



REPUBLIC OF KENYA



**Ambe v Onyango (Civil Case 174 of 2018)
[2024] KEHC 6138 (KLR) (Civ) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6138 (KLR)

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

CIVIL

CIVIL CASE 174 OF 2018

AN ONGERI, J

MAY 24, 2024

BETWEEN

DR. SELINA VUKINU AMBE PLAINTIFF

AND

CYLLUS GODFREY ONYANGO DEFENDANT

JUDGMENT

1. The plaintiff in this case, DR. Sellina Vukinu Ambe by a plaint dated 20/7/2018 sued the defendant Cyllus Auma Godfrey Onyango seeking general damages for the tort of defamation and an injunction to restrain the defendant whether by himself, his servant and or agents or otherwise howsoever from further posting or causing to be posted words defamatory of the plaintiff.
2. The plaintiff is also seeking costs of this suit and interest.
3. The defendant filed a statement of defence dated 10/9/2018 denying the plaintiff's claim.
4. The plaintiff and the defendant are residents of Greenpark Cluster Three in Machakos county.
5. The respondent posted a message on the said Estate Whatsapp Group where they were both members in the following terms

“Isaac, you are being Modest, its bullshit period. We can't allow one person to muzzle is a deny (sil) deny our children development that they need.”
6. The plaintiff and her husband testified in this case as PW 1 and PW 2 and said the malicious post was in response to the plaintiff's decision to obtain a court order to stop developments in the estate's open ground until an ongoing case was heard and determined.



7. The plaintiff stated in her plaint dated 20/7/2018 that the contents of the said text in its natural and ordinary meaning or by imputations and innuendos were understood to mean that
 - i. She is anti social and lacks motherly and/or parental instincts.
 - ii. She hates, dislikes and intimidates children.
 - iii. She is jealousy of other people's children.
 - iv. She is mean, inhumane and insensitive to children.
 - v. She lacks candour and affection to children.
 - vi. She is a crook of the highest order.
 - vii. She is a self-conceited person with no feelings and compassion to others.
 - viii. Has a dictatorial tendency.
 - ix. She is a sadist who wishes bad luck to others.
8. The defendant said at one point he was the administrator of the Whatsapp group but he said at the time of the incident he was no longer the administrator.
9. He said the mobile number 07207XXXX46 which was used does not belong to him.
10. He said his telephone number is 0720XXX01. He said he made the post and that the words bull shit meant the act of stopping the development of the playground by the plaintiff was improper.
11. He indicated that the plaintiff was aware of the playing field when she bought the house as one is given an estate map before buying the house. He added that there was no complaint from management and as a matter of fact it even contributed money to put up swings on the playing fields.
12. The parties filed written submissions as follows: the plaintiff submitted that she is a strategic management consultant and the managing director of capacity building and research company limited with a PhD qualification from which her reputation has grown tremendously.
13. She is a resident of Green Park, Cluster three House No. 606 which she owns. By virtue of this together with her husband Mr James Jesse Abe were member of a WhatsApp group constituting of members of the cluster. The defendant was the representative of the Green Park Cluster three residents and the administrator of the group. The group had around 73 members and was used predominantly to disseminate information to the residents on matters that relate to the welfare of the cluster.
14. On 19th May 2018 the defendant wrote a defamatory text on the group which was in response to a heated debate on Cluster three WhatsApp group in reaction to the plaintiff's decision to obtain a court order stopping any developments in the cluster's open ground until an ongoing case was heard and determined.
15. The posts by the defendant generated heated and adverse response against the plaintiff from most of the 73 members of the group. It was the plaintiff's submission that the impugned statement by the defendant referred to the plaintiff, that it was undisputed that that the words were published by the defendant using his mobile phone number and communicated to other members through a WhatsApp group platform consisting of 73 members who then made adverse reactions. That finally the defamatory statements by the defendant lowered the Plaintiffs estimation before right thinking member of society.



16. The plaintiff submitted that as a result of the publication she has been shunned by other residents who no longer interact with her. She suffered serious injury to her dignity and self-confidence as she and her husband were removed from the said WhatsApp group which was a classical example of being shunned.
17. It was submitted that the statement by the defendant were maliciously and recklessly published. The wordings were disproportionate to the facts at hand as the defendant did not take his time to verify the correctness of any averments he made before he published the said words. He did not weigh the consequences such publication would have on the reputation of the plaintiff.
18. The defendant on the other hand submitted that he did not deny publishing the impugned statement, that what is in contention is whether the words published were true and capable of carrying the meaning ascribed to them by the plaintiff.
19. The defendant contended that the plaintiff did not prove that the published article brought her disrepute and caused her to be shunned by her family members, colleagues and village members. It was his argument that the plaintiff is merely speculating that she lost her repute, she does not disclose the names of the individuals who have since changed their opinion of her, neither were these neighbors called to testify to this fact. That further there was no independent evidence on how an ordinary member interpreted the words complained of as that evidence would have been the basic test of determining the natural and ordinary meaning of the words.
20. The defendant added further that the plaintiff pleaded that the message posted in the estate group affected her work but there was no evidence submitted to prove the same.
21. The defendant claimed that he was justified in commenting on the ongoing discussion on the issues affecting the estate and the children whose growth was being curtailed by the plaintiff. That the words complained of could not be motivated by spite, malevolence or malice as claimed reason being that the text message was posted by the defendant in his capacity as a resident of Green Park Estate. The WhatsApp group is the normal communication channel for residents and the defendant was reacting to another resident's comment of the unfolding situation.
22. That in fact the defendant's daughter was knocked down by a vehicle while playing on the road and as such it was his responsibility to comment on the ongoing discussion about the children's playground.
23. The issues for determination in this case are as follows
 - i. Whether the impugned words were defamatory.
 - ii. Whether the statement was malicious.
 - iii. Whether the defendant has a valid defence.
 - iv. Whether the plaintiff is entitled to the remedies he is seeking against the defendant.
24. On the issue as to whether the statement was defamatory the plaintiff must establish the following elements;
 - i. That it was false.
 - ii. That it referred to the plaintiff.
 - iii. That it was published by the defendant.



- iv. That the statement tendered to lower the reputation of the plaintiff in the eyes of right thinking members of society.
25. I find that the defendant did not deny that he published the statement in the Greenpark Cluster Three Whatsapp group.
26. It is not in dispute that it referred to the plaintiff and that it caused a debate in the group and subsequently the plaintiff was removed from the group.
27. I find that as a result of the statement, the plaintiff was shunned by the group. In the case of S M W vs. Z W M [2015] eKLR it was held that:-
- “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.”
28. I accordingly find that the statement was defamatory since it contains all the elements of defamation.
29. On the issue as to whether the statement was malicious, I find that it was made with the intention of eliciting negative comments from the group. In *Phinehas Nyagah v Gitobu Imanyara* Civil suit no. 697 OF 2009[2013] eKLR, Odunga J observed that:
- “Thirdly, the words must be malicious. Malice here does not necessarily mean spite or ill-will but recklessness itself may be evidence of malice. 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 but the law does not weigh in a fair balance and it does not follow merely because the words are excessive, there is therefore malice. Malice may also be inferred from the relations between the parties before or after publication or in the conduct of the defendant in the course of the proceedings. Malice can be founded in the publication itself if the language used is utterly beyond the facts. The failure to inquire into the facts is a fact from which inference of malice may properly be drawn. Any evidence, which shows that the defendant knows the statement was false or did not care whether it be true or false will be evidence of malice.”
30. On the issue as to whether the defendant has a malice defence, the defendant said the word bull shit referred to the plaintiff's act of stopping the development of the playground.
31. The defendant has not established that he had a valid defence against the plaintiff.
32. The impugned words had the effect of ruining the plaintiff's reputation. There was a civil way of handling the dispute other than to insult the plaintiff.
33. I accordingly find that the plaintiff is entitled to damages for defamation assessed at kshs.2,000,000 (two million).
34. 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 and interest at court rates from the date of the judgment until payment in full.
35. A permanent injunction be and is hereby issued restraining the defendant whether by himself, is servant and/or agents or otherwise howsoever from further posting or causing to be posted words defamatory of the plaintiff.



36. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
24ST DAY OF MAY, 2024.***

A. ONGERI

JUDGE

