



Odongo v Iche (Civil Suit E571 of 2021) [2023] KEMC 121 (KLR) (12 May 2023) (Judgment)

Neutral citation: [2023] KEMC 121 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

CIVIL SUIT E571 OF 2021

JP ADUKE, SRM

MAY 12, 2023

BETWEEN

JAAZIAH ODONGO PLAINTIFF

AND

JANICE ICHE DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendant seeking recovery of damages for defamation. This suit arises out of alleged series of tweets published on 27th February 2020 as outlined in para 7 and 8 of the Plaint on record.
2. The Plaintiff alleges that such information could be inferred to refer to the Plaintiff and to suggest that the Plaintiff was a sexual predator and a rapist, a manipulative and opportunist who preys on women in the course of his activities and a morally and socially delinquent individual unfit to maintain relations with normal members of the society.
3. The Plaintiff blames the Defendant for defamation and prays for aggravated and exemplary damages, a mandatory injunction and a permanent injunction restraining the defendant from publishing anything on the plaintiff, an unconditional apology to the plaintiff, costs and interest at court rates.
4. Return of Service on Record shows that the defendant was served with the suit papers. The Defendant neither entered appearance nor filed a defence within the stipulated period. As a result, interlocutory judgment was entered on 16th November 2021. The matter proceeded to formal proof hearing for assessment of damages.
5. The issues for determination before this court are two:
 1. Whether or not defamatory statements were published and whether or not the published statements referred to the Plaintiff or could be inferred to refer to the Plaintiff.



6. Odunga J in *KL vs Standard Limited* [2014] eKLR distinguished libel and slander as follows:

“Slander is where a person orally or verbally utters defamatory statements while libel consists of defamatory statements in a more permanent form...” The latter is punishable per se.

7. With respect to the first issue, I have seen copies of the alleged tweet and noted the links provided by the plaintiff counsel on record. On a balance of probability, I find that statements were published on twitter.

2. The second most important ingredient in libel is the identification or nexus between the published statements and the plaintiff. Would a reasonable bystander conclude that the statements referred to the Plaintiff?

8 I have carefully examined the particulars outlined in para 7 of the Plaint and note as follows:

The person referred to in the tweet has a four letter first name denoted by asterisks as follows, “Jz . The plaintiff herein has a seven letter first name. The person referred to in the tweet has a six letter second name denoted by asterisks and ellipsis as follows, “Odgo...” The Plaintiff herein has a six letter second name.

9. Is it possible that the first name referred to Julz or Jaaziah? Or may be the same referred to Jayz? I would not know. It is believable that the same is likely to refer to Julz or Jayz. Is it likely that on immediately reading the tweet my mind would think of the Plaintiff herein? Not at all. On a balance of probabilities, and on the strength of Order 2 rule (7) of the *Civil Procedure Rules 2020* I find that the particulars provided herein do not meet the thresh hold of the reasonability test. It follows, therefore, that this suit is unmerited. I dismiss the plaint on the following terms. Costs awarded to the Defendant. ROA 14 days.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DATED THIS 12TH MAY 2023.

In the presence of :

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff-

(Name, Signature, Date)

3. For the Defence:

(Name, Signature, Date)

