



## DEFAMATORY ONLINE PUBLICATIONS, DIGITAL THREATS TO BUSINESS AND LEGAL REMEDIES UNDER KENYAN LAW

### INTRODUCTION

The rapid expansion of digital media, online news platforms and social networking sites has transformed public discourse and access to information. While these platforms have enhanced transparency and freedom of expression, they have also created fertile ground for false, malicious and coordinated online attacks against individuals and businesses.

In recent years, Kenyan businesses, particularly those operating in regulated and trust-based sectors, have increasingly faced reputational harm arising from defamatory online publications, coordinated social media campaigns, unlawful disclosure of private information and threats of economic sabotage. When left unchecked, such conduct can rapidly escalate into operational disruption, regulatory exposure and loss of commercial confidence.

This Regulatory Alert examines the legal risks posed by defamatory digital publications, the threats such conduct presents to business continuity and the remedies available under Kenyan law, including urgent takedown and injunctive relief.

### Online defamation and corporate reputation

Defamation in Kenya is governed primarily by the Defamation Act, Cap. 36 which consolidates the law relating to libel, slander and malicious falsehoods. The Act provides the statutory framework for civil defamation claims, including the defenses and remedies available to parties harmed by defamatory publications. In addition to statute, defamation is also addressed under common law principles of tort, where courts recognize both libel (written defamation) and slander (spoken defamation).

Kenyan jurisprudence has consistently held that allegations of dishonesty made in the course of trade amount to defamation per se. In such cases, reputational harm is presumed, and businesses are not required to prove actual financial loss. This principle is particularly significant in the corporate context, where false accusations of fraud, theft or regulatory breaches can immediately erode public trust and commercial confidence.

The digital environment intensifies these risks. Online platforms enable rapid dissemination of falsehoods, algorithmic amplification of sensational content and the persistence of defamatory material in searchable archives. The cross-border reach of digital publications further compounds reputational harm, exposing businesses to scrutiny and distrust beyond their local markets.

Defamation in the online space also intersects with other statutes. The Computer Misuse and Cybercrimes Act, 2018 criminalizes knowingly publishing false information calculated to damage reputation, while the Data Protection Act, 2019 prohibits unlawful disclosure of personal data that may cause reputational or economic harm. Together, these laws create a comprehensive framework for addressing harmful online publications, ensuring that businesses have both civil and criminal remedies available to protect their reputation.

### **Coordinated online campaigns and economic coercion**

Beyond defamation, businesses increasingly face coordinated digital campaigns designed to exert unlawful pressure and force outcomes outside lawful dispute resolution mechanisms. Such campaigns may involve sensationalized articles published without verification, repeated reposting across platforms, inflammatory commentary, publication of private communications and calls for boycotts or reputational destruction.

Where such actions are undertaken with knowledge of an existing contractual or commercial relationship, they may amount to tortious interference with contract or business relations, a recognized cause of action under Kenyan common law.

### **Cyber harassment and false publications**

The Computer Misuse and Cybercrimes Act, 2018 addresses harmful online conduct, including sustained cyber harassment, knowingly publishing false information calculated to damage reputation and dissemination of misleading electronic information causing reputational or economic harm.

Liability may extend beyond the original author to publishers, administrators and persons who knowingly republish or amplify unlawful content.

### **Data protection and unlawful disclosure of private information**

A recurring feature of online disputes is the unauthorized publication of private information, including private messages, telephone numbers, images of directors or employees and sensitive operational data.

Such conduct may violate the Data Protection Act, 2019, which requires personal data to be processed lawfully, fairly, and for legitimate purposes. Unauthorized disclosure may give rise to civil liability, regulatory enforcement by the Office of the Data Protection Commissioner, and court-ordered corrective measures. These protections align Kenyan law with international data protection standards.

### **Legal remedies available to businesses**

Kenyan law provides clear and enforceable remedies for businesses facing defamatory or harmful online publications.

#### **a) Interim and permanent injunctions**

Courts may grant interim injunctions restraining further publication pending trial, as well as permanent injunctions prohibiting repetition of defamatory statements where liability is established.

#### **b) Mandatory takedown orders**

Courts may compel publishers to remove defamatory content, disable access to unlawful material and take down archived or mirrored versions under their control. These orders are particularly critical where harm is ongoing.

#### **c) Public retractions and apologies**

Courts may order retractions and apologies of equal prominence to the offending publications to correct the public record and mitigate reputational damage.

#### **d) Damages**

Remedies include general damages for defamation, aggravated damages for malice or recklessness, exemplary damages to deter egregious conduct and damages for tortious interference or data protection breaches.

**e) Regulatory and criminal enforcement**

In appropriate cases, matters may attract investigation by the Directorate of Criminal Investigations or enforcement action by the Office of the Data Protection Commissioner.

**Strategic considerations for businesses**

Businesses confronted with harmful online publications should act swiftly to preserve digital evidence, engage legal counsel early, avoid public exchanges that escalate disputes and seek urgent injunctive relief to prevent further harm. Delay often compounds damage in the digital ecosystem.

**Conclusion**

While freedom of expression remains constitutionally protected, the current legal framework draws a clear and enforceable boundary where online publications cross into falsehood, defamation, intimidation, unlawful disclosure of personal data or economic coercion. Digital platforms do not operate in a legal vacuum, and the persistence, reach and amplification of online content significantly heighten the risk and impact of reputational harm to businesses.

Kenyan law provides robust civil, constitutional, regulatory and criminal remedies, including urgent interim and permanent injunctive relief, mandatory takedown orders, public retractions, aggravated damages and regulatory enforcement. Where defamatory content remains accessible online, the harm is continuous and courts have demonstrated a growing willingness to intervene decisively to prevent irreparable commercial and reputational damage.

Early, coordinated and integrated legal action combining dispute resolution, data protection, cybercrime and regulatory strategy remain essential to protect business reputation, preserve commercial relationships and mitigate escalating digital risk in an increasingly interconnected media environment.

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Need legal guidance?

For strategic advice on managing online defamation, digital harassment and reputational risk, please contact:

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