



**Nyagah v Kariuki & another (Civil Appeal E077 of 2024)
[2025] KEHC 17638 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17638 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E077 OF 2024
RM MWONGO, J
NOVEMBER 26, 2025**

BETWEEN

BONIFACE IRERI NYAGAH APPELLANT

AND

DENNIS MUGAMBI KARIUKI 1ST RESPONDENT

THE STANDARD GROUP PLC 2ND RESPONDENT

*(An Appeal from the Judgment of Hon. J.W. Gichimu, CM delivered
on 06th August 2024 in Runyenjes CMCC No. 104 of 2022)*

JUDGMENT

Memorandum of Appeal

1. Through a memorandum of appeal dated 22nd August 2024, the appellant is seeking:
 - a. That the appeal herein be allowed; and
 - b. That the costs of the appeal and those of the lower court be granted to the appellant.
2. The appeal is premised on grounds that:
 1. That the Learned Magistrate erred in law and in fact by finding the Appellant had not proved that the statements by the 1st Respondent were defamatory to him;
 2. That the Learned Magistrate erred in law and in fact by holding that the fact that the appellant did not summon any independent witnesses in support of his claim was fatal in proving defamation;
 3. That the Learned Magistrate erred in law and in fact by holding that there was justification of truth against the evidence presented before the court while such a determination had not been



made in any criminal proceedings that the 1st respondent was relying on in such justification; and

4. That the Learned Magistrate erred in law in failing to consider the submissions of the Counsel for the Appellant, the evidence and the witness testimonies presented at the hearing and erroneously reaching a finding that the Appellant herein had not proved his case.

The Complaint

3. In the lower Court the appellant filed a complaint dated 17th November 2022 and amended on 30th November 2022 seeking judgment against the respondents in the following terms:
 1. That the Defendants be restrained by way of a permanent injunction from uttering, writing, distributing, and/or otherwise publishing any articles, comments, words, pictures and/or videos that are defamatory of the Plaintiff.
 2. General Damages
 3. Punitive damages.
 4. Costs of the suit.
 5. Interest on 2, 3, and 4 above until payment in full.
4. The appellant averred that the respondents published defamatory words, pictures and videos against him through the 2nd respondent's Facebook page. He stated that the defamatory words were published in English and Kiswahili languages under the heading "a former MCA in Embu County cries for justice after police allegedly stripped him naked and assaulted him"; as follows:

"It is showing clearly what happened. I also have another one ... eh ...

Mheshimiwa Deputy President of the Republic of Kenya Mr. Rigathi Gachagua, mimi nakuombakwa sababu wewe ulitolewa na boxer kutoka kwa nyumba, mimi yangu iliraruliwa yote. Nikatolewa yote nikabaki uchi mbele ya watu nikaona aibu iliyokuwa kubwa sana na ikiwa mimi nilikuwa napigania hiyo kiti kwanza nilikuwa nataka kuitisha hiyo kiti na UDA mimi singeweza kuitisha kiti kwa sababu wale watu walionga uchi wangu nikiwa sina chochote niko uchi, hii kitu yangu imesimama. Mimi nakuomba uingilie hii kesi kwa sababu huyo ofisa ni askari mmoja mkubwa huko Nairobi na anasemekana yeye he is untouchable. Mimi nakuomba ukaweze kuingilia hii kesi. Hata wale wengine walikuwa pamoja nao wako area ya kwangu uweze pia, waweze pia kupelekwa kortini na ndio ukweli ujulikane ...

Nikasema kila mtu apewe kila kitu, kinywaji, anakunywa na mimi nilikuwa nimeagiza kinywaji yangu na wakati nilikuwa mahali pale, palikuwa na askari mmoja ambaye mimi huskia ni Inspector wa CID Nairobi area na haswa nilikuwa naskia kama alikuwa anafanya Buruburu. lakini mimi sina uhakika lakini najua ako Nairobi area. Na yeye ni wakutoka mahali pale na watu wengine wawili wote walianza maneno maneno ya vurugu na mmoja akaniambia, askari, akaniambia hawezi chagua foreigner ati ya kwamba kwa sababu mimi nimenunua shamba hiyo area, na kwetu ni mahali kunaitwa Kathageri, mimi nirudi kwetu hawezi chagua mtu ambaye ni foreigner. So mimi nikamwuliza mimi ni foreigner namna gani na hakuna tofauti ya Kathageri na Kigumo. Katika ile harakati walianza fujo na unfortunately, mimi walivinunja mguu katika ile harakati huyu askari ndiye alinitoa nguo zote kwa hivyo mimi niliumia mguu, nikaumia mgongo, na haswa ile kitu ilileta aibu ni



ya kwamba kama mheshimiwa mtarajiwa wakati ule, mimi nilipata aibu mingi sana maana kuona nimetolewa nguo mbele ya watu ... ”

Translates into English thus:

“It is showing clearly what happened. I also have another one ... eh ...

His Excellency the Deputy President of the Republic of Kenya Mr. Rigathi Gachagua, I request you because you were removed with boxer shorts from your house, mine was totally torn. My clothes were removed and I was left naked in front of people and I experienced a lot of shame and more so because I was vying to be a MCA and specifically because I wanted to vie on a UDA ticket. I couldn't vie because people saw me naked and saw my penis erect. I request that you intervene in this case because the officer is a high-ranking officer in Nairobi. Rumors have it that he is untouchable. I request that you intervene in this case. Even the others who accompanied him and who live in my area, they should all be taken to court so that the truth can be unveiled...I said everyone should be given, the drink, they take and I had asked for my drink and as I was there, there was one police officer who I hear is an Inspector at the CID in Nairobi area and specifically I have heard that he was based at Buruburu which I cannot confirm. I can only confirm that he is based in Nairobi area. The said officer is from the said locality. Himself together with other two people started bringing up issues and words meant to irk and one of them told me that he cannot vote for a foreigner because I had bought a piece of land in the said area but I am originally from Kathageri. He told me to go back to where I came from and he couldn't vote for a foreigner. I asked him how I would be a foreigner and there is no difference between Kathageri

and Kigumo. In the ensuing melee, they started being violent and unfortunately, they broke my leg. This police officer is the one who stripped me naked. In summary, my leg and back were hurt and specifically what brought shame to me is the fact that as a hopeful MCA, I really felt ashamed because I was stripped in front of people...”

5. The appellant referred to the post published through the link:<https://fb.watch/h5CQjWdkDH> and a similar one posted on their Twitter handle @StandardKenya on 14th November 2022 at 7.40pm vide the link <https://twitter.com/StandardKenya/status/1592195704994365442?t=yzEHzmD2j0xdCaGWmzzxKQ&s=19>. He claimed that the 2-minute-long video between second 0.01 and 0.05 portrayed him as a violent criminal who assaults people, destroys their property and denies them their political rights. He stated that the words are damaging to his long and successful career with the National Police Service. That his name was tarnished in the audience of 6,700 viewers who watched the video through the Facebook link.

Statements of Defense

6. The 1st respondents filed a statement of defense denying the averments made in the plaint. He stated that no defamatory statements were made against the appellant and that if any statements were made at all, they were towards calling for help against the assault he suffered from the appellant. He stated that he reported the assault at the police station and he obtained an OB number. At the time, the criminal case against the appellant had not commenced. He urged the court to dismiss the plaint.

Summary of the Evidence

7. PW1 was the appellant who stated the facts averred in the plaint. He added that the defamatory words have affected his reputation as a public servant working as a policeman. It has also affected how his family and friends view him especially because the defamatory publication was viewed by 6,700 viewers



online. He stated that following publication of the defamatory information, he received numerous phone calls asking about the contents of the video. That his name appeared on the video and he is the only officer going by that name at his place of work. He said that at some point, the 1st respondent threatened to ensure that he (PW1) would lose his job. That the video caused him psychological anguish since he had to explain himself to his boss at work.

8. He said that he does business in Nairobi and that this video caused him to lose his customers. That the 2nd respondent did not ask for clarification from him before they published the video. In cross-examination, he stated that his name was not mentioned in the extracts, and he did not produce medical evidence that he was psychologically affected. He stated that he had been promoted at work. He admitted that he did not produce the video or any OB as evidence. He stated that his name appeared on the video and he was described as IP at Buruburu Police Station. That the documents adduced do not link him to the assault of the 1st respondent but the video shows that the named police officer attacked the 1st respondent and broke his leg.
9. DW1 was the 1st respondent who stated that the appellant damaged his reputation by terming him in the plaint as a failed politician looking for clout. He stated that he was attacked by the appellant until he broke his leg and the matter was reported at the police station but no action was taken. He wrote a letter to the Director of Public Prosecutions but no action was taken against the appellant. That he was treated at Runyenjes and he continued receiving death threats from the appellant. It was his position that the appellant has come to court with unclean hands and that his character is questionable.
10. On cross-examination, he denied uttering any defamatory words. That the appellant was among the people who assaulted him as he was returning from a friend's funeral. He stated that he had filed 3 complaints against the appellant including at ODPP and IPOA but he has never received a response. He said that he was assaulted in a bar where there were several other patrons but the one witness he chose is since deceased. He sent the video to the 2nd respondent who published it without editing it. He stated that the appellant's reputation was not injured since he was even promoted at work.
11. DW2 was Bridget Kimathi of Runyenjes Level 4 Hospital. She testified that DW1 presented with a small cut wound on the left side of the face and bruises on the scalp and both arms and legs. X-ray revealed that he had a dislocated pelvis and displaced knee patella. It appeared that the injuries had been inflicted using a blunt object.

Finding of the trial court

12. The trial court found that the elements constituting the tort of defamation had not been proved. In the event, the suit was dismissed with costs to the respondents. The court relied on the cases of Selina Patani & another v Dhiranji V. Patani [2019] KECA 480 (KLR) and John Ward v Standard Limited [2006] KEHC 2628 (KLR).

Parties' submissions on the Appeal

13. The appellant relied on section 112 of the Evidence Act and the cases of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] KEHC 5119 (KLR), Phineas Nyaga v Gitobu Imanyara (2013) eKLR and Selina Patani & another v Dhiranji v. Patani (supra). In the event, the argued that the respondents did not deny publishing the defamatory words which were directed at him and were intended to infer malice. He also relied on commentary from the text by Gatley on Libel and Slander. He urged the court to allow the appeal and hold the respondents accountable for defamation.



14. The 1st respondent submitted that the published words were not defamatory and he relied on the case of *John Ward v Standard Limited* (supra). He stated that there was no error in law that should warrant overturning the findings of the trial court.
15. The 2nd respondent relied on section 7 of the *Defamation Act* and the cases of *Janto Construction Company Ltd v Enock Sikolia & 2 others* [2020] KEHC 4890 (KLR) and *Selina Patani & another v Dhiranji v. Patani* (supra). The 2nd respondent submitted that it simply reproduced the publication as presented by the 1st respondent who did not deny saying the words. That the words are in no way defamatory as they did not lower the appellant's reputation in the community. From the heading of the publication, it may well be that the publication referred to the police in general and not the appellant.

Issues for Determination

16. From all the foregoing, the issues for determination are the following:
 - a. Whether the publication by the respondent disclosed and amounts to defamation; and
 - b. If the publication was defamatory, what damages should be awarded?

Analysis and Determination

17. This appeal raises issues of both facts and law. The only way to determine it is by reexamining 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...”

18. 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.”

19. 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.”

20. In Gately 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.” [Emphasis added]

21. Therefore, the elements of defamation can be said to be the following:

- a. That the defamatory statement was made to a third party;
- b. The statements are made against the appellant;
- c. The statements are false; and
- d. The plaintiff suffered as a result of the statements.

22. In this case, the 1st respondent stated that he was assaulted by the appellant who is a police officer at the time serving at Buruburu Police Station. The appellant presented the alleged defamatory words in court as earlier hereinbefore set out. The publication was made on social media and it is said to have had 6,700 views. The appellant said that following the publication, he suffered injury to his reputation.

23. Through the plaint, the appellant stated that his name appeared for a few seconds in a video. However, the video was not produced as evidence in proof of that allegation. Without looking at the video itself, it is difficult to tell to whom the words made reference. However, instead of speculating, the 1st respondent himself cleared the air on the matter and confirmed that the publication was forwarded to the 2nd respondent for publication after the appellant had assaulted him.

24. The 1st respondent produced screenshots of the video which indicate the name Boniface Nyaga. In his evidence, the appellant asserted that the name surely referred to him as he was the only one going by that name at this place of work. In his testimony as DW1, the 1st respondent stated that the appellant assaulted him and he filed several complaints against him, even though none of the them were responded to. DW2 confirmed that the 1st respondent was treated at Runyenjes Level 4 Hospital. As part of his evidence, he produced a letter to the ODPP and a demand letter to the appellant whose subject was death threats. He also produced treatment notes as evidence.

25. The question is, were the published words defamatory? In its submissions, the 2nd respondent stated that it simply reproduced a statement made by the 1st respondent, which statement was not defamatory in any way. In order to determine whether or not words are defamatory, the East African Court of



Appeal in the case of *Onama v Uganda Argus Ltd* [1969] EA 92 stated that the meaning of the words should be able to be regarded as defamatory by the general public as well as people who are knowledgeable on the subject.

26. From his testimony, the appellant stated that he suffered psychological torture and he received many calls requiring him to explain the circumstances of the publication. He said that he lost customers from his business and he had to explain to his bosses how he ended up in such a publication. Conversely, the overall effect of the publication on him was that he was promoted at work to a higher rank in the police service. It appeared from the evidence that the publication left him unscathed.
27. Injury to reputation involves loss of one's honour in society among other things. This was discussed in the text by T. Sharkie, *A Treatise on the Law of Slander, Libel Scandalim Magnatum and False Rumours* 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 degrees, 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.”

Conclusions and Disposition

28. The publication presented in Court does not disclose the elements of defamation occasioned to the appellant. He is neither mentioned nor referred to. Further, there was no evidence of anything in the alleged statement being false. To make matters worse, no evidence was adduced that as a result of the statement, the plaintiff suffered as alleged.
29. It does not appear that the appellant lost anything following the publication. On the contrary, what is evident is that he won an accolade at his work and got promotion. It was on this basis that the trial court dismissed the suit. That finding is sound and this court would uphold it as the elements of defamation have not been satisfied. There is therefore no basis for interfering with the trial court's determination.
30. Accordingly, the appeal is hereby dismissed with costs to the respondents.
31. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 26TH DAY OF NOVEMBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ndegwa holding brief for Wepoh for Respondent 2.

Ms. Mugwe for 1st Respondent

Ngigi Karomo for Appellant

Francis Munyao - Court Assistant

