



LAWS OF KENYA



DEFAMATION ACT

CHAPTER 36

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CHAPTER 36

DEFAMATION ACT

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SCHEDULE – NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

CHAPTER 36

DEFAMATION ACT

[Date of assent: 16th June, 1970.]

[Date of commencement: 17th June, 1970.]

An Act of Parliament to consolidate and amend the Statute law relating to libel, other than criminal libel, slander and other malicious falsehoods

[Act No. 10 of 1970, Act No. 7 of 1987, Act No.11 of 1992.]

1. Short title

This Act may be cited as the Defamation Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**legislature**”, in relation to any part of the Commonwealth which is subject to a central and a local legislature, means either of those legislatures;

“**newspaper**” means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale, and which is published in Kenya either periodically or in parts or numbers at intervals not exceeding thirty-six days;

“**parliamentary report**” means a report, paper, notes or proceedings purporting to be published by the order or under the authority of the National Assembly or the East African Legislative Assembly;

“**wireless broadcasting**” means publication for general reception by means of radio communication within the meaning of the Kenya Posts and Telecommunications Corporation Act, and “**broadcast by wireless**” shall be construed accordingly;

“**words**” includes pictures, visual images, gestures and other methods of signifying meaning.

[Act No. 7 of 1987, Second Sch.]

3. Slander affecting official, professional or business reputation

In any action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

4. Slander of women

In any action for slander in respect of words imputing unchastely to any woman or girl, it shall not be necessary to allege or prove special damage:

Provided that in any such action a plaintiff shall not recover more costs than damages unless the court shall certify that there was reasonable ground for bringing the action.

5. Slander of title, etc.

(1) In any action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage—

- (a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or
- (b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Subsection (1) of section 8 of this Act shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

6. Newspaper reports of judicial proceedings

A fair and accurate report in any newspaper of proceedings heard before any court exercising judicial authority within Kenya shall be absolutely privileged:

Provided that nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

7. Qualified privilege of newspapers

(1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless such publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish, in the newspaper in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section 4 of the Law of Libel Amendment Act, 1888, of the United Kingdom) (Act No. 51 and 52 Vict. c. 64.) immediately before the commencement of this Act or conferred by this Act.

7A. Right of reply

(1) Any person or body of persons shall be entitled to a right of reply to any factual inaccuracy affecting them which has been published in a newspaper and which is damaging to the character, reputation or good standing of that person or body of persons.

(2) Where a person or body of persons is entitled to a right of reply under subsection (1) a correction shall be printed in the next possible edition of the newspaper.

(3) The correction shall be printed free of charge and be given similar prominence as the item complained of and shall appear at a similar place in the newspaper.

(4) The correction must be of such length as is necessary to identify the original item.

(5) Any person or body of persons seeking to exercise the right of reply under the provisions of this section shall do so in writing to the editor or publisher of the newspaper within a period of fourteen days from the date of publication of the damaging material:

Provided that the right of reply shall not be exercisable after a period of six months from the publication of the relevant damaging material.

(6) In any civil proceedings for libel, the court, unless it is of the opinion that any reply under this section is either irrelevant or unreasonable in all the circumstances of the case, shall be at liberty to award an additional amount of damages together with the damages for defamation where the publisher has failed or refused to publish a correction or failed to give it the prominence required by this section.

(7) In any civil proceedings for libel instituted by a person or body of persons entitled to a right of reply who or which has failed to exercise such right in accordance with this section the court shall, in the event of it having found in favour of the plaintiff, be at liberty to reduce the amount of damages which it would have otherwise awarded by such sum as the court considers appropriate having regard to all circumstances of the case.

[Act No. 11 of 1992, Sch.]

8. Wireless broadcasting

(1) For the purposes of the law of libel and slander, the publication of words by wireless broadcasting shall be treated as publication in a permanent form.

(2) Sections 6, 7 and 7A of this Act shall apply in relation to reports or matters broadcast by wireless as part of any programme or service provided for general reception by means of a wireless broadcasting station within Kenya, and in relation to the wireless broadcasting of such reports or matters, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper, and subsection (2) of the said section 7 shall have effect, in relation to any such wireless broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which".

[Act No. 11 of 1992, Sch.]

9. Parliamentary reports

(1) In any action for libel in respect of the publication of a parliamentary report it shall be a defence for the defendant to produce to the court a certificate under the hand of the Speaker of the National Assembly or of the Chairman of the East African Legislative Assembly, as the circumstances of the case may require, that such report was published by the order or under the authority of the Assembly concerned, together with an affidavit verifying such certificate.

(2) A defendant intending to produce a certificate mentioned in subsection (1) of this section shall give to the plaintiff at least twenty-four hours notice of his intention in that behalf.

10. Copies of parliamentary reports

In any action for libel in respect of the publication of a copy of a parliamentary report it shall be a defence for the defendant to produce to the court such parliamentary report, and such copy, together with an affidavit verifying such parliamentary report and the correctness of such copy.

11. Extracts from parliamentary reports

In any action for libel in respect of the publication of any extract from, or abstract of, any parliamentary report it shall be a defence for the defendant to show that the matter in question was in fact an extract from, or abstract of, a parliamentary report and that the publication thereof was *bona fide* and without malice.

12. Publication without malice

(1) In any action for libel contained in a newspaper or other periodical publication it shall be a defence for the defendant to show that such libel was inserted in such newspaper or periodical without malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity thereafter, he inserted in the same newspaper or periodical publication a full apology for the said libel, or, if the newspaper or periodical publication in which the said libel appeared should ordinarily be published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff.

(2) The defence provided by this section shall not be available unless, at the time of filing his defence, the defendant has made a payment into court by way of amends.

13. Unintentional defamation

(1) A person (in this section referred to as the defendant) who has published words alleged to be defamatory of another person (in this section referred to as the plaintiff) may, if he claims that the words were published by him innocently in relation to the plaintiff, make an offer of amends under this section, and in any such case—

- (a) if the offer is accepted by the plaintiff and is duly performed, no proceedings for libel or slander shall be taken or continued by the plaintiff against the defendant in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);
- (b) if the offer is not accepted by the plaintiff, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him against the defendant in respect of such publication, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit made by the defendant specifying the facts relied upon by him to show that the words in

question were published by him innocently in relation to the plaintiff, and for the purposes of a defence under paragraph (b) of subsection (1) of this section no evidence other than evidence of facts specified in such affidavit shall be admissible on behalf of the defendant to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer—

- (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the plaintiff in respect of those words;
- (b) where copies of a document or record containing such words have been distributed by or with the knowledge of the defendant, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the plaintiff.

(4) Where an offer of amends under this section is accepted by the plaintiff—

- (a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the High Court, whose decision thereon shall be final;
- (b) the power of the court to make orders as to the costs in proceedings by the plaintiff against the defendant, or in proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the defendant to the plaintiff of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by the plaintiff in consequence of the publication in question,

and if no such proceedings are taken, the High Court may, upon application made by the plaintiff, make any such order for the payment of such costs and expenses as could be made in such proceedings.

(5) For the purposes of this section, words shall be treated as published by the defendant innocently in relation to the plaintiff if and only if the following conditions are satisfied—

- (a) that the defendant did not intend to publish them of and concerning the plaintiff, and did not know of circumstances by virtue of which they might be understood to refer to the plaintiff; or
- (b) that the words were not defamatory on the face of them, and the defendant did not know of circumstances by virtue of which they might be understood to be defamatory of the plaintiff,

and in either case that the defendant exercised all reasonable care in relation to the publication; and any reference in this subsection to the defendant shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) of this section shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

14. Justification

In any action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the reputation of the plaintiff having regard to the truth of the remaining charges.

15. Fair comment

In any action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

16. Mitigation of damages

(1) In any action for libel or slander the defendant may, after giving notice of his intention so to do to the plaintiff at the time of filing or delivering the plea in such action, give evidence in mitigation of damages that he made or offered an apology to the plaintiff, in respect of the words complained of, before the commencement of the action or, where the action was commenced before there was an opportunity of making or offering such apology, as soon thereafter as he had such opportunity.

(2) In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

16A. Award of damages

In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just:

Provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings.

[Act No. 11 of 1992, Sch.]

17. Consolidation of actions

(1) The court or a judge may, upon the application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamatory statement brought by the same plaintiff, make an order for the consolidation of such actions.

(2) After the making of an order under subsection (1) of this section, and before the trial of the consolidated actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamatory statement and brought by the plaintiff in the consolidated actions, shall be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(3) In a consolidated action under this section, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the court gives a verdict against more than one of the defendants it shall proceed to apportion the amount of damages so assessed between such defendants, and if costs are awarded to the plaintiff the court shall thereupon make such order as may seem just for the apportionment of such costs between such defendants.

(4) For the purposes of this section, “**defamatory statement**” means libel, slander, slander of title, slander of goods and other malicious falsehoods.

18. Agreements for indemnity

An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of such publication such person knows that the matter is defamatory and does not reasonably believe there is a good defence to any action brought upon it.

19. Proceedings affected and savings

(1) This Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose, but does not affect any proceedings begun before such commencement.

(2) Nothing in this Act shall affect the privileges of the National Assembly or the East African Legislative Assembly, or the law relating to criminal libel.

20. Amendment of section 4 of Cap. 22

Subsection (2) of section 4 of the Limitation of Actions Act (Cap. 22) is hereby amended by the addition thereto of the following:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.

SCHEDULE

[Section 7.]

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I – STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of any proceedings in public of—
 - (a) the legislature of any part of the Commonwealth other than Kenya;
 - (b) an international organization of which Kenya or the Government of Kenya is a member, or of any international conference to which the Government sends a representative;
 - (c) a person or body appointed to hold a public inquiry by the government or legislature of any part of the Commonwealth other than Kenya.

2. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth subject to a separate legislature, or of any proceedings before a court-martial held outside Kenya under any written law.

3. A fair and accurate copy of or extract from any register kept in pursuance of any written law which is open to inspection by the public, or of any other document which is required by such law to be open to inspection by the public.

4. A notice, advertisement or report issued or published by or on the authority of any court within Kenya or any judge or officer of such court or by any public officer or receiver or trustee acting in accordance with the requirements of any written law.

PART II – STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

5. A fair and accurate report of the findings or decisions of any of the following associations, or of any committee or governing body thereof—

- (a) an association formed in Kenya for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudication upon matters of interest or concern to such association or the actions or conduct of any persons subject to such control or adjudication;
- (b) an association formed in Kenya for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;
- (c) an association formed in Kenya for promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

6. A fair and accurate report of the proceedings of any public meeting in Kenya *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

7. A fair and accurate report of the proceedings at any meeting or sitting in Kenya of—

- (a) any local authority or committee of a local authority or local authorities;

- (b) any commission, tribunal, committee or person appointed for the purpose of any inquiry by or under the provisions of any written law;
- (c) any person appointed by a local authority to hold a local inquiry in pursuance of any written law;
- (d) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any written law,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

8. A fair and accurate report of the proceedings at a general meeting of a company or association constituted, registered or certified by or under any written law, not being a private company within the meaning of the Companies Act (Cap. 486).

9. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any department of the government, Minister, local authority or gazetted police officer.
