



**Kaikai & another v Macharia (Civil Appeal E243 of 2024)  
[2025] KEHC 15013 (KLR) (Civ) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15013 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E243 OF 2024**

**JM OMIDO, J**

**OCTOBER 8, 2025**

**BETWEEN**

**LINUS KAIKAI ..... 1<sup>ST</sup> APPELLANT**

**ROYAL MEDIA SERVICES LTD ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DR. NANCY NJERI MACHARIA ..... RESPONDENT**

*(Being an appeal from the Judgement and Decree of the Hon. B.M. Cheloti (Principal Magistrate) delivered on 2nd February, 2024 in Milimani Chief Magistrate's Court CMCC No. 87 of 2023)*

**JUDGMENT**

1. The Appellants herein Linus Kaikai and Royal Media Services Limited have brought this appeal against the Respondent Dr. Nancy Njeri Macharia, being aggrieved by the judgement and decree of Hon. B.M. Cheloti, Principal Magistrate, delivered on 2<sup>nd</sup> February, 2024 in Milimani Chief Magistrate's Court CMCC No. 87 of 2023.
2. The Appellants presented twelve grounds of appeal vide the Memorandum of Appeal dated 20<sup>th</sup> February, 2024, which grounds are summarized as follows:
  - a. That the learned trial Magistrate erred in ignoring the submissions made before her by the Appellants.
  - b. That the learned trial Magistrate erred in holding that the Respondent had met all the ingredients to satisfy the threshold required for the tort of defamation to succeed.
  - c. That the learned trial Magistrate erred in holding that the impugned publication was not done in good faith.



- d. That the learned trial Magistrate erred in holding that the impugned publication affected the Respondent by putting into question and lowering her reputation, integrity and competence.
  - e. That the learned trial Magistrate erred in law in wholly dismissing the defences raised by the Appellants in the suit before her and by holding that the defences raised by the Appellants were not available to them.
  - f. That the learned trial Magistrate erred in law and in fact by holding that the 2<sup>nd</sup> Appellant was wholly liable to compensate the Respondent without any legal justification/explanation.
  - g. The award made of Ksh.8,000,000/- in general damages and Ksh.2,000,000/- in exemplary and aggravated damages was unjustified and manifestly high in the circumstances of the case and that the same had the effect of stifling freedom of expression and press freedom as guaranteed by *the Constitution*.
3. The Respondent filed a cross-appeal vide the Memorandum of Appeal dated 5<sup>th</sup> March, 2024 raising grounds of appeal summarized as follows: -
    - a. That the learned trial Magistrate grossly erred in fact and in law when she granted an award in terms of general and exemplary damages that was inordinately low in the circumstances of the case.
    - b. That the learned trial Magistrate erred in law in arriving at a decision which was contrary to the evidence tendered by the parties, the law, facts, submissions, authorities and judicial precedents tendered before court.
  4. This being a first appeal, this court is under a duty to re-evaluate and re-assess the evidence adduced before the trial court and reach its own conclusions. This court must, however, have it in mind that the trial court, unlike this court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (See the case of *Selle v Associated Motor Boat Co. Ltd* [1969] E.A. 123).
  5. The Respondent, who was at the time material to the suit before the trial court the Chief Executive Officer of the Teachers Service Commission, sued the Appellants seeking for general, exemplary and aggravated damages for defamation vide a plaint dated 3<sup>rd</sup> December, 2021. The Respondent pleaded that the 2<sup>nd</sup> Appellant was the proprietor of Citizen TV station while the 1<sup>st</sup> Appellant was a journalist employed by the 1<sup>st</sup> Appellant at the said TV station.
  6. The impugned words that the Respondent pleaded were uttered by the 1<sup>st</sup> Appellant on Citizen TV on 18<sup>th</sup> November, 2021 at about 10.00pm and which she complained of were as follows;
 

“I had stated then as I do tonight, KNUF was and remains on its death bed courtesy of the ruthless anti-union practices adopted by Nancy Macharia and TSC.

Now, the situation in TSC should be called out to what it truly is, a reign of terror. Constant reminders however futile must be sent to Nancy Macharia and TSC that *the Constitution* is supreme and guarantees to every person including teachers the right to fair labour practices.

I say relief because many times law courts have saved this country from impunity. The same courts can save the future of the country from TSC and from Nancy Macharia.”
  7. The Respondent told the trial court that on the 18<sup>th</sup> November, 2021 at 10.00pm, the Appellants jointly and severally during a prime news programme known as “News Gang” on Citizen TV station



- published the above words which she deemed to be false, malicious and defamatory statements against her without verifying their correctness or truth. The Respondent stated that during the entire kicker broadcast, the TV station captioned her image in the background.
8. The Respondent testified in support of her case and called four other witnesses who all told the trial court that as a result of the broadcast by the Appellants, the image of the Respondent was lowered and/or tainted. The Respondent herself testified and in cross-examination and stated that as a result of the broadcast her own family members became aware of the false and malicious words complained of as a result of which she was subjected to mental anguish.
  9. The Respondent told the trial court that the publication lowered her reputation in the eyes of the right-thinking members of the society as it depicted her as a rogue public officer who had no regard to the rule of law, an evil person who deployed underhand tactics to subdue teachers and a person who was immoral, unruly, wicked and lacked leadership skills.
  10. The Appellants resisted the Respondent's suit vide the statement of defence dated 21<sup>st</sup> December, 2021. They pleaded in their defence that the impugned words had been addressed by both the Employment and Labour Relations Court, newspapers and by the Kenya National Union of Teachers in a circular dated 29<sup>th</sup> July, 2020.
  11. The Appellants raised the defences of truth/justification, qualified privilege, public interest, fair comment on matters of public interest and the constitutional defence under Articles 33 and 34 of *the Constitution* of the freedom of expression and freedom of the media to impart information to the public.
  12. The Appellants thus contended that the suit was an abuse of the process of court as it had not been filed in good faith or with a proper purpose, was thus misconceived and filed merely to vex them.
  13. The 1<sup>st</sup> Appellant testified on behalf of the two Appellants and told the trial court that the coverage of the broadcast was the largest countrywide as the 2<sup>nd</sup> Appellant had 50% of television viewership in Kenya.
  14. The 1<sup>st</sup> Appellant stated that the Respondent had been blamed for "unfair" transfer of teachers. He however failed to divulge the source of that information when challenged to do so. The 1<sup>st</sup> Appellant, on cross examination, stated the Appellants did not verify with the Teachers Service Commission or any other source the information alleging impropriety on the part of the Respondent in transferring teachers. The witness further stated that he did not have any of the transfer letters.
  15. In her judgement rendered on the 2<sup>nd</sup> February, 2024, the learned trial Magistrate, found that the publication by the Appellants was not done in good faith as the facts therein were not verified and was calculated to disrepute the Respondent. She went on to find that the publication was defamatory and affected the Respondent by lowering her reputation in the estimation of right-minded persons as her integrity and competence were questioned. The trial magistrate went on to award the Respondent general damages of Ksh.8,000,000/- and exemplary and aggravated damages of Ksh.2,000,000/- as well as costs of the suit that were to be borne by the 2<sup>nd</sup> Appellant.
  16. Having re-analyzed the trial record and upon considering the grounds of appeal set out above and the parties' submissions, I deduce the issues for determination in the present appeal to be as follows:
    - a. Whether the respondent proved her claim for defamation against the respondents.
    - b. Subject to (a) above, whether the award for general and aggravated damages were manifestly excessive; or manifestly low as to warrant interference by this court.



17. The Appellants pleaded and submitted that the learned trial Magistrate erred in holding that the Respondent had proved the ingredients of the tort of defamation successfully, in the suit before the trial court.
18. Black Law's Dictionary 8<sup>th</sup> Edition defines defamation as "the act of harming the reputation of another by making a false statement to a third person." A defamatory statement is one which tends to lower a person in the estimation of right-thinking members of society generally, or which exposes them to hatred, contempt, ridicule, or to cause them to be shunned or avoided.
19. The Court of Appeal in *SMW v ZWM* [2015] eKLR, (Karanja, Mwilu & Azangalala JJ.A) held:-

"A 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."
20. Patrick O'Callaghan in the Common Law Series: The Law of Tort at paragraph 25.1 states that the law of defamation is primarily concerned with the protection of a person's reputation and not his or her character.
21. The elements of defamation were outlined by the Court of Appeal in cases of *Selina Patani & another v Dhiranji v Patani* [2019] eKLR and *Raphael Lukale v Elizabeth Mayabi & another* [2018] eKLR as follows:
  - i. The statement must be defamatory.
  - ii. The statement must refer to the plaintiff.
  - iii. The statement must be published by the defendant.
  - iv. The statement must be false.
22. In the present case, it is undisputed that the impugned words were uttered and broadcast by the Appellants on the 2<sup>nd</sup> Appellant's TV station on 18<sup>th</sup> November, 2021 at about 10.00pm. It is also not disputed that the said words directly referred to the Respondent and that she was mentioned by name. The outstanding issue is whether the impugned words were false and defamatory.
23. In her testimony before the trial court, the Respondent stated that the words complained of were not only false but also tended to tarnish her reputation and lower her in the estimation of right-thinking members of society generally and exposes her to public hatred, contempt and ridicule.
24. The Respondent's witnesses told the trial court that they became aware of the words that the Respondent complained of when the same were uttered by the 1<sup>st</sup> Appellant on Citizen TV and that the same caused the witnesses to view the Respondent negatively.
25. The Appellants, through the testimony of the 1<sup>st</sup> Appellant stated that the impugned words had been addressed by both the Employment & Labour Relations Court, newspapers and by the Kenya National Union of Teachers in a circular dated 29<sup>th</sup> July 2020. The said documents were contained in the Appellants' list and bundle of documents dated 7<sup>th</sup> March 2023.
26. It is however to be noted from the 1<sup>st</sup> Appellant's testimony upon cross examination that the Appellants did not confirm the veracity of the information with TSC or any other source before publishing them. The 1<sup>st</sup> Appellant also stated that he did not have before the trial court the teachers' transfer letters relating to the matter.



27. The Appellants raised several defences against the Respondent's claim. The first was the defence of justification which is defined as follows at paragraph 81, page 42 of the Halsbury's Laws of England Fourth Edition Vol 28 as follows:

“The defence of justification is that the words complained of were true in substance in fact.

Since the law presumes that every man is of good repute until the contrary is proved, it is for the defendant to plead and prove affirmatively that the defamatory words are true or substantially true.”

28. The Appellants argued that the truthfulness of the alleged defamatory words was proved through the evidence given specifically, the Employment & Labour Relations Court, newspapers and by the Kenya National Union of Teachers in a circular dated 29<sup>th</sup> July 2020.

29. Regarding the defence of justification in defamation, the principle applicable is that the truth of the alleged defamatory matter is a complete defence to a claim in defamation. Justification is a complete defence to an action for defamation and consists in proving that the alleged defamatory statement is true or substantially true.

30. It is to be noted that the Appellants admitted that they did not verify the truthfulness of the information with TSC or other reliable source and further did not produce the transfer letters that the Respondent is alleged to have maliciously caused to be issued. The 1<sup>st</sup> Appellant also testified that although the Appellants alleged that the Respondent had been blamed for transfers. He however failed to divulge the Appellants' sources of that information, merely stating that Employment & Labour Relations Court, newspapers and by the Kenya National Union of Teachers had addressed the matter.

31. In my view, the truthfulness of the words published about the Respondent was not established to any degree and merely stating that the allegations had been published or addressed elsewhere did not make the allegations true. The defence of justification was thus properly dismissed by the trial court.

32. The Appellants also argued that they enjoyed the defence of qualified privilege. Qualified privilege is a defence to defamation that protects certain communications made in good faith on occasions where the publisher has a legal, moral or social duty or interest to make the statement and the recipient has a corresponding interest or duty to receive it.

33. Qualified privilege is a legal defence to defamation. It protects a party from liability for making an otherwise defamatory statement if the statement was made in good faith on an occasion where the communicator had a legal, moral or social duty to make it and the recipient had a corresponding interest in receiving it. The privilege is however lost when the person making or publishing the statement acts with malice (knew it was false or acted recklessly) or the statement was excessively published to people who did not need to know.

34. In the Halsbury's Laws of England Fourth Edition Vol 28 pg 45 para 145, the authors state:

The defences of both fair comment and qualified privilege are defeated by proof that the defendant published the words complained of maliciously. In both cases proof that the defendant's sole or dominant motive in publishing the words was improper will establish malice. The fact that the defendant did not believe that what he said was true is usually conclusive evidence of malice to rebut the defence of qualified privilege; and in fair comment it is usually conclusive evidence of malice to show that the defendant did not honestly hold the opinion expressed. If a defendant publishes untrue defamatory matter recklessly, without considering or caring whether it is true or not, he is treated as if he knew it to be false.



35. The Appellants submitted that they had brought themselves within the legal context to benefit from the defence of qualified privilege. However, the fact that the Appellants admitted that they did not conduct due diligence to confirm the truthfulness or otherwise of the words that were complained of before proceeding to publish them on a respected TV station with very wide viewership spectrum is in my view proof that the Appellants acted with malice.
36. The other defence that the Appellants relied upon was the defence under Article 33 and 34 of *the Constitution* on the freedom of expression and freedom of the media to impart information to the public.
37. Article 33 of *the Constitution* provides that every person has the right to freedom of expression, which includes the freedom to seek, receive or impart information or idea while Article 34 provides for the freedom of the media.
38. In the case of *Nation Media Group Limited v George Nthenge* [2017] eKLR the Court of Appeal aptly held:
- “Much as we acknowledge the intrinsic value of freedom of the press, we do not subscribe to the notion that the pen is a passport to experimentation and the taking of liberties with people’s reputations. Indeed, in some instances, a good name is all that a person has when much else is lost or gone, as was so poignantly the case with the respondent in this case who had had more than his fair shares of personal tragedy as the record shows.”
39. In as much as the Appellants were entitled to express themselves, seek and impart information to the public, they were required to do so in a manner that was responsible and respected the reputation of others. In this case, the Appellants paid little regard to the Respondent’s reputation when they published the words complained of, which, as we have seen, was done without verification of their truthfulness or otherwise and maliciously. The Appellants cannot now seek refuge under Articles 33 and 34 of *the Constitution*.
40. From the foregoing, the finding that I reach is that the words complained of had a defamatory imputation which, by its natural meaning or implication, discredited and disparaged the Respondent in her reputation, profession and office.
41. Taking all the above into consideration, I find no reason to fault the learned trial Magistrate’s findings that the Respondent proved the essential ingredients for the tort of defamation. I thus uphold her holding that the Appellants defamed the Respondent by broadcasting and publishing the impugned words.
42. Both parties herein have offered different arguments regarding the award of damages as awarded by the trial court. The Appellants pleaded that the said award was excessive and manifestly high while the Respondent submitted that the award granted was inordinately low.
43. Compensatory damages are awarded to a wronged party in exercise of the court’s discretion. The principles upon which an appellate court can interfere with judicial discretion were laid down in the case of *Price & another v Hidler* [1996] KLR 95 as follows:
- “The court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision.”



44. Further, in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR the Court of Appeal while discussing the principles upon which an appellate court may disturb an award of damages by an inferior court held that:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297.

It was echoed with approval by this Court in *Butt v Khan* [1981] KLR 349 when it held as per Law, J.A that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

45. There is also the authority of *Mbogo & Another v Shah* [1969] EA 93, where it was held, inter alia, that:

“An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which it should be taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court should not interfere with the exercise of the discretion of a judge unless satisfied that the judge in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice.”

46. The court in the case of *Raphael Lukale v Elizabeth Mayabi & Another* [2018] eKLR, held as follows on the factors that ought to be taken into consideration in awarding damages in defamation cases:

“In defamation cases, the Court of Appeal, in *Standard Limited V G.N Kagia T/A Kagia & Company Advocates*, Civil Appeal No.115 of 2003, set out the following principles to be applied in awarding damages:-

“1) In situations where the author or publisher of a libel could have with due diligence verified the libelous story or in other words, where the author or publisher was reckless or negligent, these factors should be taken into account in assessing the level of damages.

2) The level of damages awarded should be such as to act as deterrence and to instill a sense of responsibility on the part of the authors and publishers of libel. Personal rights, freedoms and values should never be sacrificed at the altar of profiteering by authors and publishers.”

In the case of *John v MGM Ltd* [1997] Q.B 586 the English Court of Appeal said in part at page 607 paragraph F:-

“In assessing damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation,



honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.”

47. The trial court awarded the Respondent a sum of Ksh.8,000,000/- in general damages and Ksh.2,000,000/- as exemplary and aggravated damages.
48. The Appellants proffered the view that an award of Ksh.400,000/- in general damages would be sufficient in this case and relied on the case of *Nation Newspaper Ltd v Gilbert Gibendi* [2002] eKLR. The Appellants further urged that the Respondent was not entitled to exemplary damages as there was no evidence that the offending publication was intended for a specific profit as was held in the case of *The Nairobi Star Publication Limited v Elizabeth Atieno Oyoo* [2018] eKLR.
49. On her part, despite filing a cross appeal citing that the award by the learned trial Magistrate was inordinately low, the Respondent merely made submissions to the effect that the court ought to increase or maintain the award in favour of the Respondent. No justification was however made for the same.
50. In *Raphael Lukale* (supra) the Court of Appeal awarded the Appellant who was a head teacher a sum of Kshs. 1,500,000/= for defamatory statements aired by an FM station with wide listenership among the Luhya community.
51. In the case of *Nation Media Group Limited v George Nthenge* Civil Appeal No. 64 of 2013 [2017] eKLR, the Court of Appeal upheld an award of Ksh.5,000,000/- as compensation for defamatory words published against the Respondent who was 80 years old and had had an illustrious political career in his heydays.
52. Taking all the above into account and the Respondent’s standing in society, the fact that the publication touched on her long, illustrious professional reputation, the nature of the publication, the very wide coverage of the publication, the fact that with due diligence, the Appellants could have established the truth, I find no reason as to why I should interfere with the learned trial Magistrate’s assessment in respect of general damages.
53. With respect to aggravated damages, the same are awarded where the defamation is particularly harmful or malicious, causing greater injury to feelings, dignity or reputation.
54. Aggravated damages may be awarded where the offending party acted out of malice (e.g., knew the statement was false but published it anyway or where the said party refused to apologize, even after being informed the statement was false. The same may also be awarded where the manner of publication was deliberately humiliating.
55. The Appellants offered no apology, despite the publication being malicious and grossly injurious to the Respondent’s reputation. The Respondent was therefore entitled to an award of aggravated damages.
56. Exemplary damages are on the other hand punitive in nature and meant to deter outrageous conduct and punish the offending party. They are awarded only in specific situations, such as where the offending party’s conduct was recklessly indifferent to the rights of the defamed party and the defamation was part of a profit-driven motive (e.g., a newspaper or TV station prioritizing sales over the truth).
57. The learned trial Magistrate awarded Ksh.2,000,000/- which she bundled together as aggravated and exemplary damages. My view is that although the medium through which the defamatory words were



aired was a media house, there was no evidence that the Appellants intended to make a profit from the same. My persuasion is therefore that the Respondent was not entitled to exemplary damages.

58. In light of the fact that the learned trial Magistrate made an award under the two heads as though the same were one, and considering my view that the Respondent was only entitled to an award of aggravated damages and not exemplary damages, I opine that a reduced award of Ksh.500,000/- was sufficient recompense to the Respondent as aggravated damages.
59. The trial court's decision to issue a mandatory injunction directing the Appellants to publish a retraction as well as a permanent injunction restraining the Appellants from publishing or continuing publication of defamatory publication was challenged on the grounds that it impaired freedom of expression and public interest that the truth should be told.
60. I find that contrary to the Appellants' assertion, the injunctions sought and granted by the trial court were specific to the words broadcast by the Appellants. This court has upheld the trial court's finding that the publication by the Appellants was defamatory to the Respondent. The injunctions were drawn precisely and were in my view not so broadly couched as to curtail the Appellants' freedom of expression.
61. In the end, this court finds that the appeal on quantum under aggravated and exemplary damages is merited. The appeal is therefore hereby partly allowed with this court's finding that the Respondent was not entitled to exemplary damages but was entitled to aggravated damages in the sum of Ksh.500,000/-. I will therefore set aside the award of Ksh.2,000,000/- made under the combined heads of aggravated and exemplary damages and substitute the same with an award of Ksh.500,000/- under the head of aggravated damages.
62. The cross appeal fails and is dismissed.
63. As the parties are both partly successful in this consolidated appeal, each party shall bear their own costs.
64. This file is hereby closed.

**DELIVERED (VIRTUALLY) DATED & SIGNED THIS 8<sup>TH</sup> DAY OF OCTOBER, 2025.**

**JOE M. OMIDO**

**JUDGE**

For The Appellants: Ms. Munyori.

For The Respondent: Mr. Anyuor.

Court Assistants: Mr. Ngoge & Mr. Juma.

Mr. Munyori: I seek 30 days stay of execution.

Mr. Anyuor: I oppose the application for stay. The matter has been in court for a long time. The suit was filed in 2023.

Court: As security for the due performance of the decree was furnished, stay of execution is granted for 30 days.

**JOE M. OMIDO**

**JUDGE**

