



Kenya Broadcasting Corporation t/a KBC Radio Taifa & KBC English Service & 3 others v Keitany (Civil Appeal E160 of 2021) [2025] KEHC 9169 (KLR) (Civ) (27 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9169 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E160 OF 2021

AN ONGERI, J

JUNE 27, 2025

BETWEEN

**THE KENYA BROADCASTING CORPORATION T/A KBC RADIO TAIFA &
KBCVENGLISH SERVICE 1ST APPELLANT
NICHOLAS OMONDI 2ND APPELLANT
GRACE MATENGO 3RD APPELLANT
MARTIN KINGASIA 4TH APPELLANT**

AND

WILLIAM KIMUTAI B KEITANY RESPONDENT

(Being an appeal from the Judgment of Hon. L. Gicheha (CM) in consolidated suits being Milimani CMCC No. 3524 of 2013, 3318 of 2013, 4457 of 2013 and 4473 of 2013 delivered on 30th April 2020)

JUDGMENT

1. The Respondent filed the above suits against the four Appellants seeking general damages for the tort of defamation.
2. This is an appeal from the consolidated judgment in cases filed by the Respondent William Kimutai B. Keitany who was the acting Corporation Secretary at the National Housing Corporation [NHC] a body established within the meaning and purview of the NHC Act Cap. 117 Laws of Kenya having the principal role of the implementation of government housing policies and programmes.



3. The Respondent alleged that the impugned words were contained in Article authorized by Luke Anami, a journalist retained in the employment of the Standard Group Limited Newspaper titled: “National Housing MD fired”.
4. The following words in the Article were pleaded as being defamatory:-

“Three Mangers including an Estate Officer Lilian Muinde, Company Secretary Elizabeth Mbugua and Senior Legal Officer William Keitany have instead been shown the door following allegations of allocating more than one unit to themselves. Shitanda said the suspension of the MD follows a report by both Efficiency Monitoring Unit and the State Corporation findings which have recommended suspension of the MD and the Chairman and the sacking of the three officials. The MD suspension is essentially because of the manner in which they handled the sale of houses. We have situations where some staff members were allocated 20 units. It is immoral to allocate yourself more than one unit when other applicants have none. The Minister blamed NHC management for their “apparent weakness” in complying with housing policies and allocating themselves more than one housing unit.”
5. The Respondent said the words took him by surprise as nobody contacted him before they were published.
6. After the broadcasting of the impugned words the Respondent received calls from his wife and several people.
7. He said there were two other Legal Officers in the Corporation. He said he was shunned as a result of the impugned article and he could not go to the village for a prolonged period of time.
8. The appellants did not deny broadcasting the impugned words. They named a defence of fair comment on a matter of public interest.
9. The trial court found the Appellants liable in negligence and awarded the Respondent general damages of Kshs. 1,500,000/= Exemplary damages of Kshs. 500,000/= and aggravated damages of Kshs. 1,000,000/= against each of the 4 Appellants.
10. The four Appellants have appealed against the consolidated judgment on the following grounds:-
 - i. That the learned Magistrate erred in law and misdirected herself in finding that the publication by the Appellants was defamatory.
 - ii. That the learned Magistrate erred in law and in fact by not correctly applying the principles and laws governing the tort of defamation.
 - iii. That the learned Magistrate erred in law in awarding the Plaintiff [Respondent] a sum of Kshs. 3,500,000/= in general damages, exemplary damages and aggravated damages which award is without basis and is excessive.
 - iv. That the learned Magistrate misdirected herself in completely disregarding the Applicant’s case and did not address her mind to the real ingredients of defamation and specifically slander.
 - v. That the learned Magistrate erred in fact and law by only considering the self-assessing evidence of the Plaintiff [Respondent] as to the reaction of the public on the publication by the Appellant.



- vi. That the learned Magistrate erred in law and fact in her findings that the Appellants publication were actuated by hate and malice.
 - vii. That the learned Magistrate erred in fact and in law in failing to take into account and hold that the Respondent did not prove how the publication injured his reputation in the estimation of right thinking members of the society or exposed him to public hatred, contempt or ridicule or caused him to be shunned or avoided.
 - viii. That the learned Magistrate erred in law and in fact in failing to take into account that the Respondent failed to prove his case on a balance of probabilities.
 - ix. That the learned Magistrate misdirected herself in completely disregarding the Appellant's defence.
 - x. That the learned Magistrate erred in law and fact in failing to consider the submissions and decisions by the Applicants, thereby making a decision which was patently biased towards the Plaintiff [Respondent].
 - xi. That the learned Magistrate failed to properly and/or at all consider the typed proceedings and evaluate the evidence on record cumulatively and hence reached a wrong conclusion in view of the evidence on record.
11. The parties filed written submissions as follows:-
 12. The appellant's written submissions challenged the judgment delivered on 30th April 2020, which found the appellants liable for defamation and awarded the respondent Kshs. 3,000,000 in damages.
 13. The appeal arises from four consolidated suits filed by the respondent, William Kimutai B. Keitany, against various media houses, including the appellants [The Kenya Broadcasting Corporation and its employees], alleging defamatory publications related to a housing scandal at the National Housing Corporation.
 14. The appellants argued that the trial court erred in holding them liable for defamation, contending that the publication in question was a fair and accurate report of a press conference held by the then Housing Minister, Hon. Soita Shitanda, on 24th July 2012.
 15. They asserted that the minister's announcement—regarding the dismissal of officials, including the corporation's legal adviser, over corrupt allocation of houses—was a matter of public interest.
 16. The appellants emphasized that their role as a media house was to inform the public, exercising their constitutional rights under Articles 33 and 34 of *the Constitution* of Kenya [2010], which guarantee freedom of expression and the media.
 17. The submissions further contended that the respondent failed to prove the defamatory nature of the publication, as required under the *Evidence Act*.
 18. The appellants highlighted that the respondent admitted during cross-examination that the publication was based on the minister's press conference and that he was subsequently charged with criminal offenses related to the scandal.
 19. They argued that the publication was made in good faith, without malice, and was protected by qualified privilege, as it involved a matter of legitimate public concern.
 20. Regarding damages, the appellants challenged the trial court's award of Kshs. 3,000,000, asserting that the respondent provided no concrete evidence of reputational harm.



21. They noted that the respondent acknowledged receiving a promotion and compensation after his acquittal, undermining his claim of enduring damage.
22. The appellants cited case law [Simeon Nyachae v Lazurus Ratemo Musa] to argue that mere assertions of injury, without corroboration, are insufficient to justify such an award.
23. In conclusion, the appellants urged the court to allow the appeal, set aside the trial court's judgment, and award them costs for both the trial and the appeal, as the respondent failed to meet the burden of proof for defamation.
24. They maintained that their publication was a lawful exercise of media freedom and public duty, devoid of malice or defamatory intent.
25. The Respondent in his written submissions argued that the trial court correctly found the Appellants liable for defamation and awarded reasonable damages.
26. The Respondent asserted that all essential elements of defamation were proved as follows;
27. That the Appellants failed to verify the accuracy of the statements or seek the Respondent's side of the story, violating journalistic ethics under the [Media Council Act](#) and constitutional obligations to respect others' reputations.
28. Further that witness testimonies confirmed the Appellants' negligence, including admissions that they did not verify the truth of the allegations before publication.
29. That the defamatory statements exposed the Respondent to public ridicule, damaged his professional standing, and caused personal distress, including alienation from his community.
30. Regarding damages, the Respondent contended that the trial court's award of Kshs. 3,000,000 [comprising general, exemplary, and aggravated damages] was justified, citing comparable cases where similar or higher amounts were awarded for defamation.
31. Precedents such as Musikari Kombo v Royal Media Services and WM v Standard Group Limited support the proportionality of the award, particularly given the Appellants' reckless conduct, lack of apology, and failure to mitigate harm.
32. The Respondent emphasized that exemplary damages were warranted to deter future misconduct, while aggravated damages accounted for the Appellants' malicious and unrectified falsehoods.
33. In conclusion, the Respondent urged the court to dismiss the appeal, uphold the trial court's judgment, and affirm that the Appellants' unsubstantiated publication caused irreparable reputational harm meriting the awarded compensation.
34. The submissions reinforce that the Appellants' disregard for due diligence and ethical reporting undermined the Respondent's dignity and standing, justifying the damages in full.
35. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. In *Selle v Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.



An appeal to this court from a trial by the High 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 allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

36. The issues for determination are as follows:-
- [i] Whether the Respondent proved the tort of defamation against the Appellants.
 - [ii] Whether the Appellants have a reasonable defence against the Respondent.
 - [iii] Whether the Respondent is entitled to the damages awarded for the tort.
 - [iv] Who pays the costs of the suit.
37. This appeal arises from the consolidated judgment of Hon. L. Gicheha [Chief Magistrate] in Milimani CMCC Nos. 3524 of 2013, 3318 of 2013, 4457 of 2013, and 4473 of 2013, delivered on 30th April 2020.
38. The Respondent, William Kimutai B. Keitany, successfully sued the Appellants for defamation, securing awards of general, exemplary, and aggravated damages totaling Kshs. 3,500,000 against each of the four Appellants.
39. The Appellants now challenge the judgment on multiple grounds, primarily disputing liability and the quantum of damages.
40. The tort of defamation requires the plaintiff to establish the following;
- i. The publication of false statements;
 - ii. That the statements referred to the plaintiff;
 - iii. That the words were defamatory in nature; and
 - iv. That they were published to a third party.
41. The Respondent proved that the Appellants published an article titled "National Housing MD fired" in the Standard Group Limited Newspaper, alleging that he, alongside other officials, was dismissed for corruptly allocating multiple housing units to himself.
42. The words were unequivocally defamatory, as they imputed dishonesty and abuse of office, exposing the Respondent to public hatred, contempt, and ridicule [Rookes v Barnard [1964] AC 1129].
43. The trial court correctly held that the publication lowered the Respondent's reputation among right-thinking members of society [Sim v Stretch [1936] 2 All ER 1237].
44. The Appellants' contention that the publication was a fair report of a press conference by the Housing Minister does not absolve them.
45. While media houses enjoy constitutional protections under Articles 33 and 34 of *the Constitution* of Kenya [2010], these rights are not absolute.



46. The duty to verify facts and afford the subject a right of reply is sacrosanct [*Media Council Act*, 2013; *Nation Media Group v John Joseph Kamotho* [2010] eKLR].
47. The Appellants admitted during cross-examination that they did not seek the Respondent's side of the story, rendering their defence of "fair comment" untenable [*Musikari Kombo v Royal Media Services* [2015] eKLR].
48. The Appellants' reliance on qualified privilege and public interest fails.
49. Privilege only applies where the publisher acts without malice and responsibly [*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127].
50. In this case, the reckless publication without verification or balancing the story demonstrated malice and negligence.
51. The Respondent's subsequent acquittal in related criminal proceedings further undermined the Appellants' claim of truth or justification [*W. M. v. Standard Group Limited* [2018] eKLR].
52. The Appellants argued the award of damages was excessive, but comparable precedents support the trial court's discretion.
53. In *Simeon Nyachae v Lazurus Ratemo Musa* [2013] eKLR, the High Court upheld a Kshs. 3,000,000 award for defamation.
54. Similarly, in *WM v. Standard Group Limited* [supra], Kshs. 5,000,000 was deemed appropriate for unmitigated reputational harm.
55. The Respondent's evidence of social ostracization, professional stigma, and emotional distress justified the awards.
56. Exemplary and aggravated damages were warranted due to the Appellants' unrepentant conduct and failure to retract the falsehoods [*Cassell & Co. v. Broome* [1972] AC 1027].
57. The appeal is devoid of merit and the same is dismissed in its entirety.
58. The Respondent discharged his burden of proof, and the Appellants' defences were rightly dismissed.
59. The damages awarded were proportionate to the harm suffered and aligned with judicial precedent.
60. The judgment of the trial court dated 30th April 2020 is upheld.
61. The Appellants shall jointly and severally bear the costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 27TH JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellants

.....for the Respondent

