



REPUBLIC OF KENYA



Waweru v Chege (Civil Case 21 of 2020) [2024] KEHC 3378 (KLR) (22 March 2024) (Judgment)

Neutral citation: [2024] KEHC 3378 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 21 OF 2020
AN ONGERI, J
MARCH 22, 2024

BETWEEN

LILIAN MUDUDA WAWERU PLAINTIFF

AND

ISMAIL CHEGE DEFENDANT

JUDGMENT

1. The plaintiff in this case, LILIAN MUDUDA WAWERU (hereafter referred to as the plaintiff only) sued ISMAIL CHEGE (hereafter referred to as the defendant) seeking the following remedies;
 - i. A permanent injunction restraining the defendant from writing, publishing in whatever manner any defamatory statement about the plaintiff.
 - ii. An apology and retraction of similar prominence as the defamatory statement
 - iii. General damages for libel;
 - iv. General damages for malicious falsehood
2. The defendant filed a defence dated 7/4/2020 stating that the contents of the email were factual.
3. The plaintiff averred as follows in her plaint dated 28/1/2020 that on or about 13th October 2019, the Defendant through his email address ismailchege@yahoo.com published an email to the team managers of the National Volley Team that read as follows:

Good morning Team managers,

I hope this mail finds you well and energetic enough with the task of your teams.

I take this opportunity to thank you all for the support you have been giving me all these time I have been with you.



I know you will learn from social media why am telling you good bye, but I have found it important to inform you of what have happened and why I won't be in Kapsabet and any other volleyball event as your NSOS until further notice.

Mr. Nyaberi and Mududa alleged that, I called one team manager and told him/her that they are lovers, and many other allegations such as I don't respect some members eg

last year during playoffs, I did not respect Nyaberi in front of public, I must stand up when greeting Mududa. The allegations were countless, these are just some.

Due to their incitement and lobbying with a lot support from Mbuthia they managed to have a big number in the NEC and I was suspended for two years.

So lets wait for the decision from the next AGM to ratify it. They tried to bring it up during the last AGM and it didn't go through.

To conclude, I just apologize to any one of you whom I might have wronged without my consent during my work

And hope to meet you again as still your NSOS.

THANKS ONCE AGAIN.

Regards

Ismail Chege KVF NSOS

4. Further that the Defendant made good his promise that the recipients of his email of 13th October 2019 would be hearing from the social media why he was telling them goodbye, the following defamatory remarks under the instructions of the defendant were put out to the public on print media on an online platform known as www.dailyactive.info on or about 18th October 2019:

“EXCLUSIVE: SEX SCAM ROCKS KENYA VOLLEYBALL, TOP OFFICIAL KICKED OUT

Matters have gotten out of hands at Kenya Volleyball Federation (KVF) following the recent suspension of their Organizing Secretary, Ismail Chege.

It has now emerged that Chege was, on Saturday, suspended for two years, as a result of a leaked love affair between top officials of the federation.

A highly placed source has confirmed that First Vice —chairman Charles Nyaberi and Vice -Chairperson (Gender) Waweru Mududa are allegedly said to be an item. And that Chege is accused of leaking out the guarded secret.

It is, however, important to note that both Nyaberi and Mududa are separately married — explaining why it got messy when the allegation erupted.

In an email sent to Team Managers and seen by Opera News, Chege has mentioned the love affair as the main reason why he was kicked out of the KVF secretariat.

“I hope this mail finds you well and energetic enough with the task of your teams.

“I take this opportunity to thank you all for the support you have been giving me all this time I have been with you.



"I know you will learn from social media why am telling you goodbye, but I've found it important to inform you of what had happened and why I won't be in Kapsabet and any other volleyball event as your NSOS until further notice.

'Mr. Nyaberi (the Deputy Chairman) and Mududa (the vice chairperson-gender) alleged that, I called one team manager and told him/her that they are lovers, and many other allegations such as I don't respect some members eg last year during playoffs, I did not respect Nyaberi in front of public, I must stand when greeting Mududa (Waweru). The allegations were countless; these are just some.

"Due to their incitement and lobbying with a lot of support from Mbutia (deputy treasurer), they managed to have a big number in the NEC and I was suspended for two years.

"So let's wait for the decision from the next AGM to ratify it. They tried to bring it up during last the AGM and it didn't go through.

"To conclude, I just apologize to anyone of you whom I might have wronged without during my work and hope to meet you again," the letter read,

It's the second time Chege is being kicked out of the federation, the first one was in 2015 for alleged misappropriation of funds.

Tags: #Charles Nyaberi, #Kenya VolleyballFederation, 1, Ismael Chege, Malkia Strikers, Mududa Waweru"

5. That the words published on the online platform known as www.dailyactive.info and released to the public as a whole and was accessible to a wide audience both the general public referred and were meant to refer to the Plaintiff.
6. That in their natural and ordinary meaning, the words meant/mean and were/are understood by the right thinking members of the society to mean that:
 - a. The Plaintiff is a person of questionable character;
 - b. The Plaintiff has no integrity;
 - c. The Plaintiff's moral standing is questionable;
 - a. The Plaintiff is not professional;
 - b. The Plaintiff lacks self-respect and respect for others;
 - c. The Plaintiff is corrupt;
 - d. The Plaintiff is not fit for leadership positions;
 - e. The Plaintiff is immoral;
 - i. The Plaintiff is dishonest; and
 - j. The Plaintiff is biased.
7. That the Defendant's statements were false and actuated by malice, reckless and not based on any factual considerations, but meant to disparage the reputation of the Plaintiff and were understood to refer to the Plaintiff directly in connection with various allegations of unprofessionalism and immorality.



Particulars of malice

- a. Failing to prudently discharge his duty of care in ensuring the accuracy of the reports and statements contained in his email of 13th October 2019 to the Kenya Volleyball Team Managers and the reports and statements presented to the blogger; www.dailyactive.info;
 - b. Refusing and/or failing to consult or obtain comments from the Plaintiff before the publishing of the statements that touch on the Plaintiffs character, moral standing and professionalism; and
 - c. Refusing to give the Plaintiff an unqualified apology on account of the negative and injurious impression created as to the suspected involvement in the immoral, dishonest, unprofessional and unethical character and conduct;
8. That the Defendant's statement was actuated with malicious falsehoods the intent of which hurt the moral and professional standing of the Plaintiff.
 9. By reason of the said publication which amounts to serious libel, the Plaintiffs reputation, integrity, personality, morality and professionalism have been irreparably injured and as a direct consequence of the said publication, the Plaintiff has suffered considerable distress, humiliation, public ridicule and odium, psychological trauma and extreme embarrassment.
 10. The Plaintiff further averred that she, as a cause of the Defendants' publication, has been the face of ridicule among her colleagues, friends, even family members and the community at large linking her to alleged immorality and the suspension of the Defendant as the Organizing Secretary of the Kenya Volleyball Federation.
 11. Further that by reason of the matters aforesaid, the Plaintiff has been deeply defamed and has therefore suffered damages contrary to the high esteem that she has in the past held by right thinking members of the society.
 12. The hearing proceeded on 23/11/2023. The plaintiff who testified as PW 1 produced her witness statement dated 28/1/2020 as her evidence in chief. She stated that she has had a long and distinguished career in sports more so in volley ball. She indicated that during the period she has been in leadership in the Kenya Volleyball federation she has never been accused of any misconduct nor involved in any disciplinary proceedings.
 13. She stated that before the defendant appeared before the Kenya Volleyball Federations National Executive Committee, the defendant's disciplinary issues were raised at the annual general meeting of the year 2019 and were confirmed as worth being referred to the National Executive committee. The defendant was summoned for him to show cause for the various allegations. Following the hearing on 12/10/2019 the National Executive Committee unanimously reached a decision to suspend the defendant as the Federation's National Sports Organizing Secretary for a period of two years.
 14. On 13/10/2019 the defendant through his email address published an email to the team managers of the National Volley Team telling them that they were going to learn from social media why he was saying good bye to them.
 15. She indicated that following the email the defendant caused to be published the impugned article on 18/10/2019 on an online platform, www.dailyactive.info entitled Exclusive; Sex Scam Rocks Kenya Volleyball, Top Official Kicked Out. She noted that the article referred to her by name, the email the defendant sent was reproduced and she was identifiable as the individual referred to by the said inferences.



16. As the result of the defendant's statements and the publication she stated that she has faced ridicule among her colleagues, friends and family members linking her to the alleged immorality and the suspension of the defendant. She found it traumatizing having to persistently defend herself against the defendant's malicious accusations. Her relationship with church members who came across the publication was affected as they began shunning her and avoided associating with her.
17. In cross-examination in court the plaintiff said that the email was sent to the team managers and it was put on social media by one of the managers and splashed in 7 platforms of volley ball.
18. She said the defendant was suspended before he sent the defamatory message. He threatened the plaintiff that the message was going to be in social media.
19. The plaintiff said there were 9 allegations against the defendant that led to his suspension.
20. The plaintiff said she asked about the allegations as the defendant stood to leave. She denied that she was the source of the allegations.
21. The defendant also testified as DW1. He adopted his witness statement dated 7/4/2020 as evidence in chief.
22. The defendant stated in his written statement dated 7/4/2020 that he is the National Sport Organizing Secretary of the Kenya Volleyball Federation. On 5/10/2019 he received a service via WhatsApp that a meeting was to be held at KVF's offices on 12/10/2019. He attended the meeting and various accusations were leveled against him. A decision was made to have him suspended from his position for a period of two years.
23. He stated that upon his suspension he felt duty bound to inform the team managers of the decision. It was his averment that the contents of the email were factual. He added that he did not have a hand in the publication of the aforementioned blog.
24. In cross-examination in court, the defendant confirmed that he is the one who sent the email to the team managers and he did not know the blogger the plaintiff talked about who circulated the email in social media.
25. The defendant said he reported what the plaintiff asked him. He said in the email he repeated what the plaintiff had asked him.
26. The defendant said he was the National Secretary General of the Kenya Volleyball Federation.
27. The defendant also said in cross-examination that he was suspended for mere allegations that were not proved and within 2 months he was reinstated.
28. The defendant maintained that it was the plaintiff who was the originator of the contents of his email.
29. The parties filed written submissions as follows; the plaintiff submitted that there is no dispute that the email dated 13/10/2019 was published by the defendant. The email pointed out that the plaintiff and Mr. Nyaberi incited and lobbied the other members of the National Executive Committee to suspend him supposedly because he had called one Team Manager and told him that they were lovers.
30. Further, that it was confirmed during the hearing that no charge was raised against the defendant in respect to the rumours that he was spreading that the plaintiff and Mr. Nyaberi were in an illicit love affair.
31. The plaintiff submitted that any person reading the defendant's false statements that the plaintiff incited and lobbied for his suspension would conclude that the inferred purported illicit relationship



- between the plaintiff and Mr. Nyaberi was true hence the reason she incited and lobbied the other members of the National Executive Committee to suspend the defendant as the Federation's National Sports Organising Secretary.
32. Apart from the innuendo on the plaintiff's sexual impropriety, the defendant's defamatory remarks made her appear as a woman who is inclined to incitement and injustice against her colleagues which were words calculated by the defendant to embarrass her in her position as a leader in sports, church, business ventures and society in general.
 33. On whether the email was malicious the plaintiff submitted that it was an unconfirmed lie/falsehood without any justification whatsoever hence the evidence of malice. Whether he took it upon himself to inform the Team Managers and the Coaches of his suspension is immaterial, the decision would still have been communicated to persons affected by the suspension by the Kenya Volleyball Federation.
 34. It was the defendant's testimony that he did not assess the risk the email potentially carried and the possibility that it could spread before authoring and sharing it with the Team Managers and the Coaches. This in itself is evidence that he did not care whether the contents of the email be true or false before sending it.
 35. On the award of damages the plaintiff proposed an award of Kshs. 5,000,000 as general damages and in support cited the case of Agnes Zani v Standard Group Limited [2019] eKLR where the court of appeal awarded the Appellant who was contesting for the position of Secretary General of the Orange Democratic Movement political party Kshs. 5,000,000.00 as general damages.
 36. The plaintiff further submitted that she is also entitled to aggravated exemplary damages and proposed Kshs 1,000,000 would be appropriate in the circumstances as there has not been an apology nor a retraction on the defamatory statement from the defendant. In support the plaintiff cited among others Royal Media Services Limited t/a Citizen TV & another v Alfred Amayio Maiko [2021] eKLR, where the plaintiff was awarded Kshs. 1,000,000.00 as aggravated damages.
 37. The defendant alternatively submitted that he stood by the contents of the email he sent on 13/10/2019 to the team managers. The Defendant had just been suspended by the National Executive Committee of the Kenya Volleyball Federation and was thus informing his colleagues that he had been relieved of his duties and thus he would not be traveling to Kapsabet and neither would he participate in any other volleyball event as the National Sports Organizing Secretary.
 38. The defendant argued that he was under an obligation to inform the teams managers that he would not be available in future volleyball activities. The team managers would also be interested in knowing the reasons for the suspension of the Defendant and hence the decision by the Defendant to give the details that led to his suspension including the allegations by the Plaintiff.
 39. The defendant also argued that the plaintiff did not prove that the Defendant is the person who published the contents of the email in the blog known as www.dailyactive.info. The Plaintiff was duty bound to produce evidence that either the Defendant was the person behind the blog or that he supplied the blogger with the information published therein. The fact that the Defendant stated that he knew the managers would learn from social media why he was bidding them good bye but he found it necessary to inform them what happened meant that he knew the news of his sacking would not remain a secret.
 40. The defendant contended that defamation is hinged on the reputation of a person in the society. Although the Plaintiff made reference to people who called her on reading the words that she alleges to be defamatory, none of the said people were called as witnesses in court. It was therefore not possible



- to prove defamation in the absence of other witnesses. Thus the case herein ought to be dismissed with costs.
41. It is the duty of the plaintiff to prove her case to the required standard in civil suits which is on a balance of probabilities.
 42. The issues for determination in this case are as follows;
 - i. Whether the plaintiff has proved her case to the required standard in civil cases.
 - ii. Whether the defendant has a valid defence against the plaintiff's claim.
 - iii. Whether the plaintiff is entitled to the remedies she is seeking against the defendant.
 - iv. Who pays the costs of this case?
 43. On the issue as to whether the plaintiff proved her case against the defendant, the following are the elements of libel;
 - (1) That the defendant made a defamatory statement to a third person.
 - (2) That the statement was false.
 - (3) That the defendant was legally at fault in making the statement; and
 - (4) That the plaintiff suffered harm.
 44. I find that the defendant admitted that he sent the email to the team managers.
 45. There is evidence that the defendant said in the email he sent out that the managers were going to learn from social media why he was saying good bye to them.
 46. There is evidence that the impugned article followed the defendant's email.
 47. The defendant admitted that he published the email to the team managers and he stood by the contents of the email he sent on 13/10/2019 to the team managers.
 48. The defendant argued that he was under an obligation to inform the teams managers that he would not be available in future volleyball activities. The team managers would also be interested in knowing the reasons for the suspension of the Defendant and hence the decision by the Defendant to give the details that led to his suspension including the allegations by the Plaintiff.
 49. The defendant further said that the source of the information was the plaintiff who asked him whether it was true that he said that she was inciting the members of the association against him because he was spreading rumors that she had an affair with one Mr. Nyaberi.
 50. I find that the defendant has admitted that he sent the email in which he threatened that the issue was going to be on social media.
 51. This court must now consider whether the defendant has a valid defence against the plaintiff's claim.
 52. I find that there was malice in the way the email was worded. In *Phineas Nyagah Vs Gitobu Imanyara* [2013] eKLR it was held that:-

“Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice.
Malice may also be inferred from the relations between the parties.....



The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”

53. In his defence dated 7/4/2020, the defendant pleaded the defence of justification.
54. However, the defendant did not adduce evidence to prove that the allegations were true.
55. I find that the defendant has failed to establish that he has a valid defence against the plaintiff’s claim.
56. The plaintiff has established that the defendant is liable for tort of libel against her.
57. On the issue as to what remedies the plaintiff is entitled to, the plaintiff sought the following remedies;
 - a. General damages for libel.
 - b. Aggravated/exemplary damages.
 - c. Costs of the suit;
 - d. Interests on (a), (b) and (c) from the date of the publication of the defamatory email;
 - e. An order directing the defendant to make a full and unqualified apology and make amends and withdrawal of the defamatory statement;
 - f. A permanent injunction restraining the defendant from writing and/or publishing in whatsoever manner any defamatory statement about the plaintiff; and
 - g. Any other reliefs the honourable court may deem fit to grant.
58. I find that she is entitled to damages for libel. I award her ksh.2 million as general damages for libel.
59. The plaintiff is also entitled to an apology sent to the team manager in the same manner the email was published.
60. The apology to be tendered within 30 days of this date and in default, to pay the plaintiff Kshs. 500,000 in lieu of tendering an apology.
61. A permanent injunction be and is hereby issued restraining the defendant from writing, publishing in whatsoever manner any defamatory statement about the plaintiff.
62. I find that the plaintiff is not entitled to general damages for malicious falsehood and aggravated and exemplary damages since the general damages awarded are sufficient.
63. Judgment be and is hereby entered in favour of the plaintiff against the defendant in the sum of ksh.2,000,000 together with costs of this suit and interest at court rates from the date of this judgment until payment in full.
64. The defendant is also directed to write an apology and send the same to the team managers of the association of Kenya Volleyball Federation within 30 days of this date and in default to pay the plaintiff a further Ksh.500,000 in lieu of the same.

Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF MARCH, 2024.

.....

A. N. ONGERI



JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

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