



REPUBLIC OF KENYA



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**Akwima v Ngirini (Civil Appeal E151 of 2022)  
[2026] KEHC 4401 (KLR) (13 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4401 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E151 OF 2022  
LW GITARI, J  
MARCH 13, 2026**

**BETWEEN**

**LAWRENCE AKWIMA ..... APPELLANT**

**AND**

**JAMES NGIRINI ..... RESPONDENT**

**JUDGMENT**

1. The appeal arises from the proceedings and Judgment in Senior Resident Magistrate's Court at Tigania, PMCC No. 68/2019. The appellant was dissatisfied with the Judgment and filed this appeal based on the following grounds in the Memorandum of Appeal dated 4/11/2022:
  1. That the learned Magistrate erred in law and fact in finding the appellant liable for defamation when elements thereof had not been proved on a balance of probabilities.
  2. The appellant prays that:
    - a. This appeal be allowed.
    - b. This court do set aside the trial courts Judgment on both liability and quantum and do substitute it with an order dismissing the respondent's suit in the lower court with costs.
    - c. The costs of this appeal be awarded to the appellant.

The respondent opposed the appeal

**Background**

3. The suit was instituted vide a Fast Track Plaintiff dated 11/7/2019 in the Principal Magistrate's court at Tigania. The claim was based on defamation with the respondent alleging that on or about 15/06/2019



he received a letter dated 15/06/2019 from the Njuri Ncheke Council of Elders Tigania West Sub-County. That the particulars of the letter dated 15/6/2019 were as follows:

- i. One Lawrence Akwima (defendant) had made a complaint against the plaintiff that he had illegally occupied his parcel of land for more than 27 years.
  - ii. That the plaintiff had threatened the defendant's wife namely Rose Nkatha (deceased) and later framed her for killing his goat as a result of which she was imprisoned for 18 months, however, the plaintiff had allegedly slaughtered the said goat but hid the skin.
  - iii. That the plaintiff went through a backdoor in a case dispute in which the court ruled in his favour in a land dispute between the plaintiff and the defendant.
  - iv. That the plaintiff forcefully took possession of the defendant's land and framed him to the civil court whereby he was imprisoned for one month and fined.
  - v. That the plaintiff used false information to demand Kshs. 186,010.
  - vi. That the plaintiff threatened the defendant family by telling him that the cause of the defendant's wife death was a curse which would cause his death and that of his children.
  - vii. That the plaintiff would appear before the said council to defend himself of the accusations.
4. That the respondent wrote a reply to the said letter shedding light on the issue of the land dispute by stating that the land dispute had been adjudicated by the court. The respondent further informed him that he did not believe in the rituals performed by Njuri Ncheke and declined to attend the meeting. That he further intimated that the allegations made against him were false and cautioned the appellant against mentioning his name while performing the said rituals as the respondent is a Christian. The respondent contended that the appellant and the council of elders went ahead and performed the rituals.
5. The respondent averred that the appellant defamed him on 26/6/2019 when he gathered a group of young men and Njuri Ncheke elders who went to his compound, tied a bull with a cowbell around its neck and went showing that, "James Ngirine is a land grabber and he is the one who knows the cause of death of Lawrence Akimwa's wife and that he is supposed to return the land and atone his sins."
6. That the words in their ordinary and natural meaning, meant and were understood to refer to the plaintiff to mean, the plaintiff is a thief, a land grabber, a liar, corrupt, a murderer, a bully, un-professional, morally bankrupt and a criminal.
7. The respondent contended that he has never at any time grabbed the appellant land and any disputes were adjudicated by the court. That he is a Christian and an outstanding member of the society with a good reputation which was marred by the appellant. The respondent prayed that he be awarded general damages for defamation of character, aggravated and exemplary damages for slander as well as costs of the suit. The appellant filed his defence and denied the allegations in the plaint and prayed that the suit be dismissed with costs.
8. The dispute proceeded before the learned Magistrate who then proceeded to render his Judgment as follows:

"That the respondent (plaintiff) had proved that the appellant had defamed him. Awarded Kshs. 100,000/= as general damages for defamation. The claim for aggravated and exemplary damages was rejected."



The appellant was aggrieved by the Judgment and filed this appeal.

### **Respondent's Case**

9. The respondent testified a PW1 adopted his witness statement as his evidence. The contents of the statement were in line with the pleadings on the plaint which I have summarized above. In cross-examination he admitted that he had a land dispute with the appellant which had been concluded. That the letter was delivered to him in unsealed envelop by two strangers. On 26/6/2019 the elders gathered at the appellants home and went singing is name upto their shrine after passing thro' Ngundune Market. The elders, and others were shouting his name.
10. PW2 is the respondent's wife. She adopted her witness statement where she stated that on 15/6/2019 two men went to their home looking for her husband. They said they were sent by the appellant to her husband and the Tigania Njuri Ncheke over allegations that he had stolen the appellant's land. That the respondent told them to put what they were saying in writing. They came later in the day with a letter. Later, on 26/7/2019 the Njuri Ncheke elders went to the appellant's home, tied a bell on a bull and shouted that the respondent was a thief while heading to their shrine.
11. PW3 Father Kaibunga M'Ikalu adopted his statement and gave similar evidence like that of PW1 & 2. PW4 Shadrack Kathiani adopted his statement. He stated that on the material day he saw a crowd at the appellant's home. He then heard the people shouting that the respondent is a land grabber and had murdered the appellant's wife.

### **The Appellant's Case**

12. DW1 was the appellant and he stated that he had a long-standing dispute with the respondent. On 15/6/2019 the Njuri Ncheke elders through the Secretary wrote a letter asking him to go for oathing ceremony on 27/6/2019 the respondent failed to go to the shrine. They proceeded with the oathing ceremony then went along the road performing their rituals with permission from the chief. That he did not accompany the elders and did not know what the elders said. He maintained that he did not write the letter and did not know what was written therein.
13. In cross-examination he admitted that he is the one who told Njuri Ncheke to write the letter to the respondent, that they had a land dispute with the respondent and that he had threatened to kill his wife and concocted lies against his wife who was placed in custody for eighteen (8 months). That the respondent obtained Kshs. 186,000/= unlawfully and took his land. That the utral was performed by Njuri Ncheke elders at the shrine and denied that they went to his home.
14. DW2 was the chairman Njuri Ncheke. He adopted his witness statements where he had stated that the appellant took the Land Dispute to them. He wrote a letter summoning the respondent to the shrine to answer to those allegations but he failed to attend. The elders went round with a bull chanting but the appellant was not present. That the letter dated 15/06/2019 was written by the secretary and it was not published or made public. He testified that the name of the respondent was not mentioned during those rituals.
15. DW3 was the Secretary to Njuri Ncheke. He admitted that he is the one who wrote the letter to the respondent in his capacity as the secretary and took it personally to the respondent. That the contents of the letter was the complainant by the appellant against the respondent. He stated that the appellant was not present in the procession by the elders. DW4 adopted his statement. He stated that the appellant did not participate in the procession and no one uttered defamatory words.



## The Appeal

16. The appeal was canvassed by way of written submissions.

The respondent filed a cross-appeal dated 6/12/2022 filed in court on 15/12/2022 and he faults the Judgment of the learned Magistrate on quantum of damages for being inordinately low. He submits that he was an esteemed member of the community, a religious man as evidenced in his exhibits (5) and (6) and proposes an award of Kshs. 2,000,000/=

## Appellants Submissions

17. The appellant urges this court to reconsider and re-evaluate the evidence on liability that was tendered before the trial court and come to its own conclusion. He relies on the court of Appeal decision in *Mary Wakhububi Wafula -vs- British Airways PLC* (2015) eKLR. That for a plaintiff to succeed in a claim for defamation he/she must prove that the words spoken or written referred to him or her, that the words were false, are defamatory or libelous and he/she suffered injury to reputation as a result. He relied on *SMW -vs- ZWM* (2015) eKLR.
18. That a statement is defamatory of a person about who it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him/her to public hatred, contempt or ridicule or if it causes him to be shamed or avoided, relies on *Bernard Muinde Mutisya -vs- Gideon Kithuka Mutua* (2019) eKLR. The appellant further relies on the case of *Agnes Zani -vs- Standard Group Limited* (2019) eKLR which adopted the defamation of a reasonable man from *Winfield & Jolowicz on Tort 8<sup>th</sup> Edition* at page 255 which states as follows:

“The answer is the reasonable man. This rules out on the one hand persons who are so lax or so cynical that they would think none the worse of a man what ever was imputed of him, and on the other hand those who are so censorious as to regard even trivial accusations (if they are true) as lowering another mans reputation or who are so hasty as to infer the worst meaning from any ambiguous statement. It is not these, but the ordinary citizen, whose Judgment must be taken as standard.”

He further submits that publication in the sense of defamation means that defamatory statement was communicated to someone other than the person defamed. See *Wycliffe Swanya -vs- Toyota East Africa Limited & Another* (2009) eKLR. The appellant submits that the respondent did not plead in his plaint that the letter was defamatory but was referred to as a background to the alleged defamation on 26/06/2019. That even in his statement he did not allege that the letter was defamatory. He submits that parties are bound by their pleadings relies on *David Sironga Ole Tukai -vs- Francis Arap Muge* (2014) eKLR. The appellant submits that it was a grave error on the part of the trial Magistrate to find the appellant liable of a matter that was not pleaded and therefore not part of the respondent's case.

19. On the other hand, the appellant submits that the court should consider whether the letter was written by the appellant, whether the letter was published and whether it refers to the respondent, finally whether the words were false. That the court to consider whether the words were defamatory and whether the respondent suffered injury to his reputation as a result of the letter. The appellant submits that the letter was not written by the appellant. That he appellant reported the matter to Njuri Ncheke which is an alternative form of dispute resolution mechanism under Article 159 (2) of *the Constitution* of Kenya 2010 and he cannot be faulted for reporting the matter to the council of elders. That the letter was written by Njuri Ncheke on request by the respondent. That the respondent had a duty to prove that the letter was seen by someone else other than himself, relies on *Selina Patani & Another Dhiranji -vs- Patani* (2019) eKLR. He submits that the letter was sealed when it was delivered.



20. On whether the letter was defamatory it was submitted that the letter was written at the demand of the respondent and there was no intention of defaming him. That the letter referred to land disputes between the appellant and the respondent, a matter that was in the public domain and would not have been understood in a defamatory sense but a continuation of the long standing dispute. It is submitted that there was no evidence by a 3<sup>rd</sup> party to the effect that the standing and reputation of the respondent had been lowered as a result of the alleged defamatory publication.
21. It is further submitted that the defamatory words were not uttered by the appellant but by Njuri Ncheke elders and young men. That the uttering of the alleged defamatory words by the appellant was not proved.
22. On whether the respondent suffered injury to his reputation as a result of the alleged defamatory words, it is submitted that PW2 & 3 who testified in support of the respondent did not state that as a result of hearing the chants, shouting and singing by the crowd, they believed that he was a land grabber and murderer. That the respondent's case was not one falling under Sections 3, 4 & 5 of the Defamation Act which is actionable per se and therefore needed to be pleaded and proved. That the respondent did not adduce any evidence to show that he had suffered loss of some material or temporal advantage, pecuniary or being capable of being estimated in money as a result of the alleged defamatory words. The appellant submits the respondent did not prove that he had defamed on 26/6/2019 and that the court fell into grave error in finding the appellant liable.
23. On cross-appeal the appellant submits that the law is clear that an appellate court will only interfere with the quantum of damages if it is convinced that either the Judge acted upon some wrong principle of the law or the amount awarded was extremely high or so very small as to make it an extremely erroneous estimate of the damage of which the respondent was entitled. The respondent has not demonstrated good ground for this court to interfere with the quantum of damages. This he submits was not proved. The appellant prays that the appeal be allowed and the cross-appeal be dismissed with costs.

### **Respondent's Submissions**

24. He submits that both the elements of libel and slander were proved on a balance of probabilities through documentary and oral evidence adduced during hearing. He relies on *J. Kudwoli -vs- Eureka Educational and Teaching Consultants & 2 Others HCC 126/90* which where the court held that:

“the matter of which the plaintiff complains is defamatory in character; that the defamatory statement or utterances was published by the defendant and that defendant's publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed, that it was published, that it was published maliciously and, in slander, subject to certain exceptions, that the plaintiff has suffered special damages...”
25. The respondent submits that he pleaded in the plaint that he received the letter dated 15/6/2019 (quoted above in this judgment) from two people from Njuri Ncheke which was not sealed. That the contents in their natural meaning and ordinary meaning was understood to refer to the respondent as:
  - a. A thief.
  - b. A land grabber.
  - c. A liar.



- d. Is corrupt.
  - e. A murderer.
  - f. A bully.
  - g. Is unprofessional.
  - h. Morally bankrupt.
  - i. A criminal.
26. That the respondent adduced evidence that the appellant gathered a group of young men and elders to his compound whereby they tied a cowbell around the neck of a bull, put ripe banana leaves around the bull, then started walking from the village to Ngundune Market, the appellant and other Njuri Ncheke members proceeded with the Oath Administration and procession shouting, “James Ngirine is a land grabber and he is the one who knows the cause of death of the Lawrence Akwima’s wife and that he is supposed to return the land and atone his sins”. The said words were sung by the crowd and continued to hurl insults at him.”
27. That the appellant was present during the procession and name calling. That the evidence was corroborated by the testimony of DW4. The appellant submits that the statement was published by the appellant vide the letter dated 15/6/2019 and slandered his name during the procession of 26/6/2019. He submits that “Publication” is defined in the case of Pullman -vs- Walter Hill & Co. (1891) 1 QB 524 as follows:
- “...The making known of the defamatory matter after it has been written to some person other than the person of who it is written...”
- The appellant submits that the letter was written on behalf of the appellant as confirmed by DW3 and that it amounts to publication. That since the content of the letter were published, libel was proved.
28. On whether slander was proved, it submitted that the people gathered and shouted the words complained of (quoted above) and the appellant was among them, gave them a bull to tie a bell around it and to perform the rituals. The appellant submits that the statements were false. He relies on his Exhibit 2 a copy of the Judgment with regard to the land dispute which ruled in favour of the respondent. That the allegations were therefore false and malicious.
29. On the merits of the cross appeal it is submitted that slander was proved. He relies on Makokha Opwora -vs- Christopher Otieno Muliro (2021) eKLR. He proposed an award of Kshs. 2,000,000/=. The respondent submits that he proved his case on a preponderance of probability and the trial court did not err in its decision.

### **Analysis and Determination**

30. I have considered the Memorandum of Appeal, the proceedings and Judgment before the trial court and the submissions. I find the following as the issues which this court has to determine:
- 1. Whether the letter dated 15/06/2019 was defamatory.
  - 2. Whether there was publication of the letter dated 15/06/2019.
  - 3. Whether the respondent was entitled to damages.
  - 4. Whether the cross-appeal has merits.



31. This is a first appeal. The duties of this court have been spelt out by the decisions of this court and the court of appeal. In *Peters -vs- Sunway Post Limited (1958) EA* it was stated that:

“The appropriate standard of review established in cases of appeal can be stated in three complimentary principle:

- a. Firstly, on first appeal, the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.
- b. In reconsidering and re-evaluating evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing witnesses testify before him and
- c. It is not open to the first appellate court to review the finding of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”

32. See also *Selle & Another -vs- Associated Motor Boat Company Ltd & Others (1968) EA 123* for the same proposition. With regard to appeals on quantum of damages it has been held that an appellate court will not interfere with the Judgment of the trial court unless it is demonstrated that the learned magistrate’s award was so low or high as to be an erroneous award or that he proceeded on wrong principles or misapprehended the law. In *Rook -vs- Ramie (1941) All E.R 297* the court held that,

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

33. See also *Butt -vs- Khan* where Law J.A stated:

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

### **Analysis of the issues**

34.

(1) Whether the letter dated 15/06/2019 was defamatory

The claim by the respondent was for libel as well as slander. The elements of defamation were well laid down in the case of *J. Kudwoli -vs- Eureka Educational and Teaching Consultants & 2 Others (1993) eKLR* where the Judge held that:

“...in a suit founded on defamation the plaintiff must prove:

1. That the matter which he complains of was published by the defendant and
2. That it was published of and concerning him and
3. That it is defamatory in character and



4. That it was published maliciously; and
5. In slander, subject to certain exceptions, that he has thereby suffered special damages.”

35. In Halsbury Laws of England 4<sup>th</sup> Edition Vol. 28 on libel and slander, sets out the distinction of the two as follows:

“A slander for which an action will lie is defamatory statement if made or conveyed by spoken words, sounds, looks, signs, gestures or some other non-permanent form, published of or concerning the plaintiff to a person other than the plaintiff, by which the plaintiff has suffered actual damage, often referred to as special damage, which he must allege and prove or which is actionable per se. Distinctions between libel and slander. There are two chief distinctions in practice between libel and slander, or broadly speaking, between written and spoken defamation.

1. Every actionable libel can be dealt with in either civil action or criminal proceedings whereas slander even though actionable is as such a criminal offence unless it contravenes the law as being, for example, obscene, blasphemous or seditious or a contempt of court.
2. No special damages need be alleged or proved in an action for libel, whereas unless the defamatory words complained of are actionable per se, no action for slander will lie if the plaintiff does not both allege and prove that he suffered actual damage.”

36. Both libel and slander are in law intended to protect the interest in one's reputation. Defamation can be defined as a statement oral or written or any imputation which, when made against a person without any justifiable cause tends to injure the reputation of another and lower a person in the estimation of his fellow men and exposes the person to hatred, contempt and ridicule. When proved the claimant is entitled to damages. See Winfield on Tort (supra).

37. In this case the alleged defamation was in a letter dated 15/06/2019 which the respondent pleaded that it was received from Njuri Ncheke Council of Elders Tigania West Sub-County, Meru County, para 3 of the plaint. The particulars of the letter are at paragraph 4 of the plaint which I have quoted verbatim in this Judgment. That the respondent responded to the letter on 20/6/2019. Looking at the letter it made imputations on the character of the respondent as pleaded on the plaint, that is he is a thief, land grabber, liar, corrupt, a murderer, a bully and a criminal. The words tend to lower the respondent in the estimation of right-thinking members of the society and subject him to public hatred, contempt or ridicule.

38. In his submissions, the appellant agreed that the words would convey to an ordinary man that the respondent had stayed on appellants land for 27 years, had threatened the appellants wife and framed her for stealing and used corruption to win the case. That the words would lower the esteem of the respondent in the eyes of right thinking members of society as well as portray him as dishonest and corrupt.

39. Defamatory imputation is one that is to a man's discredit and tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule. See John Ward -vs- Standard Limited (2006) eKLR. I find that the words in the letter complained of when taken in their ordinary meaning are defamatory. I find that the letter dated 15/06/2019 was defamatory.



40. Whether the letter was communicated to somebody other than the respondent

It is well settled that for the person claiming libel defamation, he has to prove that the matter was published to one or more persons. Defamation and publication are conjoined due to the requirement that to prove the former, the latter must also be proved. In English Law Dictionary by Pitt Collin Defamation is defined as follows:

“The publication of a false and derogatory statement respecting another person without lawful justification. A defamatory statement is one exposing him to ridicule, hatred or contempt, or which causes him to be shunned, avoided, or which has a tendency to injure in his office, profession or trade.”

It is also defined as:

“The act of harming the reputation of another by making a false statement to a third person”

41. See Black’s Law Dictionary. Winfield on Tort define defamation as follows:

Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tends to make the shun or avoid that person.

42. See also SMW -vs- ZWM (supra) cited by the appellant where the court stated that the plaintiff must prove that he words were spoken or written. Defamation means the words said to be defamatory were communicated to some one other than the person defamed. The respondent stated that the letter was written by Njuri Ncheke. The contention by the appellant is that the respondent did not plead that he had been defamed by the said letter. A perusal of the plaint at page 6(six) of the record, unfortunately does not disclose that the respondent claimed that the letter was defamatory.

43. Instead defamation is hinged on the happenings of 26/6/2019 Paragraph 8 of the plaint states:

“8. The plaintiff avers that on 26/6/2019, the defendants and the council of elders defamed him by maliciously, and without his consent publicizing his reputation whereby he gathered a group of young men and the Njuri Ncheke elders to his compound, tied a cowbell around the neck of a bull, out ripe banana leaves around the bull.”

44. ‘Emphasis mine’ He goes on to plead that the crowd started walking from the village shouting that he is a land grabber and is the one who knows the cause of death of Lawrence Akwima’s wife and he is supposed to return the land and atone his sins. He further pleads the ordinary and natural meaning. That he cautioned the appellant from mentioning his name in the rituals.

45. It is indeed true that the respondent did not plead that the letter as published. His claim was based on what the elders and defendant said as they went to perform the rituals.

46. I find that the letter dated 15/06/2019 was not published. The respondent was bound by his pleadings. I find that the letter dated 15/06/2019 has missed the mark of the threshold required for libel defamation. Furthermore, the respondent pleaded that the letter was from Njuri Ncheke council of elders and not from the appellant. I find that the learned Magistrate erred when he held that there was defamation of the appellant in regard to that letter when the respondent had not based the allegation of defamation on the said letter but on the happenings of 26/6/2019. The learned magistrate also erred by holding that Pw3 read the contents of the letter which is not supported by his evidence. In his



statement PW3 stated that it is the respondent who opened the letter and read the contents to him. It is clear that the letter was not publicized by the appellant.

47. Whether the respondent was entitled to damages or slander

The learned magistrate discredited the testimony of the appellant for being contradictory to such an extent that it was not credible and agreed with the testimony by the respondent. I am inclined to agree with the finding by the learned magistrate as the witnesses gave consistent evidence which proved that the defendant was at this home. It was proved that the appellant was in the group that went through the village and the market chanting the words complained of.

48. I find no reason to fault the learned magistrate that the ritual that was performed was defamatory as the land dispute alluded to was the subject of a legitimate and legal process and decisions made in court had not been appealed against or overturned. Furthermore, what the elders, the appellant and the youths who were in the procession of the ritual by Njuri Ncheke were chanting, reflects the contents of the letter written to the appellant. The words which I have quoted above were no doubt capable of lowering the respondent's reputation and character in the society. The words were therefore defamatory and malicious as the appellant has not demonstrated that he had a justifiable cause for making those allegations.

49. The letter was written by the elders after the appellant complained to them and they also participated in the ritual. They were not parties to the suit. However, the law is well settled that a suit cannot be defeated by joinder or non-joinder of a party and a court should determine the issues in dispute with the parties before it. Order 1 Rule 9 Civil Procedure Rules provides that a suit may not be dismissed for misjoinder or non-joinder of parties. I find that the respondent had proved the allegation of defamation on a balance of probabilities.

50. Whether the court should interfere with the award of damages.

I will consider this issue along side the 5<sup>th</sup> ground whether cross-appeal has merits. The law on whether the appellate court should interfere with the award of damages is well settled. The appellate court will only interfere if the court acted on wrong principles or the award is inordinately high or low as to demonstrate an erroneous assessment.

51. Under Section 16A of the *Defamation Act* it is provided that

“In any action for libel, the court shall assess the amount of damage payable in such amount as it may deem just...”

52. The trial court has discretion to award damages. In assessing the damages, the learned magistrate was guided by case law. He relied on the case of *JMK & Another -vs- Standard Digital and Another* (2020) eKLR where the plaintiff was awarded Kshs. 400,000/= in a matter where the plaintiff was defamed through a widely circulated video. He awarded Kshs. 100,000/= as the defamation was less widely circulated. The grounds upon which an appellate court will interfere with an award of damages were stated in *Rook -vs- Raine* (supra) and *Butt -vs- Khan* (supra). In *Green LJ in Flint -vs- Lovell* 1935 KB, CA the court held that,

“The court will be disinclined to reverse the finding of the trial Judge as to the amount of damage merely because they think that if they had tried case in the first instance, they would have given a lesser sum. In order to justify reversing the trial Judge on the question of the amount on damages, it will generally be necessary that the court should be convinced that either the Judge acted upon some wrong principle of law or that the amount awarded was



so extremely high or so very small as to make it in the Judgment of the court an entirely erroneous estimate of the damage to which the plaintiff is entitled.”

The trial court in awarding damages is supposed to take into account the circumstances which go to aggravate damages and those which go to mitigate then see *Gray -vs- Barr* (1971) 2 All ER 949. If no damage is proved a claimant may be entitled to nominal damages.

53. As to whether appellants character and reputation was destroyed, this is a factor to be considered when assessing the damages. The learned magistrate properly applied the principles for awarding damages which includes, that awards should be considered and, in this regard, he relied on precedents. The award of Kshs. 100,000/= is neither too low nor to high. In the circumstance I would have no reason to interfere with the exercise of discretion by the learned magistrate.

### **Conclusion**

54. For the reasons stated, I find that the Appeal lacks merits and is dismissed. The cross-appeal is without merits and is equally dismissed. Each party shall bear its own costs for this appeal.

**DATED, SIGNED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. LADY JUSTICE L. GITARI**

**JUDGE**

