



**Chachu v Wako (Civil Appeal E023 of 2024)  
[2025] KEHC 18180 (KLR) (Civ) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18180 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CIVIL  
CIVIL APPEAL E023 OF 2024  
SC CHIRCHIR, J  
DECEMBER 3, 2025**

**BETWEEN**

**ABDINOOR HUSSEIN CHACHU ..... APPELLANT**

**AND**

**SHEIKH HARUN ALI WAKO ..... RESPONDENT**

*(Being an Appeal against the Judgment of the Hon. L. Mutai  
(CM)in Isiolo CMCC No. E020 of 2020 delivered on 4th July 2023)*

**JUDGMENT**

1. The Appellant herein, filed suit in the Chief Magistrate's Court at Isiolo , seeking general, aggravated and exemplary damages for libel and defamation .
2. It was the Appellant's case that the Respondent maliciously and without justifiable cause made a false and malicious defamatory report at Garbatula Police Station on 5<sup>th</sup> February 2020, vide OB No. 10/5/2/2020; that the contents of the report portrayed him as a criminal, a law-breaking, unethical, untrustworthy and generally bad person, resulting in injury to his character and reputation.
3. The Respondent filed a defence and later Amended it on 7<sup>th</sup> September 2021, denying the accusations, . He further stated that he and his wife filed a complaint against the Appellant when the Appellant repeatedly told the Respondent's wife that he, the Appellant intended to court her.
4. The matter proceeded to full hearing and the trial court delivered judgment on 4<sup>th</sup> July 2023 dismissing the Suit.



## Memorandum of Appeal

5. Aggrieved by the judgment, the Appellant lodged the present Appeal. He has raised several grounds , which can be summarized as follows: a). That the trial Magistrate erred by failing to find that the Appellant had proved his case on a balance of probabilities.
  - a). that the trial court failed to apply relevant pertinent principles , precedents and trends with regard to defamation
  - c) That the trial court failed to consider the Appellant’s testimony and that of his witnesses.
  - d). That the trial Magistrate erred by holding that the complaint lodged against the Appellant prompted his transfer from Gabartula police station
6. The Appeal proceeded by way of written submissions.

## Appellant’s Submissions

7. Th Appellant submits that he proved his case on a balance of probabilities , which standard, was discussed in the cases of William Kabogo vs George Thuo & 2 others (2010) 1KLR and Palace Investment Ltd vs Geoffrey Kariuki (2015) e KLR, among others
8. The Appellant further submits that the allegation that the Appellant used to visit his house; that he used to seduce the Respondent’s wife or that he went to the respondent’s home with two armed civilians were all false, and that the respondent did not produce any evidence to controvert this assertion. That the report that was made to the police was therefore false. The Appellant concludes on this issue, by submitting that the Appellant therefore proved his case on a balance of probabilities.
9. The Appellant also faults the trial court for arriving at the conclusion that the transfer of the Appellant from Garbatula police station, was prompted by the report made by the respondent; that there was no evidence presented to controvert the Appellant’s testimony to the effect that the transfer from Garbatula Police Station was a normal one. The Appellant argues that the inference made by the Magistrate was especially wrong, since no disciplinary action had been taken against him on the basis of the allegation .He further states that , in any event, such a transfer would have been illegal and would have been legible for reversal in terms of section 3 of the National Police service Commission ( Transfer and deployment ) Regulations ,2015. It is further stated that , in any event, there was evidence showing that the investigation into the alleged acts had never been completed.
10. The Appellant further contends that the statement made by the Respondent was defamatory, as it tended to lower the Appellant in the estimation of right-thinking members of society, portraying him as criminal and untrustworthy, thereby affecting his character.

## Respondent’s Submissions

11. The Respondent submits that the Appellant’s own witness (PW3) told the court that he was aware that the Appellant was interfering with the Respondent’s wife and therefore a justification on the part of the respondent to make a report to the police.
12. On whether the report was defamatory, the Respondent submits that the statements contained in the Police Occurrence Book were a complaint to a public office for purposes of investigation by the Internal Affairs Unit, hence the report has limited circulation within privileged circles. Relying on Ngonze v Ng’ang’a (2024) eKLR, the Respondent submits that information received by the Director of Public



Prosecutions or investigators in respect of a complaint, cannot be said to be defamatory as it is meant to trigger an investigation.

13. The Respondent maintained that the Appellant failed to demonstrate that the publication was malicious, as the report was given only to investigative Agencies for a particular purpose. It is submitted that there was no proof of damage either.
14. Both parties have relied on a number of Authorities which I have considered.

### **Analysis & Determination**

15. The Court has carefully considered the grounds of appeal, the submissions by both parties, and the relevant law, keeping in mind the principles that guide the an appellate court on a first Appeal. One of such principles is that the Appellate court must review the evidence afresh and make its own conclusion. (see: *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR). The other principle was set out in the case of *Mbogo & Ano vs Shah* (1968) EA 93 which principle requires the appellate court not to interfere with the findings of fact made by the trial court unless they were based on wrong principles or misapprehension of evidence.
16. The only issue the court has identified for determination is whether the tort of defamation was proved, and the standard of proof, like in all other civil cases, is on a balance of probabilities.
17. What amounts to defamation has been the subject of many past decisions of the superior courts. The Halsbury's laws of England (4<sup>th</sup> Edition Vol. 28. Paragraph 10), defines the tort of defamation as follows:

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an importation on him disparaging or injurious to him in his office, profession, calling or business”.
18. In the British Columbia case of *Murphy v. Ha March* (13 DLR 3d 484) the supreme laid down the law as follows:-

“Defamation is where a shameful action is attributed to a man (he stole my purse), a shameful character (he is dishonest), a shameful cause of action (he lives on the avails of prostitution) or a shameful condition (he has small pox). Such words are considered defamatory because they tend to bring the man into hatred, contempt or ridicule. The more modern definition of defamation is words tending to lower the plaintiff in the estimation of right-thinking members of the society generally.”
19. Closer home, in decision of *Phinehas Nyagah v Gitobu Imanyara* [2013] KEHC 6662 (KLR) it was held: ‘... defamatory statement is one which has 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 and typical examples are an attack upon the moral character of the Plaintiff attributing him to any form of disgraceful conduct such as crime, dishonesty, cruelty and so on...’
20. For a plaintiff to succeed in a suit for defamation certain elements must be demonstrated to exist in the alleged defamatory words. In this regard, I refer to the high court decision in the case of *Janto*



Construction Company Ltd v Enock Sikolia & 2 others [2020] KEHC 4890 (KLR) where the judge held as follows:

“For a litigant to succeed in a claim of defamation, the following elements must be proved in the affirmative: -

- a. That the statement tends to lower the Plaintiff's reputation in the estimation of right-thinking members of society generally either in their natural and ordinary meaning or by innuendo;
- b. That the statement refers to the Plaintiff;
- c. That the statement was published by the Defendant;
- d. That the statement is false and/or malicious.”

21. The alleged defamatory words are traceable to a report made under Occurrence Book No. 10/05/02/2020 belonging to Garbatulla police station. The person who made the report was the respondent herein. The alleged defamatory words were reproduced in paragraph 4 of the plaint. It was the plaintiff's case that the aforesaid words depicted him as :- a criminal , a law breaking person, untrustworthy person ,unworthy of being entrusted with responsibilities, is unethical, is unscrupulous and , is generally a bad person.
22. On the question of whether the words referred to the Appellant , there was no dispute on that . The respondent also readily admitted, both in his written and oral testimony, that he is the one who filed the report at Garbatulla police station. Thus the fact that the report was made by the Respondent is not also disputed.
23. The report was to the effect that the Appellant used to go to the respondent's house at night, through the back gate and at one instance the respondent saw two armed civilians in his compound . He believed that the said civilians were Agents of the Appellants who were out to harm him.The Respondent has argued that the report was primarily a complaint to a public office for purposes of investigation .
24. I have carefully considered the extensive consideration of the Judge in the case of Daniel Mutiso Ngonze vs Peter Gikonyo [2024]KEHC 11261(KLR)that has been cited by the respondent herein. In the cited case , the report was made to the Director of public prosecutions(DPP), it was a complaint against some parties in the case . The complainant copied the letter to the said to the said parties. The court held that the complaint was being addressed to DPP because the said office was performing a statutory duty; The court also acknowledged that the DPP works with other officers, which officers then might have come across the alleged defamatory words; that the DPP receives all kinds of complaints which he then hands over to the police to investigate. The court held that such reports made to a person who is mandated to receive cannot be held to be defamatory.
25. In the present case the publication of the alleged defamatory words were published in an occurrence Book(OB). It was a complaint taken for purposes of investigation. Although the Appellant denied that he recorded a statement at the internal affairs unit of the police department, the respondent stated that he visited the said offices for purposes of investigation. Thus it is evident that some investigation started, which according to the Appellant, had not been concluded at the time he testified. The Appellant's assertion therefore that there was no truth in the allegation is neither here or there , if the investigations were still on .
26. Am persuaded by the decision in Ngonze's case( supra). A police station is a place where people report their complaints with a hope of getting some vindication for ills or wrongs that they feel or perceive to



have been done to them. In the ordinary course of things, the police investigate such complaints, and in some cases, they do not find the complaint to be valid and dismiss it; in others they can conclude that a wrong has been committed and escalate the case to DPP, and the case finally goes to court. If citizens were to be barred from reporting wrongs committed to them for fear of being accused of defamation, it could constitute a violation of the rights of citizens to have their grievances eventually heard by a court of law.

27. Am not convinced that a complaint filed before the police or any other public office, whose mandate is to receive such complaint can be said to constitute defamation. It would only constitute defamation, if the content of the OB relating to the particular case, was to be republished that the words will then be treated as defamatory. That is not the scenario in this case.
28. On the question of malice, considering the intention of the publication, malice can not be inferred.
29. The Appeal is without merit. It is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF DECEMBER 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:

Roba Katelo- court Assistant

Ms. Nyokabi for the Appellant

Mr. Mwirigi for Mr. Gikundi for the Respondent.

