

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CIVIL APPEAL NO. E088 OF 2025**

KCB BANK KENYA LIMITED ..... APPELLANT

- VERSUS -

MARGARET ATIENO OSADHO ..... 1<sup>ST</sup> RESPONDENT

METROPOL CREDIT REFERENCE BUREAU LIMITED ..... 2<sup>ND</sup> RESPONDENT

**(Being an appeal from the judgment/decree of the Honourable F.M. Rashid (PM) delivered on 12/03/2025 in Kisumu CMCC No. 523 of 2019 between Margaret Atieno Osadho v KCB Bank Kenya Limited & Metropol Credit Reference Bureau Limited)**

**J U D G M E N T**

1. The 1<sup>st</sup> respondent sued the appellant and 2<sup>nd</sup> respondent vide a plaint dated **4/11/2019** seeking general, exemplary and punitive damages for defamation occasioned by the appellant's instructions to the 2<sup>nd</sup> respondent to list her as a loan defaulter. The appellant also sought a mandatory injunction to compel the appellant to remove her adverse listing with the 2<sup>nd</sup> respondent.
  
2. The appellant filed a statement of defence dated **17/2/2020** denying the averments made by the 1<sup>st</sup> respondent and putting her to strict proof of the same. It further contended that the entire suit was premature as there was a procedure for delisting from a Credit Reference Bureau that the plaintiff had not followed.

3. On its part, the 2<sup>nd</sup> respondent entered appearance and filed a statement of defence dated **26/11/2019** denying the 1<sup>st</sup> respondent's averments as against it.
4. By a judgment delivered on the **12/3/2025**, the trial court found that the 1<sup>st</sup> respondent's claim for defamation had succeeded and proceeded to award her a mandatory injunction compelling the appellant to remove her adverse listing with the 2<sup>nd</sup> respondent as well as general damages of **Kshs. 500,000/-**, punitive damages of **Kshs. 200,000/-** and costs of the suit, all to be settled by the appellant.
5. Aggrieved by the said decision, the appellant preferred this appeal vide a Memorandum of Appeal dated **3/4/2025**. It set out eleven (11) grounds of appeal which can be summarized as follows: -

*a) That the trial magistrate erred in fact and in law by reaching a determination that the appellant was negligent in providing wrong information to the 2<sup>nd</sup> respondent herein and that it owed a duty of care to the 1<sup>st</sup> respondent when the claim for negligence was not proven to the required standard.*

*b) The learned trial magistrate erred in fact and in law by reaching a conclusion that the 1<sup>st</sup> respondent was adversely listed as a loan*

*defaulter, a determination made contrary to the weight of the evidence presented before her by the appellant and the 2<sup>nd</sup> respondent herein.*

- c) The learned trial magistrate erred in fact and in law by penalizing the appellant for the disputed listing when the same was proved to have been rectified in accordance with the provisions of Regulation 25 (7) as read with Regulation 50 (5) of the Banking (Credit Reference Bureau) Regulations 2013 as soon as the error was discovered and long before the suit was filed.*
- d) The learned trial magistrate having correctly appreciated the legal standard for a successful claim for defamation, proceeded on a wrong application of the same to determine the claim against the appellant contrary to the law and the evidence tendered before her.*
- e) The learned trial magistrate erred in fact and in law in awarding general damages of Kshs. 500,000/- and punitive damages of Kshs. 200,000/- when the same was not proven and without any basis for the assessment of the same.*
- f) The learned trial magistrate erred in law and in fact by awarding the respondents costs of the suit.*

6. The appeal was disposed off by way of written submissions. I have duly considered the same.
7. This being a first appellate court, it is its duty to re-assess, re-evaluate and analyse the evidence afresh and come to its own independent conclusions and findings but at all times having in mind that it did not see the witnesses testify. See Selles & Another –vs- Associated Motor Boat & Co. Ltd & Others (1968) EA.
8. The 1<sup>st</sup> respondent testified as **Pw1**. She adopted her testimony dated **4/11/2019** as her evidence in chief and produced her list and bundle of documents as her exhibits. It was her testimony that she was placed on the CRB list by the appellant. That prior to the listing, she worked as tailor, clothes vendor, tailoring teacher and Equity Bank agent. That she had approached Equity Bank for a loan but the same was denied on account that she was a defaulter as was evident from her listing with the 2<sup>nd</sup> respondent.
9. That as a result she could not access a loan from any bank. That she was placed on the CRB wrongly. That as a result of this, she was forced to sell her 2 ½ acre piece of land and machines in order to clear her debts.

10. In cross-examination, she testified that she knew about the listing in 2016 but wrote to the appellant in **October 2019** through a demand letter to its manager at Luanda. She reiterated that subsequently, she could not access any loans as each time she applied for a loan with her bank, Equity Bank, she was told that she was not eligible. She further testified that she did get loans during the 2016 – 2019 period specifically one Mobete Loans for Business Expansion. That it was her and her advocate who knew about the listing on CRB. That she did not have any witness in support of her claim for defamation. That she did not have any proof that she sought a loan and the same was declined.

11. In re-examination, she testified that she accrued many debts as a result of her listing on the CRB. That she did not have any documents from the bank as the bank retained the same and further that she did not know that the same would be needed in court.

12. The appellant called **Elizabeth Mutuku Mwende** as **DW1**. It was her testimony that she worked with the appellant in the Credit Division as the Assistant Manager CRB. She adopted her witness statement dated **15/10/2024** as her evidence in chief and list of documents of the same date as her exhibits.

13. In cross-examination, she stated that the appellant submitted the two loans held by the 1<sup>st</sup> respondent as active loans though not performing. That when they

detected the error, they notified the 2<sup>nd</sup> respondent via email after which the 1<sup>st</sup> respondent was cleared and delisted from the CRB. It was her testimony that the negative reporting of the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent was caused by the loans being listed by the Finance department as she had not serviced the loans.

14. It was her testimony that, the erroneous listing was done in **2019** though the 2<sup>nd</sup> respondent stated that it was for the period between **2014 – 2019**. That the erroneous listing was occasioned by the capturing of the wrong ID number. She admitted that the appellant was negligent as they forwarded the 1<sup>st</sup> respondent's name erroneously. That the erroneous listing of an individual could have an implication on her borrowing. That they did receive a demand letter **in October 2019** from the 1<sup>st</sup> respondent and they deleted the 1<sup>st</sup> respondent's name from CRB though they did not inform her.

15. In re-examination, **Dw1** testified that they rectified the error of the 1<sup>st</sup> respondent's listing.

16. The 2<sup>nd</sup> defendant called one **Paris Kiama** as **D<sup>2</sup>W<sup>1</sup>**, the Dispute Resolution Manager of the 2<sup>nd</sup> respondent adopted his statement as his evidence in chief and produced her list of documents as exhibits. It was her testimony that they received a demand letter from the 1<sup>st</sup> respondent which they responded to comprehensively. That the accounts forwarded to them had been defaulted and

the respective financing institutions were Tala and M-Shwari who were not parties to the instant suit.

17. In cross-examination, she told the court that they did not confirm that the 1<sup>st</sup> respondent had defaulted with the appellant. That the Banking Regulations anticipated errors such as this and thus they provided mechanisms to amend the error and amendment. That the letter from the appellant on rectification of the error was acted on by them on the same day it was received, the **18/4/2019**.

18. That the demand letter from the 1<sup>st</sup> respondent was received on the **25/10/2019** and responded to on the **29/10/2019**. However, in the letter, the 2<sup>nd</sup> respondent did not tell the 1<sup>st</sup> respondent that they had delisted her as they are not required to inform her of the delisting. That they had received the information to list her on the **28/2/2014**. She admitted that listing with a CRB has implications where an individual can be denied a loan when applied for.

19. It is on the foregoing evidence that the trial court dismissed the appellant's claim for defamation.

20. *Black's Law Dictionary* 8<sup>th</sup> Edition defines defamation as "***the act of harming the reputation of another by making a false statement to a third person.***"

21. In **John Ward v Standard Limited [2006] eKLR**, it was held as follows: -

*“A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule, or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling. The ingredients of defamation are:*

- (i) the statement must be defamatory*
- (ii) the statement must refer to the plaintiff*
- (iii) the statement must be published by the defendant*
- (iv) the statement must be false.”*

22. In Halsbury’s Laws of England 4<sup>th</sup> Edition Vol. 28 at page 23, the learned authors opine: -

*“In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense.”*

23. In S M W v Z W M [2015] eKLR, the Court of Appeal held: -

***“A statement is defamatory of the person of whom it is published if it tends to lower him/her 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 shunned or avoided.”***

24. As earlier stated, the 1<sup>st</sup> respondent alleged defamation on the part of the appellant and 2<sup>nd</sup> respondent for her listing on the CRB as a result of which she alleged she could not access loans thus ran into debt and was forced into selling her piece of land and machinery.

25. There is no dispute as to whether the 1<sup>st</sup> respondent was listed in the CRB. What is in dispute is whether the said listing was defamatory.

26. The appellant who was the main tortfeasor in the instant case argued that the listing was not defamatory, that the listing was erroneous and rectified immediately they were alerted of the same and that in any case, the 1<sup>st</sup> respondent had failed to prove the elements of defamation. The 2<sup>nd</sup> respondent on its part similarly argued that the elements of defamation were not proven, that they also rectified the erroneous listing as soon as they were alerted of the same.

27. In **Elizabeth Wanjiku Muchira v Standard Ltd [2011] eKLR**, the Court of Appeal held that whether a statement is defamatory or not is not so much dependent on the intentions of the defendant but on the “***probabilities of the case and upon the natural tendency of the publication having regard to the surrounding circumstances. If the words published have a defamatory tendency it will suffice even though the imputation is not believed by the person to whom they are published.***”-Clerks & Lindsell on Tort 17<sup>th</sup> Edition 1995-page 1018.”

28. In **Musikari Kombo v Royal Media Services Limited (2018) eKLR**, the Court of Appeal held that: -

***“The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive. In Halsbury’s Laws of England 4th Edition Vol. 28 at page 23 the authors opined:***

***“In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to***

*whom the publication was made would be likely to understand them in a defamatory sense.”*

29. Defamation therefore involves imputations that tend to cause injury to the reputation of a person, and a successful plaintiff must demonstrate the injury to his reputation or standing as part of the ingredients of defamation, and not merely rely on his own estimation of himself. It is what those who know him/her opined after hearing the words complained of.

30. In SMW v ZWM (2015) eKLR, the Court of Appeal observed:

*“15. Black’s Law Dictionary 8th Edition defines defamation as the act of harming the reputation of another by making a false statement to a third person. (Emphasis added). A statement is defamatory of the person of whom it is published if it tends to lower him/her 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 shunned or avoided: see Gatley on Libel and Slander (10th edition). A plaintiff in a defamation case must prove that the words were spoken /written; that those words refer to him/her; that those words are false; that the words are*

*defamatory or libelous and that he/she suffered injury to reputation as a result. ...*

*19. The trial judge had considered the testimony of witnesses with a view to assessing their credibility and at no point did any of the Appellant's witnesses at trial consider the appellant to have been defamed by the contents of the letter. The witnesses who testified at trial constitute and pass the ordinary reasonable man test as they were not only neighbours but also people known to the disputants. There was no evidence of any public ridicule, hatred or even shunning experienced by the appellant.*

*The appellant had only testified at the trial court that he felt shy to interact with some of his friends in tea farming. The appellant appears to have had an apprehension of defamation on himself ostensibly based on how he himself considered his standing in the society. That is not what defamation is in law. The appellant himself further testified before the trial court that nothing had changed in his dairy farming business. Moreover, despite being a tea farmer in Gatundu, he had since relocated to his Karen home at the time of these proceedings where the chances of any possible defamation of*

*him became slimmer based on the existing solitary and liberal lifestyle adopted by urbanites. As elucidated earlier, the test to be applied is that of the reasonable ordinary man, not the appellant or the respondent...” (Emphasis added).*

31. Therefore, as stated in *Musikari Kombo case (supra)* as to whether the listing of the 1<sup>st</sup> respondent and subsequent denial of loans was defamatory, the test to be applied is that of the reasonable ordinary man. It is not the 1<sup>st</sup> respondent's view of herself that matters. She ought to have adduced evidence through other witnesses that the listing complained of caused or had the tendency to cause injury to her reputation by way of public ridicule, hatred or even being shunned or that it tended to lower his esteem in the mind of right-thinking members of society.

32. In the absence of such evidence, it is difficult to see how the claim founded on defamation could be sustained. She ought to have pursued the appellant and 2<sup>nd</sup> respondent for losses occasioned by the lack of access to credit facilities as a result of the erroneous listing. For defamation, she should have led evidence of people who knew of the said listing and as a result of such, held her in low esteem. That was not presented before the trial court.

33. The holding by the trial court that the information of listing of the 1<sup>st</sup> respondent on the CRB was available to third parties and the basis upon which she was denied a loan thus defamatory does not hold water in the absence of any evidence of the publication of such listing to such 3<sup>rd</sup> parties. The question that was to be answered by the trial court was; what was alleged of the 1<sup>st</sup> respondent? was it true or false? If false, to whom was it published? If so published, what did those to whom it was published hold the 1<sup>st</sup> respondent to be? If what was published of the 1<sup>st</sup> respondent lowered their estimation of the 1<sup>st</sup> respondent before their eyes, then there would be held to have been defamation. None of this was proved at the trial. The alleged 3<sup>rd</sup> parties were neither disclosed nor were they called to testify of the same.

34. In the circumstances, it is my view that the 1<sup>st</sup> respondent failed to prove all the necessary ingredients in a defamation case. As such, she failed to prove her case to the required standard and should have been dismissed.

35. The appellant further impugned the trial court's award of costs to the respondents against it.

36. Accordingly, the appellant failed to prove the elements of defamation on a balance of probability against the respondents. Awarding costs is a matter of the

discretion of the Court. It is not a matter of course. The exercise of the discretion, however, depends on the circumstances of each case.

37. The general rule is that “*costs follow the event*”. This was driven by the fact that there could be no “*one-size-fits all*” situation on the matter. **Section 27(1) of the Civil Procedure Act** is clear. Since the 1<sup>st</sup> respondent did not prove her case against the appellant and 2<sup>nd</sup> respondent, the appellant should not have borne the costs. Accordingly, the costs should have followed the event. I am therefore satisfied that the trial court did not err in awarding costs against the appellant. This limb of the appeal therefore succeeds.

38. From the foregoing, it is clear that the 1<sup>st</sup> respondent did not prove her case to the required standards. The appeal is meritorious and the same is allowed as prayed.

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this 6<sup>th</sup> day of **May, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**