



REPUBLIC OF KENYA



KENYA LAW
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**Mugo v Wambugu & 8 others (Civil Appeal E054 of 2025)
[2026] KEHC 2493 (KLR) (20 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E054 OF 2025
PJO OTIENO, J
FEBRUARY 20, 2026**

BETWEEN

PAUL MAINA MUGO APPELLANT

AND

DOMINIC WAMBUGU 1ST RESPONDENT

NAOMI NJERI 2ND RESPONDENT

JOHN KIRAGU 3RD RESPONDENT

PETER MWANGI 4TH RESPONDENT

JULIA WANJIKU 5TH RESPONDENT

PAULINE MUTHONI 6TH RESPONDENT

JANE WAIRIMU 7TH RESPONDENT

PAUL IRUNGU 8TH RESPONDENT

GEOFFREY MWANGI 9TH RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. Abdulqadir Lorot
(CM) in Naivasha MCCC No. E006 of 2024 delivered on 19th May, 2025)*

JUDGMENT

(Being an appeal from the Judgment and Decree of Hon. Abdulqadir Lorot (CM) in Naivasha MCCC No. E006 of 2024 delivered on 19th May, 2025)

JUDGMENT

Background of the Appeal



1. By an Amended Complaint dated 20th June 2024, the appellant instituted suit against the respondents seeking general damages for defamation as well as, aggravated damages, damages in lieu of an apology, costs of the suit, and interest on both damages and costs at court rates. He further sought a permanent injunction restraining the respondents from further publishing or uttering the offensive words or any other statements of a similar nature that are false, defamatory, or otherwise injurious to his reputation.
2. The appellant's case before the trial court was that, on or about 27th April 2019, he entered into a lease agreement with one Susan Wangui, the respondents' sister-in-law, in respect of a half-acre parcel of land for a period of six years for purposes of cultivation. He averred that on or about 13th February 2023, the respondents, together with other family members, purported to terminate the said lease through minutes allegedly signed by all the respondents. The appellant contended that the said minutes contained words which were defamatory of him. The impugned words, as recorded in the minutes, were to the effect that:

“ Paul Maina is believed and accused by family members because of the following reasons:

- i. Wrongly advising our sister-in-law to create a quarrel with our brother John Kiragy coming all the way from her house which is about 400m to Kiragu's compound to an extent of stabbing him with a knife 3 times and the case now in court.
-Her daughter Sheila biting the father's neck. Case in court
-The son Dennis warring the father's neck. Case in court.

NB: All these were planned to enable Susan Wangi (brother's wife) to seek public sympathy now for the second time to be allowed to sell the piece of land which our late dad and mum left a curse behind that no one should ever sell the land to anybody not related to the family by blood.

- ii. Financing my brother's wife by paying cash bail in the police cells instead of asking woman and her children involved in brutality to approach their fathers to seek for the forgiveness since they wholly carry the blessings and curses of those children.
- iii. Paul Maina has been a regular visitor in my brother's house where he is spotted leaving the house in the morning after spending the night which is believed to be a lack of respect to the family.”

3. The appellant contended that the respondents circulated the impugned statements throughout the village, thereby portraying him as a person of questionable character, an accomplice in criminal conduct, and an individual engaged in adulterous behaviour. He maintained that the publication of those words gravely injured his reputation and standing within the community.
4. In their joint Statement of Defence dated 15th July 2024, the respondents denied the appellant's claim in its entirety and averred that the suit disclosed no reasonable cause of action known in law, described it as frivolous and vexatious, and urged the court to dismiss it with costs.
5. The matter then proceeded to trial by adduction of viva voce evidence. The appellant and his one other witness gave evidence by adopting the witness statements as evidence in chief and were cross examined. Even the respondents also gave evidence through the 1st and 3rd respondents by adopting the filed witness statements as evidence in chief and were then cross examined.
6. In a reserved judgment delivered on 19th May 2025, the learned trial magistrate held and determined that the appellant had failed to establish the essential elements of defamation, namely that the statements complained of were false, that they were published, and that they occasioned injury to his reputation. On that basis, the suit was dismissed with costs to the respondents.



7. Dissatisfied with that decision, the appellant preferred the present appeal vide a Memorandum of Appeal dated 26th May 2025, seeking orders that the appeal be allowed, that the judgment of the trial court dated 19th May 2025 be set aside, and in its place substituted a judgment allowing the suit, and that he be awarded the costs of the appeal.
8. The appeal is anchored on seven grounds crafted to be: --
 - a. THAT the learned magistrate erred in fact and in law in failing to consider and appreciate the cross examination by the appellant/plaintiff in his judgment.
 - b. THAT the learned magistrate erred in fact and in law in failing to consider and appreciate that the 2nd, 4th, 5th, 6th, 7th, 8th and 9th defendants neither filed their statements nor testified in court in his judgment.
 - c. THAT the learned magistrate erred in fact and in law in failing to consider and appreciate that a defendant cannot be a witness to a co-defendant as was in his judgment.
 - d. THAT the learned magistrate erred in fact and in law in failing to appreciate that defamation cases are against persons in their personal capacity and is not collective where each defendant can be sued separately.
 - e. THAT the learned magistrate erred in fact and in law by failing to consider and appreciate that statements and testimonies presented in court without support of evidence cannot be taken as factual in his judgment.
 - f. THAT the learned magistrate erred in fact and in law by misrepresenting facts in his judgment.
 - g. THAT the learned magistrate erred in fact and in law by failing to appreciate that the respondents' actions injured the reputation of the appellant.
9. Even though the court directed parties to file and exchange submissions within set time, as at the time of drafting this judgment, only the appellant had filed his submissions. That failure by the respondent, however, does not lessen the court's duty and obligation on first appeal, to apply its full mind to the record by way of reevaluation and reassessment of the evidence led at trial with a view to reaching own conclusions. However, in undertaking that task, the court must be mindful not to easily hastily and freely seek to upset findings of facts by the trier of facts.

Appellant's Submissions

10. The appellant submits that the learned trial magistrate failed to properly evaluate the evidence adduced during cross-examination. He contends that had the court done so, it would have appreciated that he had indeed lawfully leased the land belonging to the respondents' sister-in-law. He further argues that during cross-examination of the 3rd respondent, it emerged that the latter's assertions were based on information allegedly received from his wife, who was not called as a witness. According to the appellant, the claim that he was seen visiting the sister-in-law's house in the evening and leaving in the morning was therefore founded on hearsay evidence.
11. The appellant also challenges the capacity in which the 1st respondent participated in the proceedings. He argues that the 1st respondent purported to represent the other respondents by virtue of being the administrator of their late mother's estate, yet the cause of action was one of defamation, which is personal in nature. He contends that each respondent ought to have entered appearance individually. Further, he asserts that the 1st respondent did not comply with the provisions of Order 1 Rule 13(1) of



- the Civil Procedure Rules, which require a party representing others to file written authority to that effect.
12. Additionally, the appellant submits that a defendant cannot properly testify as a witness on behalf of a co-defendant, and faults the trial magistrate for observing that the 3rd respondent testified as a witness for the 1st respondent.
 13. The appellant further contends that the respondents did not tender any evidence to substantiate or justify the impugned statements, nor did they prove the truth of the allegations made against him.
 14. Unfortunately for the assertion that each defendant ought to have entered appearance separately and given evidence individually was never supported by any law; either statutory or judge-made.
 15. The appellant however correctly cites to court the decision in John Ward vs the Standard Ltd, HCCC No 1062 of 2005 for the ingredients of the tort of defamation.
 16. On the foregoing submissions, the appellant urges this court to find that his amended plaint was meritorious, set aside the decision dismissing the claim and to substitute same with a decision allowing the claim and to award to him the general damages in the sum of Kshs 300,000 and aggravated damages of Kshs 100,000. He also prays that the costs of the appeal be awarded to him.

Issue, Analysis, And Determination

17. Having considered the record of appeal and the submissions of the appellant, in line with the grounds in the memorandum of appeal, despite the several grounds of appeal, the court identifies the sole issue for determination to be whether the appellant proved his case against the respondents to the required standards, within a balance of preponderance. Whether the trial court failed to consider the cross-examination of the respondents, whether certain defendants did not appear, and whether a co-defendant can testify on behalf of another are questions that would arise only after the appellant, as plaintiff, discharged his burden of proof. That goes for the argument that defamation is a personal action and that the trial magistrate
18. In coming to that position, the court appreciates that questions of the quality of evidence in chief and upon cross examination, by the respondent would only arise after the appellant discharged his duty and burden of proof. Even in civil cases, the defendant carries no burden of proof until the evidentiary burden is shifted. It is however sufficient to say that no law commands that in a defamation suit each defendant enters appearance separately and none exist to compel that a defendant must give evidence or be found liable even where no cause is established against it.
19. The appellant's challenge on the judgment on alleged failure to consider the cross-examination of the respondents is not supported by the evidence on record. A careful review of the record and submissions, it is evident to the court that the trial court conducted a meticulous assessment of the evidence. The magistrate correctly found that the appellant had failed to discharge the burden of proof to establish that the statements complained of were false, published, and injurious to his reputation. This finding aligns with the principle in *Swanya v Toyota East Africa Ltd & another* (Civil Appeal 70 of 2008) [2009] KECA 379, where the Court of Appeal held that a plaintiff in a defamation suit must strictly prove the falsity of the statements and the resulting damage to reputation.
20. On the element of falsity of the statement attributed to the respondents, the court noted that the appellant did not offer any evidence to rebut the accusation that he was seen entering the home of Susan in the evening and leaving in the morning. Nor did he summon the said Susan as a witness. The trial court further observed that the minutes of the meeting appeared to have been made in good faith, reflecting the respondents' belief that the appellant was causing a family rift to secure land from



Susan. The discussions and minutes were known only to the members, thereby defeating the element of publication. The court agrees with the trier of facts that the defendants could not have published their opinion to themselves and found a cause in defamation for the appellant. The court is of the learning that for a claimant in a cause for defamation to succeed, he must, unless the case is that in the class known to be actionable per se, prove that there was a publication to a third party that has lowered that third party's estimation of the claimant. It was upon the appellant to prove that element before the respondents could be called to prove otherwise.

21. The appellant called PW2 to demonstrate injury to his reputation. PW2 testified that in March 2023, during a meeting with the chief, some members raised concerns regarding Nyumba Kumi elders allegedly harassing people and sleeping in their homes. The witness confirmed that the statement was general and did not refer to any specific person. On this basis, the court concurs with the trial court's dismissal of the claim for defamation because no damage to reputation was established by the appellant against the respondents.
22. Regarding the cross-examination of the 3rd respondent, the appellant argued that the evidence was hearsay because it was allegedly based on information from the 3rd respondent's wife, a non-witness. The record, however, shows that the 3rd respondent testified that both he and his wife personally observed the appellant spending nights at Susan's home. Accordingly, this evidence does not constitute hearsay.
23. On the appellant's contention that the 1st respondent lacked authority to represent the other respondents, it is noted that this objection is irrelevant to the determination of defamation. The trial magistrate correctly found that the appellant had failed to prove the defamatory nature of the statements against any of the respondents. Even assuming a procedural irregularity regarding representation, such an irregularity does not assist a plaintiff who has not established the substantive elements of defamation.
24. With respect to the appellant's assertion that a defendant cannot testify for a co-defendant, the court observes that this point is similarly immaterial, as much as it is supported by any law, especially where the plaintiff has not established the elementary ingredients of the tort of defamation. The law does not require defendants to prove the truth of every statement; rather, it is the plaintiff who bears the burden of proving that the statements were false and damaging. (See the case of *Oira v Standard Limited & another* (Civil Appeal 57 of 2017) [2022] KECA 1361 (KLR)).
25. In conclusion, the court upholds the trial magistrate's dismissal of the suit as properly grounded in law and fact. The appellant has not demonstrated any misapprehension of evidence, error in law, or misdirection that would justify interference with the trial court's judgment. This principle is supported by *Selle & Another v Associated Motor Boat Co. Ltd* [1968] EA 123, which confirms that an appellate court will not interfere with factual findings unless there is a clear error.
26. In the circumstances, the appeal is adjudged to be without merit and is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT LODWAR THIS 20TH DAY OF FEBRUARY 2026

PATRICK J O OTIENO

JUDGE



[Date]

