

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO. E140 OF 2024

JOHNSTONE KIPKOECH KIGEN
APPELLANT

AND

RICHARD KIGEN 1ST
RESPONDENT

DAUDI KIPKURUI KIGEN 2ND
RESPONDENT

*(An appeal from the Judgment of Hon. Wattimah M. Caroline – Principal
Magistrate delivered on 5th June in Eldoret CMCC No. 23 of 2022)*

JOHNSTONE KIPKOECH KIGEN
APPELLANT

=VERSUS=

RICHARD KIGEN 1ST
RESPONDENT

DAUDI KIPKURUI KIGEN 2ND
RESPONDENT

Coram: Before Justice R. Nyakundi
Mukabane & Kagunza Advocates
Seneti Oburu & Company Advocates

JUDGMENT

1. The brief background facts of this case are that the Appellant herein sued the Respondents for: -
 - a. General damages
 - b. Costs of the suit
 - c. Any other relief this court may deem fit to grant.
2. The 2nd Respondent denied the appellant’s claim vide amended statement of defence amended on 2nd October 2023. The matter proceeded for a full trial where the trial Court heard the parties and their witnesses. The Judgment was delivered on 5th June 2024 in which the learned trial Magistrate pronounced herself as follows:

*“The evidence on record is the testimony by the Plaintiff the letter was sent to his boss. The alleged boss or anyone from the said office was never called to testify. No other third party was called to testify as to the publication and injury to reputation. As to whether the Plaintiff character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the Plaintiffs reputation and standing in society was injured. The Plaintiff claims that he was transferred and demoted due to the said letters, I find no evidence adduced to prove this. Transfers, demotions and promotions at work places are human resource functions and such cannot amount to defamation. I find no nexus between the letters mention herein and the Plaintiffs employees’ decisions. In the **Nairobi Civil Appeal No. 114/2017, Selina Patani and Anor vs Dharanji Patani**, the three judge bench held that a person’s own view about his/her reputation is not material in a claim for defamation;*

“There must be evidence from a third party to the effect that the standing and reputation of the claimant has been lowered as a result of the defamatory publication. In the absence of third party evidence, we find no error or law on the part of the Judge in arriving at the determination that the appellants did not prove their claim for defamation.”

Having said that therefore, I find that the Plaintiff failed to prove this claim on a balance of probability, the suit is hereby dismissed. Considering the relationship between the parties herein and in order to foster peace between the parties and to encourage litigation closure between the parties, each party shall bear their own costs.”

3. The Appellant being dissatisfied with the judgment of Hon. Wattimah M. Caroline – Principal Magistrate delivered on 5th June 2024 in Eldoret Chief Magistrate’s Court Civil Case No. 23 of 2022, appeals to the High Court and raises the following grounds of appeal

- (a) That the Learned Magistrate's Court erred in fact and in law by proceeding to make a judgment whilst disregarding admission of facts by the 1st Respondent during trial.
- (b) The Learned Magistrate's Court erred in fact and in law by proceeding to make a judgment whilst disregarding admission of facts by the 2nd Respondent during trial.
- (c) That the Learned Magistrate erred in fact and in law by disregarding testimony that the defamatory letters were circulated through offices and shared to 3rd parties which amounted to publication.
- (d) That the Learned Magistrate erred in fact and in law in dismissing the Appellant suit thereby causing injustice.
- (e) That the Learned Magistrate erred in fact and in law in failing to give due regard to factors that were not pleaded or constituted part of the trial and or not controverted thereby arriving at a wrong conclusion.
- (f) That the Learned Magistrate erred in fact and in law in failing give due regard to the evidence tendered and thereby arriving at a wrong judgment.
- (g) The Learned Magistrate erred both in fact and in law and that it was wrong for the court to come to the conclusion that the defamatory statements were not published whereas the truth is that:
- i. The 2nd Respondent admitted to have authored the defamatory letter dated 23rd of April 2021 and addressed to the Principal Secretary, Ministry of Interior.
 - ii. The same defamatory letter was attached to another defamatory letter authored by the 1st Defendant dated 23rd of June 2021 and addressed and delivered to the Deputy County Commissioner Ainabkoi Sub-County.
- (h) That the Learned Magistrate erred both in fact and in law in putting undue regard to corroborate facts that were not disputed

as to the circulation of the defamatory publications to a third party.

- (i) That the Learned Magistrate erred in fact and in law in failing to find that the allegation that the Appellant used a firearm and threatened to harm the respondents was false and hence defamatory, yet this fact had been conceded by the 2nd Respondent.*
 - (j) That the acts of defamation have subjected the Appellant to odium, ridicule, financial impecunity, physical and mental anguish and deterioration of health.*
 - (k) That the Learned Magistrate misdirected himself in allowing venturing in matters not before court of reconciliation hence arriving at a wrong conclusion.*
 - (l) That the Learned Magistrate erred in fact and in law in failing to find that the defamatory statements had a significant impact on the Appellant's employment.*
4. The Appellant prays that this honorable Court be pleased to overturn the decision of the trial court and allow this appeal on the following terms:
- (a) The Judgment dated 5th June 2024 be set aside.*
 - (b) This appeal be allowed.*
 - (c) Costs of the trial court and the costs of this appeal be awarded to the Appellant.*
5. The appeal was canvassed by way of written submissions.

Appellant's Written Submissions

6. The learned Counsel on behalf of the appellant argued as follows: that the dispute originates from two defamatory letters authored by the Respondents in April 2021 and June 2021, addressed respectively to the Principal Secretary, Ministry of Interior and the Deputy County Commissioner, Ainabkoi Sub-County. These letters, were then circulated through official government offices. The Respondents accused the Appellant a senior public officer of serious criminal

conduct including threats to kill, firearm misuse, witchcraft and gross misconduct. The Appellant maintained that these accusations were malicious fabrications intended to destroy his professional standing, precipitate disciplinary action against their brother and ostracize him socially, professionally and economically.

7. It was the learned Counsel's contention that malice was manifest in the entire publication and therefore the court should be guided by the dicta in *Phineas Nyaga v Gitau Imanyara (2013)*, *Pullman v Walter Hill & Co. (1891) 1 QB 524 (applied in Kenya in SMW v ZVM [2015] eKLR*, *Wycliffe A Swanya v Toyota East Africa Ltd [2009] eKLR*.
8. The Learned Counsel's submissions was mainly centered on the defamatory letter calculated to injure the professional standing of the Appellant couched in the following language to bring the tort of defamation into perspective to warrant this court to allow the appeal;
 - a. *Publicly, he's been demonized, disparaged and demeaned.*
 - b. *Criminally overlooked by the law enforcement agencies!*
 - c. *Domestically terrorized, tortured and tormented extra judicially.*
 - d. *Professionally, he's been profiled, blackmailed, discriminated, dehumanized and bullied, and reduced from a high-flying public administrator to a mere clerical employee!*
 - e. *Judicially, he's been prejudiced, ignored, shortchanged, undercut!*
 - f. *Socially, he's been isolated and reduced from a shining role model into an outcast and a pariah!*
 - g. *Economically, he's been reduced from a loan creditor, a PHILANTHROPIST, to a begging indigen and a pauper living from hand to mouth. He nowadays lives a life characterized by permanent indebtedness and skyrocketing loan secured from nondescript shylocks;*
 - h. *Familiarly, he's been reduced from a caring, loving and a household providing to a net multitasks dependent!*
 - i. *Psychologically, he' been reduced from a level headed measured and social gentleman to a hyper reactive individual, to a*

traumatized and a quarrelsome sadism who now suffers from acute PHOBIA or distrust for lies and liars! Moreover, he' nowadays has unusually quarrelsome and cantankerous persona!

- j. Physically, he's been reduced from a hospital stranger to a full-time drug and hospital dependent disabled person and;*
- k. Spiritually, he's been reduced from a religious bystander and or an agnostic to a skeptical iconoclast!*
- l. Politically, he's been reduced from being apolitical into a convinced, addicted, and devout humankind rights advocate!*
- m. Intellectually, his cognitive capacity has been reduced by resultant ischemic and subsequent hemorrhagic stroke into near cabbage!*
- n. Developmentally, his multi-million development projects, constructions and jua kali industries were reduced into mere white elephants' courtesy of the RESPONDENTS sponsored Gaza-like extrajudicial and scorched earth atrocities and!*
- o. Communally, his erstwhile friends, neighbors and even relatives have since avoided him like a plague!*
- p. Ideologically, to hit the nail on the head, the OVERRIDING gist of this matter is that the Respondents schemed the entire plot knowing well enough that IMPERIAL INSTITUTIONS are scientifically susceptible to MONEY, POLITICALPOWER, /GUNS, PROPAGANDA/DUPLICITY, SCRIPTURISM, LIBELISM, BLACKMAIL, BETRAYAL and SUBTERFUGE! This should explain why they fought me so hard and for so long using these inhumane imperialistic paraphernalia!*
- q. Constitutionally, Appellant's basic human rights have been violated by this libelous defamation in the sense that the court as well as police have denied him justice by overlooking his agonies!*
- r. Criminally, when the appellant recently (07-10-2025) reported to Police about illegal and forceful occupation of his houses at his own homestead by none other than the Respondent's sponsored extrajudicial talisman (see page117) together his delinquent son who's equally being sought after by the same hesitating police for*

similar crimes against the Applicant and his workers! The police haven't taken any action to apprehend them.

- s. Legally, the Respondents have refused to follow succession law in order to keep hiding behind family land dispute so as to keep assaulting the reputation of the Appellant anywhere, anyhow, wherever and to whoever cares to listen!*
- t. Culturally, they accused me of practicing witchcraft the most serious customary capital law offence!*
- u. Biologically, the Respondents, via these 165 LIBELS. frantically portrayed and profiled the Appellant as the most beastly human being ever to have walked the Almighty's Cosmos! And hence one who should be neutralized by the then Deep State in the first instance! Sure, enough hardly a week elapsed after the 21-04-2021 defamatory letter was delivered to the Office of the PRESIDENT at Harambee House when State hit men assassins went to his rural homestead looking to abduct him!*
- v. Functionally, they've (Respondents) clipped all the Applicant's wings! For instance, yesterday (16-10-2025) they abruptly called a 'clan' meeting. and asked me to attend indirect violation of the sacrosanct sub judice doctrine! The Respondents shave worked so hard to defame the Appellant everywhere including profiling him as the black sheep within the larger clan.*
- w. Cognitively, the shameful 165 defamations have kept the Appellant in permanent mental imprisonment and impairment. The Appellant nowadays is preoccupied with suicidal thoughts since his name and reputation has been damaged beyond resuscitation! He therefore has little time left to plan for his family and himself.*
- x. Intellectually, the Applicant suffered both mental and physical infirmity. Indeed, the Appellant has suffered such lifestyle and life-threatening conditions as hypertension, diabetes insomnia, depression, migraine headaches, impaired speech and stammering, depression irritability, hemiparesis, and 49%*

disability due to the overwhelming heaps of 165 filthy IMPERIAL defamation;

- y. Judicature, the Appellant and his family have borne the full brunt of the Respondent's orchestrated decade-long defamation and extrajudicial terror!*
- z. Disruption of family harmony. These libels have caused the appellant's family anguish since the Appellant acquired new personality traits occasioned by the over 10-year-old extrajudicial atrocities and these vicious defamations all sponsored by the Respondents! In order to mitigate this unprecedented situation his family opted to persuade one of his daughters to peruse a degree in psychology. She has since graduated and has been offering invaluable psychological counselling support to her depressed father.*

9. It is from this background that the Appellant invited the Court to apply the principles in **Pullman Vs Walter Hill & Co. (1891) 1QB 524, SMW v ZVM [2015] eKLR** and **Wycliffe A. Swanya v Toyota East Africa Ltd. [2009] eKLR** to allow the appeal on merit as against the impugned judgment in which wrong discretion of facts and evidence was misapplied by the learned trial Magistrate.

10. It was the learned counsel's contention on behalf of the Appellant that the learned trial Magistrate in arriving at her findings disregarded the admitted facts and evidence by the Respondents founded in Appellant's exhibit No. 2 which also forms part of the record. In addition, learned counsel for the Appellant further submitted that the correspondences in the form of letters dated 23rd April 2021 and later in another letter dated 23rd June 2021 forms part of the gist of the defamation although in construing the wording there was a failure on the part of the trial court to give the true meaning giving rise to the defamation in question. It was also the case for the Appellant that the learned trial magistrate for disregarding that the defamatory letters were circulated to 3rd parties which amounts to publication of the alleged defamation. In support of the entire scope of the appeal so as

to persuade this court to allow the appeal learned counsel for the appellant placed reliance in the following case law: **Joseph Kamunge v Charles Muriuki Gachari [2016] KEHC 5119 (KLR), Musikari Kombo v Royal Media Limited [2018] KECA 801 (KLR), Pullman v Walter Hill & Co (1891) 1 QB 524, SMW v ZVM [2015] eKLR** and **Section 16A of the Defamation Act, Cap 36 of the Laws of Kenya.**

11. The essence of the appellant's submissions is that there is merit in the appeal calling for this court to reverse the decision of the trial court.

1st Respondent's Written Submissions Summary

12. As at the time of preparing this judgment, there was no credible evidence both in our online platform and the manual record that the 1st respondent had filed any written submissions on the matter.

2nd Respondent's Written Submissions Summary

13. On the part of the 2nd respondent, the Learned Counsel canvassed the issues as herein under captured by this court. The learned counsel for the 2nd Respondent submitted that Section 107 of the Evidence Act, Cap 80 Laws of Kenya, provides that he who alleges must prove. Counsel argued that where a party is in possession of cogent and/or tangible evidence, such party bears the burden of proving the alleged facts if judgment is to be rendered in their favour. Reliance was also placed on Section 109 of the Evidence Act, which places the burden of proof upon a party who has special knowledge of particular facts to adduce evidence in support thereof. It was submitted that if the Plaintiff had special knowledge of the matters in issue, such evidence ought to have been presented before the trial court and subjected to cross-examination to test its veracity and credibility, and only if it met the civil standard of proof on a balance of probabilities would judgment issue in their favour.

14. Counsel further submitted that the traditional legal position regarding unsigned documents is that they are worthless and incapable of sustaining a cause of action. It was argued that an action cannot

successfully be maintained on the basis of an unsigned document, as such a document is inadmissible and, even if admitted, carries no probative value and cannot be relied upon by the court in resolving any dispute between parties.

15. It was the 2nd Respondent's evidence, according to counsel, that the unsigned letter dated 23rd April 2021 addressed to the Principal Secretary, Ministry of Interior and National Coordination, and relied upon by the Plaintiff, did not emanate from him. Counsel pointed out that during cross-examination by the advocate for the 2nd Defendant, the Plaintiff admitted that the said letter was unsigned and that it was difficult for the court to determine whether it originated from the 2nd Respondent or from any other person. The Plaintiff further conceded that the authenticity of an unsigned document cannot easily be ascertained.
16. Counsel submitted that given the importance and sensitivity of the subject matter, more cogent evidence was required to justify the orders sought by the Appellant. It was contended that such orders could not properly be granted against the 2nd Respondent on the basis of a disputed and unsigned letter lacking evidential and probative value.
17. With regard to Ground 3 of the Memorandum of Appeal, counsel submitted that although it alleged that the 2nd Respondent had made certain admissions, a perusal of the pleadings and proceedings revealed no such admissions. Reference was made to pages 29 and 30 of the Record of Appeal, where the 2nd Respondent expressly denied authoring the letter dated 23rd April 2021, denied that it bore his signature, and maintained that its authenticity could not be ascertained. Counsel further noted that at page 29 of the Record of Appeal, the 2nd Respondent denied making or publishing any defamatory statements against the Appellant. Additionally, at page 22 of the Record of Appeal, the Appellant admitted during cross-examination that the letter in question was unsigned.

18. It was therefore submitted that no evidence was adduced by the Appellant to demonstrate that the alleged defamatory letter was published. Counsel maintained that a careful reading of the trial magistrate's judgment shows that the court properly evaluated the evidence tendered. In the circumstances, the Appellant failed to prove his case against the 2nd Respondent on a balance of probabilities as required by law.
19. Consequently, counsel urged this Honourable Court to find that the trial magistrate cannot be faulted and to dismiss the appeal.

Analysis and Determination

20. This appeal is primarily on defamation following the dismissal of the entire suit by the trial court on the basis that the claimant now the Appellant failed to discharge the burden of proof on a balance of probabilities. That being the case, this court is being asked to review the impugned judgement and grant the orders the trial court could have issued had the claim been considered meritorious.
21. As an Appeal's court it is settled law that the court of Appeal can interfere with the discretion of a single judge only if it is shown that the single judge failed to take into account a relevant matter which he ought to have taken into account or that he took into account an irrelevant matter which he should not have taken into account of that the decision is plainly wrong that no reasonable judge properly directing himself as to the law and facts could possibly have arrived at the same decision. *See Samaki Industries (Nairobi) Ltd v Samaki Industries (k) Ltd. Nairobi Civil application number 260 of 1996.* (**See *Sarjit Sing and another v Caltex Oil (Kenya) Ltd 2010 (CAK)***).
22. What is this court being asked to interfere with? The defamation suit which was heard and determined learned Magistrate Wattimah in Eldoret CMCC No. E023/2022. The grievances against the judgement are clearly crafted in the Memorandum of Appeal dated 4.7.2024. From the perspective of the original suit the carrier paragraphs and

averments constituting the claim is pleaded in the plaint dated 12.1.2022 in the following language.

That on or about 23rd April 2021, the 2nd defendant wrote a letter dated 23/4/2021 to the Principal Secretary Ministry of Internal Security and National Coordination accusing the plaintiff of extremely outrageous and horrific things particularly page 4 of the said letter where the second defendant alleges that the plaintiff uses a gun/pistol to threaten family members and create fear and sense of insecurity within the family, the said statement being addressed to ministry of national security and coordination and considering that the plaintiff ministry of national security damaged the plaintiff's reputation, as it is clearly intended to denote that he is abusing his position as the deputy county commissioner and has seriously 5. injured his reputation.

That Page 4 and 5 of the said letter further states that on the evening of 8/2/2021 an old shopping bag was found hanging at the 2nd defendant's gate in Kitengela tied with a wire and that the contents of the bag were two very old bull horns which had blood on them, a plastic bottle which contained blood and that some blood had splashed to the ground. That the bag also contained something like an old woman's wallet, a tiny perfume bottle, an old woman's blouse hanging on the gate and a tiny piece of letter with the words 'GHARAMA' written several times on it. The letter further states that on 22/2/2021 the same incident as the one on 8/2/2021 recurred.

The 2nd defendant states in the said letter that the plaintiff is the main culprit and that he used proxies to commit the alleged acts.

That all the allegations made against the plaintiff in the letter dated 23/4/2021 to the Principal Secretary Ministry of Internal Security and National Coordination, refer to the plaintiff and are false and have seriously damaged the plaintiff's reputation.

The plaintiff avers that he became aware of the letter dated 23/4/2021 to the Principal Secretary Ministry of Internal Security and National Coordination, they were invited through when Deputy County Co

Commissioner a letter dated 25/6/2021 to attend the office of the the c
omplaints made Ainabkoi on 1/7/2021 as the Kigen family, to discus
s in the letter to the ministry of internal Security and National Coordi
nation.

The intention of the 2nd defendant was to destroy the plaintiff's cha
racter before thaddressee of the said letter and any other person th
at would read the said letter.

That his character the plaintiff being a civil servant, the words of the
2nd defendant have tarnish and harmed his reputation in the eyes o
f the addressee and any oother person who may have read the
contents of the said letter. That on or about 23rd June 2021, the 1st
Defendant also wrote a letter dated 23/6/2021 to the Deputy County
Commissioner Ainabkoi Sub County alleging that the plaintiff has
been orchestrating a long standing land dispute in the family, which
allegations ae untrue and has destroyed the plaintiffs' reputations to
the addresses of the said letter and any other person who may have
read the letter.

23. The substratum of the entire litigation can be viewed from the context
and text of the letter dated 23.4.2021 which I hereby reproduce for
purposes of sharing the historical litigation constituting the cause of
action which has bedeviled the dispute between the Appellant and the
Respondents.

DAUDI K KIGEN
P.O BOX 108
AINABKOI
MOBILE: 0722577410
23.4.2021

TO THE PRINCIPAL SECRETARY
MINISTRY OF INTERNAL SECURITY AND NATIONAL
COORDINATION
P.O. BOX 350-00100
NAIROBI

REF: A FAMILY CRIES AGAINST A STATE OFFICER
JOHNSTONE K. KIGEN: My names are Daudi Kipkirui Kigen of I/D

No. 10705768. I come from Uasin Gishu County, Ainabkoi Sub-County, Kapngetuny Location Kipteimet Village. I come from a polygamous family of 3 wives. Being a polygamous family, we faced a fair share of the challenges and intrigues found in most of such family set-up. I and most of my brothers (Step-brothers included) having come of age and coupled with exposure we got through education, we helped our father to resolve most of the issue which had been a challenge for him to resolve. I am addressing myself to the main challenge which was the sub-division of this land my father had approximately 18 acres of land. In early 1994, three sons each representing their mothers (wives of Barngetuny) undertook the exercise of subdividing the 18 acres into three equal portions of 6 acres each. With the supervision, instructions and guidance from our late father, the three sons managed to successfully accomplish the exercise. The three sons were namely; 1. Johnstone Kigen - currently D.C.C at Liboi Sub-County of Garissa County represented the first wife. 2. Daniel Kigen - currently based in Tanzania represented the third wife of our father. 3. Samuel Kigen currently based at home and now battling with diabetes which has unfortunately disabled him represented the second wife of our father. It should be noted that each homestead had already been living in their own portion of the land since late 1980s and therefore the demarcation did not in any way necessitate relocation of any of the homestead, thus the demarcation fitted exactly as our father had anticipated and planned. The demarcation exercise by the three sons and our father was just to confirm the boundaries and to ensure that the three portions were equal, official and final. The historical aspects on how family affairs degenerated into our current situation is briefly addressed in the letters attached to this document. In my plea to the state and as one of the family members, I wish to confine myself to one individual character who has made all attempts to bring the whole family back together impossible. Johnstone Kipkoech Kigen who is currently the D.C.C of Liboi Sub-county Garissa County, has always

s remained the thorn in the flesh to the family. Johnstone is the last-born child from the first wife. He was born exactly 21 months after I had been born. We therefore were born and raised by the first wife. Johnstone swears under the oath and even in public, that the last wife and her children back to their land as long as he is alive. That their coming shall only happen when he is dead. He has gone ahead to divide the land into two; one portion for the first wife and the other for the second wife. He completely destroyed the existing demarcation and created his own. The state officer even after dividing the land into two, instead of three has gone and chased me out of my rightful share as the child of the first wife. He completely occupied the house which I had built from the scratch except that he did the roofing, floor and final touches. **My plea and prayers to the state as the protector of lives and properties are as follows.**

- (a) This state officer be instructed to reinstate the fence I had erected to mark the boundary between me and him, which he has partially destroyed and he vows that he doesn't recognize it. b. He should be made to accept and recognize me as his brother from one father and one mother and we therefore need to accommodate each other in our fathers land. c. That he should denounce his many announcements that he shall kill me if I insist on my portion of the land. That I should withdraw my support into the coming of the third wife. d. That he should be made to desist from psychologically torturing my wife through threats, abuses, name calling, character assassination and all manner of evil he imagines and utters. (e) That he should be forced and directed as a matter of urgency to remove giant CCTV as a serious intrusion into both private and public lives of both the family members and members of the village and society at large. (f) That he should be deprived the luxury of carrying a gun/pistol which he uses it to threaten family members and create fear and sense of insecurity within the family. (g) On the issue threat to my life, he once assaulted me badly on the where I had to seek for medical treatment.

ment at Eldoret Hospital on 20-03-2020. commemoration This was a day after we had a tenth back ceremony for our late father who died exactly ten years (18-03-2010) he had said that such a commemoration held at home should not be or within our fathers land.

He has made several threats to my life both verbally and in writing. In the year 2013 or there about he called me on phone and stated categorically that he would soon kill me if I continue pushing for the coming back of the third wife. Unfortunately, we lost the recorded audio. He also wrote serious threats to me and the sons of the third wife back then. He has of late extended the same threat to any wife whom he feels that she is threatening to overshadow his fragile ego. On the evening of 08-02-2021, a horrible incident took place at the gate to my house in Kitengela. Our family house maid wanted to rush to the shop to buy some items at 7.30pm. She could not believe what she saw hanging against the gate of the compound. She alerted us and we rushed to the scene. We found an old shopping bag hanging against the gate. A wire had been used to tie the bag on the gate.

The Contents of the bag were even more horrifying

Some two very old bull horns were attached to the bag and had blood on them, There was a plastic bottle in the bag which contained blood and some blood had splashed on to the floor/ground, The bag also contained something like an old woman's wallet. It also contained a tiny perfume bottle. There was also an old woman's blouse hanging on the gate, There was a tiny piece of letter whose writings were not very visible but the word GHARAMA had been written several times on it.

The above incident happened exactly two days after my wife and I had a serious confrontation with Johnstone on WhatsApp. We had a serious face-off on WhatsApp on Friday from 05-02-2021. He got so enraged and furious that he invited two villagers to take beer with him the whole of Saturday (06-02-2021) so as to cool his tempers. On the 07-02-2021, one of the villagers who had taken beer with Johnstone (The previous day) the whole of Saturday, went to my brother

(Samuel Kigen) and told him that he (Johnstone) is so mad about me and my wife Janet that he is threatening to wipe them out. He advised Samuel that Kapbarngetyuny as a family should do something so as to avert a serious catastrophe. On 22-02-2021, the same incident as above happened on my gate at Kitengela gate. It was exactly 2 weeks after the previous incident. It happened on a Monday and exactly 7.30pm. I had to install CCTV and bigger bulbs so as to make the compound brighter. The incident have since stopped. The culprit is my own brother. JOHSTONE who is using proxie to do the dirty business.

My final submission;

- 1. Johnstone to reinstate my fence as it was and as directed by the clansmen.*
- 2. Johnstone to remove his structures in my portion of the land*
- 3. Johnstone to remove giant CCTVS mounted on top of the storey buildings*
- 4. To remove giant dogs which he keeps and yet they are not licensed.*
- 5. Stop threatening me and my wife forth with using either his dogs, verbal or written.*
- 6. Third wife together with her children should come and occupy their rightful land without any conditions (refer to the letter by Richard on behalf of his mother) I, on behalf of the family urge the state to restore order and soberness in our family. The family has undergone serious sufferings under this state officer. We have become strangers and refugees in the land of Our Father.*

24. In the evidence tendered before the trial court, One Richard Kigen who happened to be the 1st Respondent gave evidence on oath and explained that the whole issue revolves around the land question with the Plaintiff now the Appellant to this Appeal. His major complaint at the time was that the local administration who included the Village Elders, the area Chief and the State Officers from the National Government in charge of the county and sub-county administration

were informed of the issue but failed to resolve it amicably. He went further to inform the trial court the words used in the purported letter were not malicious to meet the threshold of the tort of defamation it was further the testimony of the 1st Respondent that the said letter was authored in good faith with no intentional intent of malice.

25. On the other hand, one Daudi Kipkurui Kigen also gave evidence on oath and on adoption of his witness statement he denied that aforesaid letter dated 23.4.2021 was indeed authored by him but on the face of it he could not draw any inferences or manifestation that the text is of a defamatory nature. The two Respondents/Defendants at the trial court did plead with the court evidentiary to dismiss the suit for being non-suited in so far as the claim on defamation is concerned. I acknowledge that in this appeal the Appellant based reliance on 12 grounds of appeal in the filed Memorandum of Appeal. In its entirety the Appellant's complaint is about the learned trial Magistrate's failure to logically analyze the evidence, deal with admitted facts which essentially did not tally with the final decision of dismissing the suit.
26. This appeal concerns the reputation and character of an individual. Every person has the right, during their lifetime, to enjoy an unimpaired and unimpeachable reputation and good name, a right safeguarded by law through the tort of defamation as an actionable claim for damages. It is trite law that a person who communicates to another false and untrue statements with malice, which in the ordinary course of events are likely to substantially disparage that person's character and thereby injure their reputation, is guilty of defamation. Defamation is actionable under both civil and criminal law. The tort is fundamentally designed to protect the reputation of an individual and to vindicate that reputation through an award of damages, and where appropriate, an apology to the aggrieved party. These are the remedies the Appellant sought before the trial court, and having failed to obtain them, he now invites this Court to overturn the decision of the trial court on the basis that it aggravated the injury to his reputation.

27. The issue for determination in this appeal is whether the language used by the 1st Respondent in the letter dated 23rd April 2021, together with the subsequent correspondence on the same subject, amounted to defamation or whether it was merely communication arising from a protracted family land dispute. Under Sections 107(1), 108, and 109 of the Evidence Act, the burden of proof rests upon the Plaintiff, in this case the Appellant, to establish that the words complained of in the impugned letter were published to and came to the knowledge of third parties. The letter in question was addressed to the Principal Secretary, Ministry of Internal Security and National Coordination. It was therefore incumbent upon the Plaintiff/Appellant to prove that the contents of that letter were brought to the attention of third parties in a manner that could reasonably be inferred to have been intended to disparage his character and reputation. Generally, where the alleged defamatory publication is in the form of a letter or documentary communication, the author is not automatically responsible for its further dissemination to third parties unless such publication is proved. The evidence adduced before the trial court did not establish a prima facie case that the letter was dispatched, shared, or otherwise published to third parties with the intention or effect of injuring the Appellant's name, reputation, or character.
28. It is now well settled that in civil proceedings, the burden of proof rests with the Plaintiff and does not shift to the Defendant. It was therefore the duty of the Plaintiff/Appellant to demonstrate that the allegations contained in the letter, both in their textual and contextual meaning, were false, malicious and highly prejudicial to him.
29. The jurisdiction upon which this litigation landscape on appeal is based is now well settled as stated in **Dinkerrai Ramkrishan Pandya v R (1957) EA 336** in which the Court observed as follows: -

On the first appeal the appellant is entitled to have the appellate courts own consideration and view of the evidence as a whole and its own decision thereon. It will be therefore not be sufficient for the appellate court to say that as these was ample evidence to support t

he judge's findings, it should therefore ipso jacts It would, therefore, not be sufficient for the appellate court to say that as their own decision thereon, as it is by no means unusual to be confronted with be upheld. The appellate court must consider the evidence as a whole and make cases wherein there is ample evidence to support both sides. An appeal from the High Court to the Court of Appeal is by way of a retrial and the Court of Appeal is not bound necessarily to accept the findings of fact by the Court below but must re-consider the evidence and make its own evaluation draw its own conclusions although always bearing in mind that it has to have the advantage of the trial judge in seeing and hearing witness.

30. When a Judge is faced with a claim of this nature, he or she must first do two things. The first is to form his or her own view about the meaning of the alleged defamatory words in the letter or document and assign some meaning as any other person in the world would do. The second is to determine what meaning can be extracted from the words within the context of the tort of defamation. These two scenarios are different in context and text. The reason is that in the tort of defamation there might be more than one meaning to the words complained of and forming the subject matter of the claim. As matters stand, when it comes to the adjudication of defamation suits, the reasonable meanings attributed to the words complained of remain open until a single meaning is interpreted and construed by the court itself, applying the evidentiary rules to the facts of each specific case. There is no doubt from the record of the trial court that the two parties, the Appellant and the Respondents, placed different meanings on the impugned letter forming the subject matter of the defamation claim. In my view, the single meaning of the words in the said letter, as authored, was that they were defamatory. Whereas the Respondents, in their statement of defence and evidence in court, denied that the words were malicious or that they gave rise to the tort of defamation.

31. *In applying the single meaning rule the determination of meaning issue and the complicated associated rules on pleading would effectively dis*

appear. In principle, a judge could still be asked to decide whether a given form of words was capable of bearing a meaning attributed to it by the claimant. Indeed, in the absence of a jury, the test could be applied more stringently by the judge unrestrained by constitutional niceties? It might be, for instance, whether a pleaded meaning was 'tenable', in the sense that it could have been taken - perhaps among others - by a 'significant' proportion of readers. Importantly, however, there would seldom be any need for a judge to engage in such an exercise. The parties themselves could easily distinguish meanings that are tenable from those that are not.

32. A person's honor, dignity or business reputation is protected under the law from other person's defamatory reactions. The burden of proof is discharged evidentiary by the Plaintiff or Claimant who is agitating for compensation under this tort. How does the term defamation and insult be considered by courts of law? They are usually considered in the context of the existence of intention, malice and an aim to defame that other person who becomes the Plaintiff in a Civil Claim. In adjudicating defamatory claims, the court should not ignore the right to expression under Article 33 of the Constitution. The right to freedom of expression includes inter-alia the right to seek and receive information. The accessibility of Public information is a vital pre-requisite for democracy and for the transparency of State Government accountable before the Public. It must also be borne in mind simultaneously so that this constitutional right is not absolute and is subject to restriction under the constitution. The tenor of the letter dated 23.4.2021 to the Principal Secretary Ministry of Internal Security and National Coordination was a family cry to a State Officer who also happens to be the heir within the consanguinity and affinity of the Kigen heritage. This is the core of the letter being the extract of the issues forming the gravitas of the defamation suit.

Johnstone Kipkoech Kigen who is currently the D.C.C of Liboi Sub-county Garissa County, has always remained the thorn in the flesh to the family. Johnstone is the last-born child from the first wife. He was

born exactly 21 months after I had been born. We therefore were born and raised by the first wife. Jonstone swears under the oath and even in public, that the last wife and her children back to their land as long as he is alive. That their coming shall only happen when he is dead. He has gone ahead to divide the land into two; one portion for the first wife and the other for the second wife. He completely destroyed the existing demarcation This and created his own. ahead state officer even after dividing the land into two, instead of three has gone He and chased me out of my rightful share as the child of the first wife. completed forcefully occupied the house which I had built from the scratch except that he the roofing, floor and final touches.

My plea and prayers to the state as the protector of lives and properties are as follows. This state officer be instructed to reinstate the fence I had erected to mark the boundary between me and him, which he has partially destroyed and he vows that he doesn't recognize it. b. He should be made to accept and recognize me as his brother from one father and one mother and we therefore need to accommodate each other in our fathers land. c. That he should denounce his many announcements that he shall kill me if I insist on my portion of the land. That I should withdraw my support into the coming of the third wife. d. That he should be made to desist from psychologically torturing my wife through threats, abuses, name calling, character assassination and all manner of evil he imagines and utter. (e) That he should be forced and directed as a manner of urgency to remove giant CCTV is a serious instruction into both private and public lives of both the family members and members of the village and society at large. (f) That he should be deprived the luxury of carrying a gun/pistol which he uses it to threaten family members and create fear and sense of insecurity within the family. (g) On the issue threat to my life, he once assaulted me badly on the where I had to seek for medical treatment at Eldoret Hospital on 20-03-2020. commemoration This was a day after we had a tenth back ceremony for our late father who died exactly ten years (18-03-2010) he had s

aid that such a commemoration held at home should not be or within our fathers land.

He has made several threats to my life both verbally and in writing. In the year 2013 or there about he called me on phone and stated categorically that he would soon kill me if I continue pushing for the coming back of the third wife. Unfortunately, we lost the recorded audio. He also wrote serious threats to me and the sons of the third wife back then. He has of late extended the same threat to any wife whom he feels that she is threatening to over-shadow his fragile ego

33. These sentiments in the letter are traceable to the justiciable issues involving the family land, in which the beneficiaries and beneficial right holders have a legitimate expectation that justice shall not only be seen to be done but be experienced on the basis of the rights which accrue by birth. I have reviewed this case within the structural aspects of the Memorandum of Appeal and the evidence so far adduced as a whole.

34. The law of defamation as it stands in Kenya does not protect injured feelings and dignity but is mainly concerned with reputation and the purity of character. It is a century-old law whose main purpose is to maintain peace in society and to avoid people maliciously taking it upon themselves to publish injurious information in the form of a letter, a document, or even slander, with the sole intention of damaging a long-sustained reputation, whether within one's profession or business. It is trite that vulgar language, abuse, or insults do not per se amount to the tort of defamation or a defamatory statement. An essential ingredient of the cause of action filed before the trial court, and now the subject of this appeal, is that the Plaintiff/Appellant had the duty to prove not only that the impugned letter was published to a third party but also that the words complained of, when read in and read out in their interpretive meaning, were understood to refer to him in a defamatory sense. *Generally, as it known in law Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.*

35. In defamation cases, there must be an imputation or import of malice. In essence, the subject publications which became a subject of this cause of action as between the Appellant and the Respondent must denote malice. This is what the court articulated in the cases of **Musikari Kombo Vs Royal Media Service Ltd 92018) eKLR** and **Phinehas Nyagah V Gitobu Imanyara (2013) eKLR**, the Court held that: -

“Malice here does not necessarily mean spite or ill-will but recklessness itself may be evidence of malice. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice but the law does not weigh in a fair balance and it does not follow merely because the words are excessive, there is therefore malice. Malice may also be inferred from the relations between the parties before or after publication or in the conduct of the defendant in the course of the proceedings. Malice can be founded in the publication itself if the language used is utterly beyond the facts. The failure to inquire into the facts is a fact from which inference of malice may properly be drawn. Any evidence, which shows that the defendant knows the statement was false or did not care whether it be true or false will be evidence of malice.

36. This is what is deducible from the evidence before the trial court: there is a long-standing land dispute between the Appellant and the Respondents. There appears to be a power-related conflict between the Appellant and the Respondents regarding the sharing and management of the suit property. If one considers the wording of the letter complained of by the Appellant, it reflects siblings who had reached a point of no return and were venting their emotions to the Permanent Secretary, Ministry of Interior and National Coordination, which supervises the Appellant, in an effort to seek administrative intervention to resolve the conflict. As the letter indicates, and as borne out by the oral evidence before the trial court, there is no evidence to establish, on a balance of probabilities, that the

Respondents, who were sued as Defendants before the trial court, had any ill motive against the Appellant in writing the letter to the Permanent Secretary.

37. In the **Miguna Miguna Vs Standard Group Ltd and 4 Others (2017) eKLR** the apex court on such matters made the following observations: -

“Speaking generally a delamatory statement can either be libel or slander. Words will be considered detamatory because they tend to bring the person named into hatred, contempt or ridicule or the words may tend to lower the person named in the estimation of right-thinking members of society generally. The standard of opinion is that of right-thinking persons generally. The words must shown to have been construed or capable of being construed by the audience hearing them detamatory and not simply abusive. The burden of proving the defamatory nature of the words upon the plaintiff. He must demonstrate that a reasonable man would not have understood the words otherwise than being defamatory. See Gatley on Libel and Slander (8th edition para. 31).

*The ingredients of detamation were summarized in the case of **Jolm Ward V Standard Ltd HCCC 1062 of 2005** as follows:-*

The ingredients of defamation are The statement must be defamatory. The statement must refer to the plaintiff. The statement must be published by the defendant. The statement must be false.

38. Turning back to this appeal and having a panoramic view of the Memorandum of Appeal, the Appellant’s case, based on the impugned letter or any such documentary communication to the Permanent Secretary, Ministry of Interior and National Coordination, broadly and extensively stretches the law of defamation a little too far for the court to make positive findings on the definition and elements of defamation so as to rule in favour of the Appellant. For a statement to be defamatory, it must excite in reasonable people feelings that are less than strong, disparaging, and targeted at the reputation of the

claimant. The words must tend to lower the claimant, or the Appellant for that matter, in his reputation and character in the estimation of right-thinking members of society generally, or must amount to a false statement about a person to his discredit.

39. These statements captured in the impugned letter and additional correspondence as against the Appellant, and the evidence that followed from him during the trial, have not shown that he has been disparaged as a person in his reputation in relation to his office, profession, calling, trade, or business. What was the legal expectation in so far as discharging the standard and burden of proof by the Appellant before that trial court duly constituted under Article 50(1) of the Constitution? In the lens of the law, the Appellant/Plaintiff should have clearly established that the words were defamatory when reasonably taken within the meaning of the tort, and not what the Respondents/Defendants intended by those words. Fortunately for the Respondents/Defendants, in answer to this controversy, they have laid bare the land dispute which is so protracted and the perception they hold that justice has not been found within their borders and household due to the exhibited conduct of the Appellant.
40. As in cases of defamation, before this appellate court the ultimate question is obviously not what the Respondents intended but what the words in the letter can reasonably be understood as conveying. In this Judgment, elsewhere in its body, I have reproduced the extract of the publication in question. All those elements of defamation developed many centuries ago cannot fit the cause of action being so vigorously pursued by the Appellant against the Respondents. There is some accuracy regarding the land dispute between the Appellant and the Respondents, and with respect to the writing that occurred, it is very unlikely that its intention was to tarnish, harm, or damage the Appellant's reputation. I think that if this were a criminal case, the threshold of what transpired between the Respondents and the Appellant may not have established liability against them in terms of

the various boiling-point issues touching on this family land, which does not appear to have been distributed with finality.

41. The said publication, as construed in the Judgment and now in the Memorandum of Appeal with its crafted grounds, leads me to hold the view that the publication by the Respondents has not caused the Appellant great embarrassment, humiliation, or distress within his professional calling as a State Officer working with the Ministry of Interior and National Coordination so as to found liability capable of attracting compensation on the part of the Respondents. If indeed the Appellant had been brought into ridicule, odium, or contempt in the minds of right-thinking citizens at his place of work or within the Ministry where the letter was shared, such evidence was never availed for admission before the trial court. There is no evidence that the letter touching on the Appellant was sent to the Permanent Secretary for the financial gain or advantage of the Respondents so that they could gain mileage in securing land rights to the prejudice or injustice of the Appellant. If this court were to extend such publication to bring it within the law of the tort of defamation, it would amount to an unreasonable disruption to the community at large. My final desert on this Appeal comes from the comparative commentary by **A.G Noorani Law of Libel in Pakistan, Then Nation case Economic and Political Weekly May 11, 2002** in which the Supreme court adopting the treatise based squarely on the fundamental right to freedom of speech and expression embodied in their article 19 of the Constitution which is equivalent to our Article 33 of the 2010 constitution ruled as follows:-
“In the wrong of defamation the law presumes malice in the sense of wrongful act done intentionally by publishing defamatory matter but there is a lawful excuse for the publication of such matters as in the ordinary case of privileged communication or of fair comments upon a matter of public interest, the onus is upon the plaintiff to establish the fact of malice in order to maintain the action. It means that malice must be proved as a fact irrespective of the mere inference arising from the libello us character of the publication. When the plaintiff fails to prove malice

by cogent evidence then he can be non suited on this ground. The burden of proving express malice both by extrinsic and intrinsic evidence lies on the plaintiff to show that the publications were actuated by some indirect or improper motive”

42. From my view of authorities, evidence and the Judgement of the lower Court, the appeal lacks merit and the same is dismissed with costs to the Respondents.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT 23RD DAY
OF FEBRUARY, 2026**

.....

**R. NYAKUNDI
JUDGE**