have their character and reputation protected and safeguarded from false, unwarranted and malicious or scurrilous attacks on the one hand, and the public’s right to know as exercised and fed by freedom of expression, which is an indispensable feature of a free and democratic society as well as a major tool for public accountability. The defence is entrenched under Section 7 of the *Defamation Act*. Further the learned judges adopted the judgement in *Reynolds vs. Times Newspapers* [1999] 4 ALL ER 609 the House of Lords went on further to set out a criteria for determining whether a publication is subject to qualified privileged as herein under:
- “Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only. (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. (2) The nature of the information, and the extent to which the subject matter is a matter of public concern. (3) The source of the information. Some informants have direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories. (4) The steps taken to verify the information. (5) The status of the information. The allegation may already have been the subject of an investigation which commands respect. (6) The urgency of the matter. News is often a perishable commodity. (7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed..(8) Whether the article contained the gist of the plaintiff’s side of the story. (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. (10) The circumstances of the publication including the timing.”
27. The Defendant has not shown or proved before this court that he even bothered to follow any of the steps provided in the above quoted case. He has failed to demonstrate to this court how publication of the Plaintiff picture and the defamatory statements against him were of any public interest.
28. It is my opinion that the following criteria was not followed, therefore, the Defendant cannot utilize the Defence of public interest and this defense must fail.



Whether the publication is true in substance.

29. The Burden of proving the truthfulness of the publication is true in substance does fall squarely on the Defence. In the case of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR John Mativo J. had this to say, “circumstances. Terminologically, “justification” as used in the law of defamation, means “truth”. The defence calls for the defendant demonstrating that the defamatory imputation is true. He cannot get away with it by saying that he believed that the matter complained of was true. He has a burden to prove the words are true”. He went further to quote the case of Hon. Uhuru Muigai Kenyatta v Baraza Limited Rawal J (as she then was) observed the information that causes the defamation, will be assumed to be untrue until the defendant proves otherwise. The learned judge stated:-

“...While taking defence of justification or qualified privilege in the Defamation Case, the Defendant was required by law to establish the true facts and the Plaintiff has no burden to prove the defence raised by the Defendant.....” The Supreme Court of Nigeria in Joseph Mangtup Din vs African newspaper of Nigeria Ltd, Adolphus Godwin Karib Whyte J.S.C held that:- “It is well settled that the onus lies on the respondent to prove the truth of the words in their ordinary and natural meaning:-See Dumbo v. Idugbo.

30. The Defendant has produced a newspaper cutting to demonstrate that indeed there were some dubious employment going on at the county being perpetuated by the Plaintiff. That even though a lot of concerns were raised over the issue, the Plaintiff being the leader of the board did not act or resolve the issues. I have gone through the newspaper cutting, I note that it does not mention the Plaintiff at all. Further, contrary to the Defence assertion that the Plaintiff is the leader of the board, the chairperson is the boss while the Plaintiff is a secretary.

31. It is my holding that the Defendant has failed to demonstrate that the words were true in substance.

Whether the suit discloses any reasonable cause of action.

32. From the analysis of evidence placed before me, it is my holding that the Plaintiff has made out a case against the Defendant on a balance of probability, consequently, judgement be and is hereby entered for the Plaintiff against the Defendant.

What orders commends themselves.

33. Having considered the evidence and the case laws this court orders as follows: -

- a. The Defendant shall permanently remove the offending defamatory word referring to the Plaintiff from all his social media platforms i.e Facebook and WhatsApp or any other social media platform.
- b. The Defendant shall offer unequivocal apology to the Plaintiff through the same social media platforms he published the offending and defamatory statement.
- c. The Defendant shall pay to the Plaintiff general damage of Kshs. 3,000,000.
- d. The Defendant shall further pay exemplary damages to the Plaintiff assessed at Kshs. 300,000/-
- e. The Plaintiff shall have costs of the suit.
- f. Interest at Courts rate from the date of judgement until payment in full on C, D and E above.
- g. Stay of execution 30 days.



So orders the Court.

SIGNED, DATED AND DELIVERED VIRTUALLY AT SIAYA COURT THIS 13TH DAY OF JUNE, 2025

HON. J. P. MKALA

RESIDENT MAGISTRATE

Judgment Delivered in the presence of;

Plaintiff/Counsel - Absent

Defendant/Counsel - Ms. Otieno

Court Assistant - Kevin Akwany

