



**Ratemo v Faulu Microfinance Bank Limited & another (Civil Appeal E1394 of 2023 & E095 of 2024 (Consolidated)) [2025] KEHC 2869 (KLR) (Civ) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 2869 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E1394 OF 2023 & E095 OF 2024 (CONSOLIDATED)  
AB MWAMUYE, J  
JANUARY 30, 2025**

**BETWEEN**

**VIOLET KERUBO RATEMO ..... APPELLANT**

**AND**

**FAULU MICROFINANCE BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**FINLEY INTERNATIONAL LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgment and decree passed in Milimani Civil suit No. E4725 of 2022 by Hon Mrs. Isabellah Barasa, PM on 7th December, 2023)*

**JUDGMENT**

1. This is an appeal from the judgment and decree of Milimani Principal Magistrate Hon Mrs. Isabellah Barasa in Milimani Civil suit No. E4725 of 2022 where the Appellant herein violet Kerubo Ratemo instituted a suit vide a Complaint dated 20<sup>th</sup> September 2022, seeking damages for breach of contract on the part of the 1<sup>st</sup> Respondent, general damages for defamation and emotional stress, punitive and exemplary damages, cost and interest against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein Faulu Microfinance Bank Limited And Finley International Limited respectively.
2. In the Complaint, it is contended by the Appellant that she took a facility of Kes. 40,000/= with the 1<sup>st</sup> Respondent. She states that she had been listed, on instruction of the 1<sup>st</sup> Respondent by Credit Reference Bureau, (CRB). She was later cleared by the said bureau after clearing the loan facility sometime in October 2015. Consequently, a clearance notice was sent to her official email.
3. The Appellant further contends that the loan facility has never appeared on her CRB certificate at all. In the year 2020, she received a call from a strange number informing her that they were auctioneers acting on the instructions of the 1<sup>st</sup> Respondent to recover her non-performing loan. She reached out



to the 1<sup>st</sup> Respondent for clarification at their Ngong Branch, where she was advised to visit the credit manager head office. At the head office, she contends she never had the chance to speak to the credit manager. She was asked to expect a call from the credit manager, which call she avers has never come through. However, she continued to receive harassing calls from various strange numbers.

4. The Appellant contends that she was summoned by her Human Resource Manager at Diamond Trust Bank over an email received from the 2<sup>nd</sup> Respondent that she had defaulted on a loan facility by the 1<sup>st</sup> Respondent and that they needed assistance in getting in touch with her. She further avers that she could not get loan facilities from her employer as she was regarded as a defaulter yet she was a banker. She contended that the 2<sup>nd</sup> Respondent continued to write to her through the general office email. Consequently, word went around the workplace that she was a defaulter. She was psychologically traumatized as a result thereof.
5. The Appellant averred that she received a call from the 1<sup>st</sup> Respondent who stated that they had found the repayment made by the Appellant and have since regularized her loan account. She received a confirmation email on the same, but it was never copied to her employer.
6. In their defense, the 1<sup>st</sup> Respondent averred that the Appellant did not have an outstanding loan with the 1<sup>st</sup> Respondent and that the same appeared to be outstanding due to a malfunction of the core banking system of the 1<sup>st</sup> Respondent. The same was corrected within a week, after it was raised by the 1<sup>st</sup> Respondent's agent and instructions to the 2<sup>nd</sup> Respondent to follow up on the loan were withdrawn immediately.
7. The 1<sup>st</sup> Respondent avers that it was the Appellant who repeatedly kept her colleagues in copy of the communication relating to the loan and that the Appellant was not entitled to damages for defamation as the issue was brought up by the malfunctioning of the core banking system and thus unintentional on their part.
8. Upon hearing the parties, the trial magistrate entered judgment for the Appellant against the Respondents and awarded general damages for negligent misrepresentation in the sum of Kes. 500,000.00, damages for defamation of Kes. 1,000,000.00, punitive damages at Kes. 300,000 and costs. In entering judgment for the Appellant, the learned magistrate in a judgment dated 7<sup>th</sup> December, 2023 expressed as follows;

The 2<sup>nd</sup> Defendant contacted the Plaintiff's employer and the Plaintiff in writing on account of inaccurate information passed to it from the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant was the 1<sup>st</sup> Defendant's agent. By putting in writing inaccurate information relating to the Plaintiff's credit history, the Defendants are guilty of defaming the Plaintiff. Though the 1<sup>st</sup> Defendant's defense is that the issue was caused by the malfunctioning of the core banking system which it could not have noticed without the plaintiff bringing it to its attention, the evidence presented in court shows that the 1<sup>st</sup> Defendant never informed the Plaintiff or her employer of this development and did not apologize for the very first e-mail that was sent out. I agree with the plaintiff when she states that the defendants in their e-mail made it look like she had just cleared the loan and informing her that the issue had been laid to rest. I am persuaded that the Plaintiff has made a case of defamation against the defendants on a balance of probability.

9. The Appellant was dissatisfied with the trial court's judgment and filed a Memorandum of Appeal dated 13<sup>th</sup> December 2023 on three grounds as follows;



- a. The Learned Magistrate of the Lower Court erred in law and in fact in awarding general damages on all head/limbs that are so low as not to be commensurate with the injury occasioned to or visited upon the appellant considering the gravity and seriousness of the Respondent's actions and or omissions as per the weight of the evidence on record.
  - b. The Learned Magistrate of the Lower Court erred in law and in fact in awarding general damages under all heads that are so manifestly low without considering the factor of inflation and the passage of time when compared to precedents quoted before her in arriving to her decision.
  - c. The Learned Magistrate of the Lower Court erred in law and in fact in failing to consider and apply the Appellant's written submissions and authorities quoted before her before arriving at her decision.
10. The Respondents were equally dissatisfied with the trial court's judgment and filed a Memorandum of Appeal dated 22<sup>nd</sup> January 2024 in Milimani HCCA E095 of 2024 urging the Court to allow the appeal (Milimani HCCA E095 of 2024) and set aside the judgement delivered on 7<sup>th</sup> December 2023, the plaint dated 15<sup>th</sup> September 2022 to be dismissed with costs and costs for the appeal.
  11. The two files Milimani HCCA E1394 of 2023 and Milimani HCCA E095 of 2024 were consolidated on 25<sup>th</sup> September 2024 by consent of both parties, with the lead file being Milimani HCCA E1394 of 2023.
  12. At the hearing of the instant appeal, learned Counsel Mr. Musindi appeared for the Appellant while learned counsel Ms Ngui appeared for the Respondents. Both parties filed written submissions and cited authorities in this matter.
  13. The Appellant filed two submissions dated 17<sup>th</sup> May 2024 and 16<sup>th</sup> August 2024. It was submitted by the Appellant that an award of Kes. 500,000.00 for negligent misrepresentation was too low considering the negligence on the part of the 1<sup>st</sup> Respondent and the injury caused to the Appellant. She urged the court to enhance the award to Kshs. 5,000,000/=.
  14. On the award of damages for defamation, the Appellant submitted that the trial Court ignored the cardinal principle in the assessment of damages for defamation and urged Court to be guided by the checklist on the quantum of damages with regard to cases on defamation as was held by the Court of Appeal in *Johnson Evan Gicheru v Andrew Morton & Micheal O'Mara Books Limited (Civil Appeal 314 of 2000) [2005] KECA 81 (KLR) (14 October 2005)* and prayed that the award of Kes. 1,000,000.00 be enhanced to Kes. 10,000,000.00/=.
  15. On the award for punitive damages, the Appellant submitted that no evidence was provided on account of a system malfunction that caused the appellant's account to be wrongfully debited. She cited the case of *Githongo v Murungaru (Civil Appeal 404 of 2019) [2022] KECA 821 (KLR) (19 May 2022) (Judgment)* and asked the court to enhance the award on punitive damages to Kes. 3,000,000.00 from Kes. 300,000.00. The appellant concluded her submission by urging the Court to take into consideration the arguments she fronted in her submission and alter the lower court's judgment and equally dismiss the Respondents' present appeal that was filed vide Memorandum of Appeal dated 22<sup>nd</sup> January 2024.
  16. The Respondents submitted that the Learned Magistrate failed to consider the essential elements of defamation and erred in both law and facts leading to an erroneous decision. The appellant cited the *Janto Construction Company Ltd v Enock Sikolia & 2 others [2020] KLR* and *Selina Patani & another v Dhiranji v Patani [2019] eKLR*



17. On the award of damages, the Respondents submitted that the Learned Magistrate having erred in law and facts by failing to consider the elements of defamation, it follows that any award on damages for defamation is unjustified. On award for negligent misrepresentation, the Respondent submitted that the same was neither pleaded nor advanced by the appellant during trial. On punitive damages, the Respondents submitted that the malfunction on the core system was not intentional and that the Respondent acted without delay in resolving the issue. They cited the cases of *Galaxy Paints Company Ltd v Falcon Guards Ltd (Civil Appeal 219 Of 1998) [2000] KECA 215 (KLR) (14 April 2000)* and *Barclays Bank of Kenya Limited v Mema (Civil Appeal E011 of 2021) [2021] KEHC 333 (KLR) (Commercial and Tax) (3 December 2021) (Judgment)* and in totality submitted that the Court ought to set aside the judgment delivered on 7<sup>th</sup> December 2023, and to dismiss the Appeal with costs.

### **Analysis And Determination**

18. This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See *Selle and Another v Associated Motor Boat Company Limited and others [1968] EA 123* and *Williamson Diamonds Ltd. v Brown [1970] E.A.L.*

19. As I discharge my mandate of evaluating the evidence placed before the Lower Court, am guided by the holding in *Peters v Sunday Post Ltd [1958] EA 424*;

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ...”

20. Further, it is firmly established that this Court will be disinclined to disturb the finding of a trial Magistrate as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Magistrate on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Learned Magistrate acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie [1941] 1 ALL E.R. 297* and echoed with approval by the Court of Appeal in *Butt v Khan [1981] KLR 349* when it held as per Law, J.A that:

“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.”

21. In *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.m. Lubia and Olive Lubia [1982 –88] 1 KAR 727 at p. 730 Kneller J.A. said:-*

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court



of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilangov Manyoka*[1961] E.A. 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltdv Kavoloto*[1970] E.A., 414, 418, 419. This Court follows the same principles.”

22. In *Gicheru v Morton and Another* [2005] 2 KLR 333 this Court stated:

“In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the Court of Appeal should be convinced either that 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 Appellant was entitled.”

23. The foregoing sets out the law and the guiding principles which I am bound to apply in the determination of this appeal. I have carefully perused the proceedings, the evidence adduced before the judgment of the trial court, and the records of appeal as a whole including the parties' submissions and the grounds outlined in the consolidated appeals, and I have summed up the following two issues for determination;

- a. Whether the learned magistrate erred in both law and facts by failing to consider the key elements of defamation;
- b. Whether the award of damages was justified and therefore very low.

24. I shall now deal with each head issue hereunder.

**Whether the learned magistrate erred in both law and facts by failing to consider the elements of defamation;**

25. The Appellant in her Complaint dated 20<sup>th</sup> September 2022 listed two particulars of defamation against the respondents, as reproduced herein; purporting to collect an already paid debt and writing emails to the Plaintiff's employer and colleagues directly when they had all the Plaintiff's contacts and knew her place of work and how to personally find her.

26. The Appellant produced several email correspondences that were sent to her work email and in particular email dated 9<sup>th</sup> October, 2021 from the Managing Director of the 2<sup>nd</sup> Respondent to the Appellant's employer's Human Resource Department, copied to the appellant's General Manager and colleagues.

27. Before I proceed further, it would be important to underscore what defamation entails and the key elements required to establish a claim on defamation. In the case of *Phinehas Nyagah v Gitobu Imanyara* (Civil Suit 697 of 2009) [2013] KEHC 6662 (KLR) (Civ) (2 August 2013) (Judgment) the Court stated that

‘... defamatory statement is one which has tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of the right -thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem and typical examples are an attack upon the moral character of the Plaintiff attributing him to any form of disgraceful conduct such as crime, dishonesty, cruelty and so on...’



28. Kuloba J (as he then was) in *J. Kudwoli & Ano. v Eureka Educational & Training Consultants & 2 others* [1993] eKLR had to say the following on defamation: -

‘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 them shun or avoid that person.....

.....A defamatory imputation is one to a man’s discredit or which tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit..’

29. What therefore are the elements of defamation? I shall quote the case of *Janto Construction Company Ltd v Enock Sikolia & 2 others* [2020] KLR which was equally cited by the Respondents in their submissions;

101. The elements of the tort of defamation are equally well settled. For a litigant to succeed in a claim of defamation, the following elements must be proved in the affirmative: -

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

30. As stated herein above, the Appellant produced several email correspondences that were sent to her work email and in particular email dated 9<sup>th</sup> October, 2021 from the Managing Director of the 2<sup>nd</sup> Respondent to the Appellant’s employer’s Human Resource Department, copied to the appellant’s General Manager and colleagues. It behooves this court to produce the email that was sent by the 2<sup>nd</sup> Respondent Managing director;

Attention: Human Resource

Good Afternoon Sir/Madam

We are requesting your office to assist us in getting in touch with the above-named client who has a facility with the bank (Faulu Kenya) and in default.

It has been difficult for us to get in touch with her.

We would really appreciate for your assistance so that we can communicate on the same and have arrangements with the client.

Thank you in advance as we wait for your response.

You can kindly reach us on mobile (254) 746417082

Regards

31. It was the evidence of the Appellant that the email address [info@dtbafrica.com](mailto:info@dtbafrica.com) was being accessed by all her colleagues. Did this amount to publication, yes it was. The email was sent to the A



32. Appellant's employers and her colleagues. To this end, am guided by the English Court of Appeal case of *Pullman v Walter Hill & Co* [1891] 1 QB 524 which stated the following on what publication entail;

“What is the meaning of ‘publication’? The making known the defamatory matter after it has been written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there is no publication of it; for you cannot publish a libel of a man to himself. If there was no publication, the question whether the occasion was privileged does not arise.....

If the writer of a letter shows it to his own clerk in order that the clerk may copy it for him, is that a publication of the letter? Certainly it is, showing it to a third person; the writer cannot say to the person to whom the letter is addressed, ‘I have shown it to you and to no one else.’ I cannot, therefore, feel any doubt that, if the writer of a letter shows it to any person other than the person to whom it is written, he publishes it” (per Lord Esher, MR).

33. In a libel case, the Court must thoroughly examine the entire publication in question and assess it from the perspective of an ordinary, reasonable member of society. Unless the pleadings explicitly allege innuendo, the Court should interpret the words in the publication based on their plain and natural meaning when determining whether the content damages the Plaintiff's reputation.

34. Kuloba, J. in the Kudwoli's case (supra) rightly so dealt with the applicable standard of who a reasonable person is in the context of a defamation claim. The Learned Judge expressed himself as follows:

This standard rules out extremes at either poles; embracing neither a genius nor an idiot, neither a fanatic nor a faddist, neither a walking encyclopedia nor an illiterate. He is simply a fair-minded person and not one with a morbid or unduly suspicious mind which must discover defamatory imputation in everything published. One with impervious intellect is excluded. The test of reasonable which guides and directs the court in deciding whether the matter carries a defamatory imputation requires involving ordinary intelligence, not the intelligence of persons setting themselves to work to deduce some unusual imputation might succeed to discover.

35. Turning to the contested publication, it is evident that it was made on 9<sup>th</sup> October 2021. There is no question that the publication specifically referred to the Appellant. Additionally, it is clear that the email was authored and published by the 2<sup>nd</sup> Respondent and copied to the Appellant's Human Resource Manager. To this very end, I am persuaded that the information that was published on the email platform was not true and therefore malicious. In my view, the information was only meant to malign the name of the Appellant, as nothing was as easy as writing to the Appellant directly without including her employers in following up on the alleged outstanding loan facility.

36. The appellant testified that as a result of the publication of the impugned email she was perceived to be a defaulter at her workplace, which resulted in her being denied finance facility by her employer, and further, she was ejected from the office chama. In my view and analysis of the evidence that was tabled at the trial Court, this amounted to reputational harm on the part of the Appellant by the Respondents.

37. The Respondent raised the issue of a lack of a third-party testimony to prove publication. The Court of Appeal in the case of *Wycliffe A Swanya v Toyota East Africa Ltd & Francis Massai* (Civil Appeal 70 of 2008) [2009] KECA 379 (KLR) (Civ) (13 March 2009) (Judgment) emphasized on the crucial point of having a third party in a defamation case by stating the following;

“Words uttered by a party against another amount to slander if they are published and intended to disparage that person in his office, profession, calling, trade or business held or



carried on by him, (see section 3 of the *Defamation Act*). The words allegedly uttered by the respondents and which gave rise to the case in the superior court do not appear to have been communicated to third parties or shown to have been intended to disparage or directed at disparaging the appellant in his office, profession, calling, trade or business held or carried on by him. The pleadings or even the proceedings do not disclose this important aspect of the case nor do they disclose any third party who would have heard the disparaging remarks in order to establish the ingredient of publication and to hold the appellant to ridicule or contempt.”

38. I am equally guided by the case of *Selina Patani & another v Dhiranji v Patani* [2019] eKLR which was cited by the Respondent on the necessity of having a third-party testimony to buttress the claim of defamation. I shall not rehash the same. I have perused the proceedings in the trial court and it is very clear that the appellant had only one witness, herself.
39. However, from the record it is apparent that the email was addressed to the Human Resource Manager of Diamond Trust Bank. The content of the email recounted that the Appellant defaulted in its loan obligations and sought assistance to get in touch with her. Without going further on this, it is apparent that the author of the email message intended it to be read by a person other than the Appellant, a third party.
40. Therefore, I am persuaded that the trial court justly considered the essential elements of defamation and I accordingly uphold her finding that there was defamation.

#### **b. Whether the damages awarded were inordinately low**

41. The Learned Magistrate awarded Kes. 500,000.00 as damages for negligent misrepresentation. This Court has been tasked by the Appellant to set aside the same and enhance it to Kes. 5,000,000.00. The Respondent argues that there was no defamation and therefore no need to award damages as they were neither pleaded nor adduced before the trial court.
42. I have carefully perused the Appellant’s Complaint dated 20<sup>th</sup> September 2022 and I note that it is hinged on the claim for breach of contract and defamation. The orders sought are damages for breach of contract, damages for defamation and punitive and/or exemplary damages. The trial magistrate awarded damages for negligent misrepresentation, which the Respondent avers was not pleaded.
43. It is trite law that parties are guided by their own pleadings and that the court will only grant orders as prayed for in the pleadings or make such orders which are appropriate which flows from the cause of the trial.
44. The Court of Appeal in the case of *Lamba v National Social Security Fund & another (Civil Appeal E168 of 2021)* [2023] KECA 124 (KLR) (3 February 2023) (Judgment) stated the following;

“28. The appellant’s recourse, therefore, as correctly observed by the learned judge, lay in damages. During the trial, as can be discerned from the record, the appellant chose to abandon the claim for damages and decided to pursue the other prayers as sought in the amended complaint. In the judgment, the learned judge states as follows: “during the hearing, she indicated that she was abandoning the prayer for damages so that she could pursue the suit property.” The judge, therefore, had no avenue of awarding damages as the prayer for special damages was abandoned. It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit if need arises in the cause of a trial. Indeed, where a court has



proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs.....

29. The prayer for damages having been abandoned, then the prayers sought in the amended plaint were rightly rejected by the learned Judge. It is a cardinal principle of law that a court will only grant reliefs sought by a party.”
45. The exercise of judicial discretion in an appeal was discussed in *Price and Another v Hilder* [1996] KLR 95 quoted by Aburili J in the case of *Ojwang v Kara & another* (Civil Appeal E097 of 2023) [2024] KEHC 3131 (KLR) (28 March 2024) (Judgment) as follows:
- “In considering the exercise of judicial discretion, as to whether or not to set aside a Judgment the court considers whether in the light of all the facts and circumstances both prior and subsequent and of the respective merits of the parties, it would be just and reasonable to set aside or vary the Judgment. The court will not interfere with the exercise of discretion by an inferior court unless it’s satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision.”
46. In the circumstances of this case, the court is of the view that the decision of the trial court to award damages for negligent misrepresentation, which was not pleaded in the Plaint was clearly wrong and the same ought to be set aside.
47. It is trite law that a bank-customer relationship is contractual. Banks have a fiduciary duty of care and therefore they cannot act recklessly when dealing with clients. It is a relationship that is based on trust. In the present appeal, the 2<sup>nd</sup> respondent owed the appellant a duty of care not to share the information regarding the appellant’s credit history, which was actually false information. The Court is guided by the case of *Barclays Bank of Kenya v Francis Manthi Masika T/A Manthi Masika & Company Advocates* (Civil Appeal 9 of 2018) [2020] KEHC 8532 (KLR) (30 January 2020) (Judgment) which quoted with approval the case of *Karak Brothers Company Ltd v Burden* [1972] 1 ALL ER 1210 where it was expressed that:
- ‘... a bank has a duty under its contract with its customer to exercise “reasonable care and skill” in carrying out its part with regard to operations within its contract with its customer. The standard of that reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely. The relevant considerations include the prima facie assumption that men are honest, the practice of bankers, the very limited time in which banks have to decide what course to take with regard to a cheque presented for payment without risking liability for delay, and the extent to which an operation is unusual or out of the ordinary course of business. An operation which is reasonably consonant with the normal conduct of business (such as payment by a stockbroker into his account of proceeds of sale of his client’s shares) of necessity does not suggest that it is out of the ordinary course of business. If “reasonable care and skill” is brought to the consideration of such an operation, it clearly does not call for any intervention by the bank. What intervention is appropriate in the exercise of reasonable care and skill again depends on circumstances.’”



48. In the instant case, the trial court made the following observations before pronouncing itself to the amount payable to the appellant for punitive damages.

“.....The 2<sup>nd</sup> Defendant contacted the Plaintiff’s employer and the Plaintiff in writing on account of inaccurate information passed on it from the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was the 1<sup>st</sup> defendant’s agent/ By putting in writing inaccurate information relating to the plaintiff’s credit history.....Though the 1<sup>st</sup> defendant’s defence is that the issue was caused by malfunctioning of the core banking system which it could not have noticed without the plaintiff bringing it to its attention, the evidence presented in court shows that the 1<sup>st</sup> defendant never informed the plaintiff or her employer of this development and did not apologize for the very first email that was sent out.....”

49. Having regard to the above findings of the trial court. I am satisfied that in determining the punitive damages payable to the appellant, the said court considered the claim in a wholesome manner and took into account the consequences of the respondents’ action in sharing inaccurate information about the appellant’s credit history to the appellant’s employer before finding that an award of Kshs. 300,000/= was suitable in the circumstances of the case. I am unable to find that the said award was so inordinately high or low as to represent an entirely erroneous estimate or that it was based on some wrong principle or on a misapprehension of the evidence. I therefore decline the appellant’s invitation to interfere with the said award.

50. Consequently, the Court makes the following orders in regards to the instant consolidated appeals:

- a. The award for damages for negligent misrepresentation is hereby set aside;
- b. The award for damages for defamation is upheld.
- c. The award of punitive damages is upheld.
- d. Each party each party shall bear her/its own costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 30TH DAY OF JANUARY, 2025.**

.....  
**BAHATI MWAMUYE**  
**JUDGE**

