



**Murimi v Stellan Consult Ltd & another (Civil Case 30 of 2011)
[2024] KEHC 2663 (KLR) (Civ) (15 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2663 (KLR)

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

CIVIL

CIVIL CASE 30 OF 2011

AN ONGERI, J

MARCH 15, 2024

BETWEEN

LAWRENCE NJAU MURIMI PLAINTIFF

AND

STELLAN CONSULT LTD 1ST DEFENDANT

EUNICE MATHU 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case Lawrence Njau Murimi(hereafter referred to as the plaintiff only) sued Stellan Consult Ltd and Eunice Mathu(hereafter referred to as the 1st and 2nd defendants respectively) seeking general damages for libel, aggravated and exemplary and also punitive damages and costs of this suit in respect of an article published by the defendants.
2. The plaintiff avers in his plaint dated 31/1/2011 that sometime in January 2010 at pages 12, 13 and 14 in Issue No. 282 of the said Parents magazine/ newspaper of January 2010 the Defendants jointly, deliberately, intentionally and negligently printed, published and circulated to the general public an article entitled;

"Blame it on Alcohol Says jilted wife" containing untrue, false, malicious, scandalous, scathing and libelous remarks and innuendos about and concerning the Plaintiff particularly the following passages;

"Sensible drinking can be fun, but when the boundaries of social drinking are broken, the drinker and those in his life are not spared the deathly blows of the vice. Jane Murugi Njau 's husband, a confessed teetotaler drunkenly called her one evening from the bar and declared he was now a convert of the drinking



culture The long serving graduate teacher narrates to Mwaura Muiganahow her husband of 16 years took to drinking in 2003... The man who was once a teetotaler became not only a drunkard, but also a verbal and physical abuser. Also a teacher at a secondary school, he would previously be home by 6 pm to prepare for lessons for the next day, now he frequented the bar and staggered home past 11 pm. A string of insults was his way of announcing his arrival home, and more often than not, he would beat her, only to blame it on the bottle. The couple 's daughter, Carol Wambui, then in class five, was traumatised by her father's newly acquired abrasive character. She was not spared his insults whenever he was inebriated. His drinking habit was like a double — edged sword — he stopped contributing to the family budget and pushed his daughter and wife to the edge I suspected he was having an extra-marital affair but dared not to mention it..... On September 20, 2008, I came to learn about my husband's extra-marital affair through a friend. I confirmed the allegations after my own investigations and boldly confronted my husband. This time he viciously assaulted me to an extent I feared he would kill me. It was around 3 pm and my screams attracted neighbours who included my pupils. The children screamed at him to stop beating their teacher, but he dared them to come to my rescue. It was not until the neighbours threatened to beat him that he let go of me. I cannot begin to explain how embarrassed I was to be beaten like a child in front of my pupils and neighbours. I nursed my wounds as my husband went to the bar to drink.”

3. In the particulars of negligence and malice, the plaintiff averred that the defendants;
 - i. Deliberately published the article recklessly without any care, precaution or regard to the personal, social and professional reputation and integrity of the Plaintiff.
 - ii. Deliberately took the Plaintiff's personal, social and professional reputation, integrity and dignity for granted.
 - iii. Deliberately failed to cross-check the truth or accuracy of the article with the Plaintiff or to seek to hear/publish the Plaintiff's side of the story.
 - iv. Deliberately failed to cross-check the truth or accuracy of the article with the Plaintiff's school and his professional colleagues/fellow teachers.
 - v. Deliberately failed to cross-check the truth or accuracy of the article with the Plaintiff's relatives especially his parents and siblings.
 - vi. Deliberately failed to cross-check the truth or accuracy of the article with the relevant Government authorities.
 - vii. Deliberately gave the story unwarranted and unjustifiable prominence.
4. The Plaintiff further averred that as a direct consequence of the publication and circulation of the offending article his reputation, personal, social and professional integrity, standing, character and esteem has been lowered, dimmed and brought in to disrepute, contempt, public opprobrium, odium and ridicule in the eyes of right thinking members of society and he has thereby greatly suffered loss, injury and damage.
5. The 1st and 2nd defendants filed a defence dated 21/3/2011 denying the plaint and raised the defence of fair comment on a matter of public interest at paragraph 8(g) and (h) of the Statement of Defence.



6. The plaintiff's evidence in summary is that he was married to one Jane Murugi Njau who testified as DW1 who was the contributor of the article published in parents magazine January 2010 edition.
7. The plaintiff adopted in his witness statement 12/6/2018 as his evidence in chief. He stated as follows in the said witness statement that sometime in January/February 2010 his sister Juliet Murimi and friends William Kiama and Ndiga Wambugu called him separately all asking if he had read the Parents Magazine Issue of January 2010 which he was told contained a very scandalous story narrated by his wife.
8. He stated that he purchased the said magazine and read the article. The article described him as an irresponsible reckless drunkard, wife batterer and family neglecter. Prior to the publication nobody from the magazine called or interviewed him to verify the story. It was clear that the magazine deliberately published the article without any care or truth to the accuracy of its contents.
9. He stated that he is a responsible person who takes care of his family responsibilities, a law-abiding citizen and a man of good character and moral standing in society. He is devoted to his work as a teacher and he respects his students and colleagues. Despite demand notices from his advocates for amends and apology the defendant failed to do so.
10. In cross-examination, the plaintiff said the article does not mention his name but it contains the name of their daughter.
11. The defendant called 4 witnesses who produced their witness statements as follows; DW1 Jane Murugu Njau a teacher at Sagana Primary School stated that she is the wife of the plaintiff and share one daughter, C W. She currently has a case against the plaintiff where she is seeking the division of their matrimonial property.
12. She stated that on 5/5/2009 she wrote a letter to the 1st defendant informing them that she wished to share the experience she underwent in her marriage. Sometime in July she got a phone call from Mr. Mwaura Muigana, the deputy editor of the 1st defendant. He invited her for an interview on 5/5/2009. She later met him in November 2009, where he explained that it was very important that she gives him information that is true.
13. In January 2010 the story was published and it contained exactly what she told Mr. Mwaura. She explained the reason she wanted to tell her story was to inspire other women going through a hard time. She reiterated that what she told Mr. Mwaura was true and she stands by what was published.
14. DW2 Winnie Njambi in her statement said that the plaintiff is her brother-in-law. She indicated that Jane who was married to the plaintiff complained of his bad drinking habits as elaborated in the article.
15. The incident under the subtitle 'our daughter bears the brunt' happened while she was visiting the family. Where the plaintiff slapped his daughter over an incident that involved eggs. Her sister tried to stop him from further harming their daughter but instead he turned on her. It was her statement that the incident as explained in the article happened exactly as contained in the article.
16. DW3 Lily Rono Waweru stated that she is an editor at Parent Magazine and it is her capacity as editor to prepare, re-write and edit copy to improve readability and correct errors in spelling punctuation and spelling.
17. She reiterated that DW1 wrote to the magazine wishing to share her story and that thereafter Mr. Mwaura interviewed her, wrote the story and forwarded it to the editor. DW1 provided various documents in support of her story as according to their records. The story was published in the Parents Magazine January 2010 issue.



18. DW3 indicated that the magazine has no reason to malign the plaintiff's name or damage his reputation neither do they have any interaction with the plaintiff.
19. DW4 Eunice Mathu stated that she is an editor of Parent Magazine. On 5/5/2009 she received a letter from Jane Murugi where she stated that she wished to share her story of being in an abusive relationship.
20. DW4 indicated that after reading the letter she instructed the Deputy Editor Mr. Mwaura to invite DW1 for an interview to recount her experience. Mr. Mwaura did as instructed and the article was published under the heading "Real Life Experiences". DW4 indicated that the magazine had no reason to malign the plaintiff's name and further she had never interacted with the plaintiff.
21. The parties filed written submissions as follows; the plaintiff submitted that the impugned article was published in the Parents Magazine Issue No. 282 of January 2010. The magazine did not state its exact date of publication save for January 2010. The plaintiff argued that borrowing from the provisions of section 57(a) of the *Interpretation and General Provisions Act* (Cap 2) on computation of time, in this case time started running from the next month.
22. The plaintiff submitted that the defence of unintentional defamation is predicated upon or followed by an offer of amends before or after commencement of proceedings. However, as the record shows there was no attempt by the defendants to avail themselves of the defence.
23. That the defendant further not having called the author of the article, Mwaura Muigana as a witness, the defence of unintentional libel is not available to them unless they can show that they authored the article without malice.
24. The plaintiff further submitted that the words and the entire article was about and concerning him. The words in the article and the pictures combined left no doubt that the article was about and concerning the plaintiff.
25. That the article cast the plaintiff as irresponsible and uncaring husband of Jane Murugi Njau. It cast the plaintiff as verbally and physically violent to Jane Murugi. It cast him as an uncaring father of his child Carol Wambui, an unprofessional high school teacher, a drunkard and an adulterous husband.
26. The plaintiff argued on the defence of fair comment on a matter of public interest that the particulars at paragraph 8(g) and (h) of the Statement of Defence as fair comment and of public interest, are matters that the magazine could have written in a manner without making untrue statements specific to the plaintiff.
27. The plaintiff argued that fair comment must be based on true facts and as the plaintiff has demonstrated the allegations against him are false. He contended that the words and the entire article was published negligently and maliciously without any regard to the truth or the version of the plaintiff.
28. The defendant submitted that the suit herein is time barred as the article was published in the magazine issue of January 2010 and the twelve months allowing for the suit therefore lapsed in December of the same year. The suit herein was filed in January 2011 and it follows that the same should be struck out.
29. The defendant further submitted that contrary to what has been alleged by the plaintiff, upon publication of the article he was not subjected to public ridicule, contempt and hatred or injured his reputation in his office, trade, profession or financial credit. The plaintiff went ahead and got a new job and was even promoted to head of department studies at his place of work.



30. It was the defendants argument that the plaintiff did not prove all the elements of defamation and thus his claim is unsubstantiated. The defendant further submitted that the article did not mention the name of the plaintiff and therefore does not directly identify him.
31. The defendant further submitted that it had no knowledge nor had any interaction with the plaintiff and would therefore have no reason to malign his name or damage his reputation. They therefore did not act out of malice nor recklessness.
32. The defendant argued that evidence was adduce during the hearing that the Plaintiff took a liking to the bottle in 2003. The plaintiff upon becoming a drunkard would come home late in the night and would physically and verbally abuse his wife and daughter. It is also true that the plaintiff's daughter was traumatized by the father's character. The defence of justification thus applies in this case.
33. It is the duty of the plaintiff to prove his case to the required standard in civil cases which is on a balance or probabilities.
34. The defendant submitted that this suit is statute time barred since the article was published in the magazine issue of January 2010 and the twelve months allowing for the suit had lapsed in December of the same year.
35. The defendant said that the suit herein was filed in January 2011 and it follows that the same should be struck out.
36. However, the defendant ought to have raised that issue for determination and not wait to raise it during submissions.
37. The defendant should have raised the issue as a preliminary objection since it touches on the jurisdiction of the court.
38. In the case of *Bosire Ongero v Royal Media services* [2015] eKLR, the court stated as follows;

“...the question of limitation touches on the jurisdiction of the court, which means that if a matter is statute barred, the court would lack jurisdiction to entertain it. I therefore find and hold that the preliminary objection raised in the instant case is on a point of law, and the same is validly and properly taken.”
39. The issues for determination in this suit are as follows;
 - i. Whether the plaintiff proved the tort of libel.
 - ii. Whether the defendants have a valid defence against the plaintiff's claim.
 - iii. Who pays the costs of this suit?
40. On the issue as to whether the plaintiff proved the tort of libel, 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.
41. The defendants did not deny that they published the article. It is the duty of the plaintiff to prove that the story published is not true.



42. There is evidence that the contributor (DW 1) gave her story willingly and she maintained that the same is true.
43. She said the story was published in January 2010 and it contained exactly what she told Mr. Mwaura who was reporting for the 1st defendant. She explained the reason she wanted to tell her story was to inspire other women going through a hard time. She reiterated that what she told Mr. Mwaura was true and she stands by what was published.
44. The defence of justification is raised when the words complained of are true in substance and in fact (see *Associated Leisure Ltd (photographic Equipment Co Ltd) v. Associated Newspapers Ltd* [1970] 2 QB 450 pg 456).
45. In the case of *Machira t/a Machira & Co. Advocates vs. East African Standard* (2001) KLR 638, the Court stated at page 644:
- “...A Defendant is permitted to plead justification only where it is clear that the allegations he made and are complained of are true in fact or substantially so. He cannot be allowed to set out a version . . . For him to rely on justification, he must accept the Plaintiff’s version of the statement or a statement which is in sum identical with the Plaintiff’s version.
46. In the case of *Hon. Uhuru Muigai Kenyatta vs. Baraza Limited* [2011] eKLR Judge Rawal DCJ (as she then was) held as follows;
- “While taking defence of justification or qualified privilege in the defamation case, the defendant was required by law to establish the true facts and the plaintiff has no burden to prove the defence raised by the defendant. Once verified, the justification or qualified privilege does not insert the defendant and in any event, the onus that the same is true rests on the defendants to make it a fair publication.”
47. I find that the defendants are not liable for the tort of defamation. The contributor of the impugned article testified as DW1 and said the story was her personal experience and that the same is true.
48. I therefore find that the defendants have a valid defence to the plaintiff’s claim since they reported what DW1 told them.
49. The 1st and 2nd defendants raised the defence of fair comment on a matter of public interest at paragraph 8(g) and (h) of the Statement of Defence which is valid.
50. DW1 said in her evidence that the Plaintiff took a liking to the bottle in 2003. Further that the plaintiff upon becoming a drunkard would come home late in the night and would physically and verbally abuse her and their daughter and in the circumstances, I find that the defence of justification applies in this case.
51. I find that the entire article is a matter of public interest since it relates to Gender Based Violence which is alive in our current society and also on challenges married couples encounter in the institution of marriage especially with alcoholic spouses.
52. The plaintiff was not named in the said article and further, he did not controvert the evidence of DW1.
53. I find that DW1 was exercising a legitimate right of expression and it is the duty of this court to protect and promote its constitutional mandate.



54. In the Ugandan Court of Appeal case of Kivumbi vs. Attorney-General [2008] 1 EA 174, the Court expressed itself as follows on the issue of freedom of expression;

“The fundamental right of freedom of expression is closely related to freedom of religion, belief and opinion, the right to dignity, the right to freedom of association and the right to peaceful assembly etc. These rights are inherent and not granted by the State and it is the duty of all Government agencies who include the police to respect, promote and uphold these rights”.

55. I find that the plaintiff has not proved his case to the required standard and I dismiss the same.

56. Had the plaintiff proved that the Article contained falsehoods, this court would have awarded him general damages of Kshs. 2 million. No exemplary damages would have been payable for reasons that the said general damages are sufficient.

57. However, the plaintiff did not prove his case to the required standard and I dismiss the plaintiff's case with costs to the defendants.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 15TH DAY OF MARCH, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant

