



REPUBLIC OF KENYA



**Nation Media Group Limited & another v Gituma & another (Civil Appeal
28A of 2020) [2023] KEHC 416 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 28A OF 2020
EM MURIITHI, J
JANUARY 26, 2023**

BETWEEN

NATION MEDIA GROUP LIMITED 1ST APPELLANT

WINFRED KAGWE 2ND APPELLANT

AND

GEORGE MUGAMBI GITUMA 1ST RESPONDENT

PETER MUTABARI 2ND RESPONDENT

*(An appeal from the Judgment and Decree of Hon. E. Mbicha
(SRM) in Meru CMCC No. 270 of 2014 delivered on 4/3/2020)*

JUDGMENT

Introduction

1. By a Plaint dated 2/8/2010, the 1st Respondent herein (the Plaintiff in the trial court) sued the Appellants herein (the 1st and 2nd Defendants respectively in the trial court) and the 2nd Respondent herein (the 3rd Defendant in the trial court) and sought general, aggravated and exemplary damages for defamation together with costs and interest thereon.
2. The 1st Respondent averred that on 4/3/2010 in the daily newspaper namely Daily Nation, owned by the 1st Appellant, the 2nd Appellant while an employee of the 1st Appellant and acting on false and malicious allegations from the 2nd Respondent, and without conducting any investigations went ahead and falsely and maliciously published or caused to be published of and as concerning the 1st



Respondent to known and unknown people in the way of his profession and/or occupation in the following words that is to say:

“On November 15th, 2007, I wanted to file a divorce case at Maua senior Principal Magistrate and G.G Mugambi & Company advocates agreed to represent me at the fee agreed. I paid the amount in two instalments and attached copy of receipts to prove it. However, my lawyer never filed the case even though he repeatedly told me that he did. I found out the truth for myself at the court registry. I had to file the case on my own (Divorce cause No. 5/09). Later, the plaintiff above filed a case against me and since mugambi owed me money I asked him to represent me which he agreed to but never showed up in court. In November, 2009, I had another civil suit and sought his services again. I paid the agreed fees in full, but the case was never mentioned in court. Since then, I have been requesting him for a refund of the two cases but he has completely refused. I have booked several appointments to see him but he never honours them. I once waited for him for 8 hours but he never showed up. Now, because of his unethical actions, I lost custody and civilized up keep of my son. Please help me recover my money from the lawyer and let him pay me my financial and emotional damages caused.”

3. By the said words in their natural and ordinary meaning, the Appellants and the 2nd Respondent mean and were understood to mean that the 1st Respondent, who is a practicing advocate does not deserve to be a member of such noble profession. The said words also implied that the 1st Respondent is a cheat, a criminal who ought to be in prison, unethical, a liar, a dishonest and an evasive. By the publication of the said words, the 1st Respondent has been greatly injured in his credit and reputation and in the way of his profession and/ or occupation and has been brought into public scandal, odium, contempt, ridicule and is being shunned by members of the society, as a result of which he has lost clientele.
4. The Appellants denied the claim vide their defence dated 1/11/2010, and prayed for its dismissal.
5. The 2nd Respondent denied the claim vide his defence and counterclaim dated 25/10/2010.
6. Upon full hearing, the trial court, after dismissing the 2nd Respondent’s counter-claim, entered judgment in favour of the 1st Respondent as against the Appellants and the 2nd Respondent and awarded him General Damages for defamation of Ksh.6,000,000, Aggravated Damages of Ksh.800,000 and costs plus interests.

The Appeal

7. The Appellants filed their Memorandum of Appeal dated 20/3/2020 setting out 9 grounds of appeal as follows:
 1. The learned Magistrate erred in law and fact in holding that the Respondent had been defamed by the Appellants yet the evidence adduced did not support the Respondent’s claim(s).
 2. The learned Magistrate erred in law and fact in failing to hold that the Appellants proved that the publication was the truth and the Defence of Justification had been proved from the evidence that had been tendered by the 2nd Respondent in court.
 3. The learned Magistrate erred in law and fact in finding that the Appellants did not take any serious steps to prove their report was fair and accurate.
 4. The learned Magistrate erred in law and fact by relying on controverted and hearsay evidence and thereby arriving at a wrong determination.



5. The learned Magistrate erred in law and fact by misapprehending the Provisions of the [Defamation Act](#), Chapter 36 of the Laws of Kenya and the Schedules thereto and thereby arriving at the wrong determination.
6. The learned Magistrate erred in law and fact in awarding compensatory damages of Kenya Shillings Six Million (Kshs. 6,000,000) to the 1st Respondent, which amount is inordinately high when taking into account the evidence, the pleadings and all other factors to be considered when assessing damages for determination.
7. The learned Magistrate erred in law and fact by failing to take into account and fully consider the various authorities submitted by the Appellants before arriving at the sum of Kenya Shillings Six Million (Kshs. 6,000,000) which award was not founded on any outlined legal principal or precedent and was inordinately high.
8. The learned Magistrate erred in law and fact by awarding the sum of Kshs. 800,000 as aggravated damages without any basis in law for such an award.
9. The learned Magistrate erred in law and fact by basing the award on extraneous consideration and factors.

Duty of the Court

8. The duty of this court as the first appellate court was succinctly summarized by the East Africa Court of Appeal in *Selle and anor v Associated Motor Boat Company Ltd* [1968] EA 123, 126 as follows:

“An appeal to this court from a trial by the High Court is by way of a retrial and the principals upon which this court acts in such an appeal are well settled. Briefly put they are that, this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. In particular this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

Evidence

9. PW1 George Mugambi Gituma, the 1st Respondent herein, adopted his statement recorded on 23/5/2018 as his evidence in chief. He testified that as a result of the defamatory story published by the Appellants about him and his Law firm in the daily nation of 4/3/2010, his reputation and character were lowered to right minded members of the society:

“...Many clients took off and withdrew instructions from my firm. I was eventually forced to close down my law firm at Maua. I was also doing work for Ecobank in Mt. Kenya region who also withdrew instructions. I was also representing Maruti Merchants Hardware and supplies. I also lost that work. I was also doing work for Mutuati Farmers Sacco which involved preparation of documents. I am also a family man married with two kids. I am also a church elder with Jesus Winner Ministries. I am also the organizing secretary for Alliance Party of Kenya in Igembe North there where I come from. Out of this publication I was affected psychologically most clients started treating me as a dishonest, untrustworthy advocate. I was vindicated and shunned by people who did not want to associate themselves



with me. I lost clientele and crucial support I was getting from my law firm. The media never offered me any apology even after I served them with a demand notice....I seek compensation jointly and severally against the three defendants. Had they taken initiative to investigate this matter they would have known the truth. They never consulted me for clarification. Had they done so they would have known the truth.”

10. On cross examination by the Appellants’ counsel, he stated that:

“...I entered as agreed with 3rd defendant to represent him....I stopped representing the 3rd defendant. I called him to pay my fees. I did not file application to cease acting. The matter was at pleadings stage I incurred loss as a result of this publication. I have not presented a statement of accounts. I closed business at Maua. No cessation of office documents I used to act for Ecobank. I have not filed a letter of appointment. I have no document showing termination of business. They just stopped giving me work. No letter of termination form Maruti Merchants....The 3rd defendant filed a complaint against me which was summarily repeated. Ref letter dated 17th February 2017. The 3rd defendant complained to Kenya Human Rights Commission. I am not aware of that complainant. I am fully aware of complaint to Law Society of Kenya. Ref doc filed by 3rd defendant letter from Law Society of Kenya filed by 3rd defendant on 18th October 2018. It is sent to Charles Kimathi and Kiome advocate. It shows status of plaintiff as an advocate from 2007-2008 which is relevant matter before the plaintiff signs suit as an advocate of the high court of Kenya. There is no prejudice suffered because they have filed suit in that capacity...I cannot verify this document is from Law Society of Kenya. The title of the document is status of Gituma George Mugambi. It states in the year 2007 I was active 2008 inactive 2009 inactive – 2010 inactive. Active means an advocate is practicing. Inactive means one did not take out a practicing certificate. It shows the advocate is under suspension. In the year 2007 is when I received instructions. In 2008 I was preparing to file the appearances according to this document I was under suspension but I cannot confirm it is not addressed to me.”

11. On cross examination by the 2nd Respondent’s counsel, he stated,

“The 3rd paragraph of the document shows I was under suspension. I am not under suspension. I was not party to tribunal cause no. 120/2016. I am not a party. I am not on suspension as from 7th May 2018. In 2008 my status is indicated as inactive. In 2008 I paid for my certificate on 1st March I have not received the receipt. In 2009 I paid on 25th March I paid for my PCS in good time for that year. I represented defendant in 198/2009 and 159/2008....in 198/2009 I wrote to him on 14th April 2009 for both matters I had charged a total of Ksh.140,000/=. He only paid Kshs. 46,000. It was not sufficient to proceed even as he paid...I have not mentioned Ecobank, Maruti Merchants. I have not mentioned these 3 major clients....Nothing to show my witness was not my client. I am a business person. I am in hotel industry. I ran a restaurant. I have a licence. It is Winkers Restaurant Maua. It’s been in operational since the year 2008. It still operates. I am still in practice. I closed my Maua business due to lack of clients....in 198 I was paid 41,000/= we travelled to Nairobi to file appointment and memo of appearance. I had been paid 17,000/=. Subsequently I received other payments until it reached 41,000. He continued making partial payments. I stopped accepting partial payments and I told him to come for his files. It was not fair comment. The law society dismissed it. It was repealed and not entertained. Claim was repealed. I have never been suspended by LSK. In the year 2010 I filed in 2010. Ref PC for 2011. I was issued on 30th August 2011. Prior to 30th August I was authorized to practice. I had taken out my



practicing certificates. I didn't for 2008, 2009 and 2010. I didn't agree with the letter that in those years I was inactive."

12. On re-examination, he stated that:

"Instructions were given to me in the year 2009. I was admitted to the bar in the year 2006. I am not aware of any disciplinary cause against me filed by Peter Mutabari. He complained to LSK. I clarified issues and this complaint was summarily rejected. Not aware of the document. They are referring to. I am an advocate currently. No civil suit on professional negligence was filed against me or my law firm. I am an advocate in Meru and other towns all over Kenya. Eco bank were my clients."

13. PW2 Daniel Gikunda Anampiu, an advocate of the High Court of Kenya, adopted his witness statement dated 16/2/2013 as his evidence in chief. He went on to state that:

"I am aware that the 1st defendant published a story involving the plaintiffs, which is purely defamatory of the plaintiff. I have known the plaintiff since 2006 when he joined my office as an assistant. He worked in my office for two years. He left my office in 2007. During that time and after I knew him to be an honest professional advocate of the High Court of Kenya. I didn't notice anything unethical as published in the nation of 4th March 2010."

14. On cross examination by counsel for the Appellants, he stated that:

"The plaintiff was my assistant between 2006 and 2007. He went to open his firm in 2007. He had a practicing certificate after he left my office. I did not follow whether he took out a practicing certificate. Not aware he was suspended by the Law Society of Kenya...If an advocate operates without a practicing certificate, it is against the law. The disciplinary committee would be involved to take action. Inactive advocate means several things; may be dead, sabbatical leave, practicing with court..The plaintiff is my colleague. The plaintiff is well known to me..Not aware the plaintiff took money for 2nd defendant and did not represent him..I only saw it in the newspaper. The plaintiff told me the person was telling a lie. Not aware the plaintiff is suspended by the disciplinary committee...The story published depicted him in negative light. It has not been demonstrated to the public that it was so. My relationship with the plaintiff changed I no longer gave him briefs. I was engaging him as a practicing advocate. I would not give him briefs if I knew he did not take out practicing certificate. No counsel has a practicing certificate right now. He did conveyancing and litigation. His business was making profits. I don't know if his business operates today. Currently I don't know how his business is doing. The plaintiff stays outskirts of Meru town."

15. On cross examination by counsel for the 2nd Respondent, he stated that:

"In the year 2008-2010 the plaintiff was inactive practice. In 2007 I knew him as a good person. Not aware he changed and become bad person. I did not speak to the complainant. I did not believe the letter that the plaintiff was practicing without certificate. He was not active for 5 years. I did not follow if he was active in court in 2018. I don't of his office running. I am not the right person to decide if the problems of the plaintiff and his client were fair."



16. On re-examination, he stated that:

“The plaintiff was my associate. He left my firm and opened his in 2007. He carried out work professionally. Records of LSK can go wrong. We went digital in 2010 and had problems.”

17. PW3 Mutuma Gitonga David adopted his statement dated 3/5/2018 as his evidence in chief. He went further to state that:

“The plaintiff is known to me. I have been approaching him as an advocate for legal services. I am aware about an article written on 4.3.2010 by Nation Media Group. When I read that article I formed an opinion I was dealing with a fraudster and one who is untrustworthy. I called the advocate to find out if he was aware of the article. He told me the publication was a lie. I lost trust and withdrew services from his office.”

18. On cross examination by counsel for the Appellants, he stated that:

“I knew Gituma about 2006. I engaged his services in 2008 property business. In 2008 I visited his chambers. It is well displayed. I saw his practicing certificate on the wall. I am testifying as a client who read that publication. I knew Gituma as an advocate this business still operates at Standard Chartered building in Meru. I no longer have cases with him....Not aware inactive means he did not take out a practicing certificate. I read the article in 2010... Currently I am not engaging with him since the publication. The story in the public made me lose confidence.”

19. On cross examination by counsel for the 2nd Respondent, he stated that:

“The plaintiff was my advocate. I don't have any instruction note. I used to pay him. He used to give me receipts. They are not here. My business was registered in the year 2008... My business is PAG agencies. I formed opinion he is a fraudster, he has offices at standard bank building. I don't give him work since that publication. I formed opinion negative since that publication. I formed opinion he is of doubtful character since that time. I saw a bluish certificate on the wall.”

20. On re-examination, he said:

“I knew Gituma form 2006. He did work for me. I came to know the publication was false.”

21. DW1 Peter Mutabari, the 2nd Respondent herein, adopted his witness statement as his evidence in chief. He stated that on 15/11/2007, he instructed the 1st Respondent to file a divorce case for him at Maua. The 1st Respondent did not file the said case even after he had paid him the agreed legal fees, so he was forced to file the same by himself. When Agnes Karambu sued him in a children's case at Nairobi, he requested the 1st Respondent to act for him, since he owed him money. The 1st Respondent requested for legal fees of Ksh. 18,000 which was paid in full, but he once again failed to render any services to him. In 2008, he once more approached the 1st Respondent to act for him in another case, but the case was later thrown out for want of prosecution, even after he had paid the 1st Respondent



a total of Ksh.46,000. He filed a complaint to the advocates complainant commission, but the money was never refunded. He asserted:

“..I [do not] know why the plaintiff sued me. I did not defame him. The contents of the article are true. I wanted the article to assist me to recover my money and for the public to be aware.”

22. On cross examination by counsel for the 1st Respondent, he stated that:

“..I am an agricultural extension officer, private instructed the plaintiff to defend me. 2007 to file case. I have receipts. They don't show it was for a divorce case. I had a children case against me. Also defamation case against me. He filed documents in the children case. He filed but never appeared ref page 1 of ruling. I went to advocates disciplinary commission. I did not attend as complainant. He was suspended. I don't know what transpired there. I did an article before I went to the advocate's complaints commission. The newspaper does not determine complainants. Before doing an article the liability of the advocate had not been determined. 2007 the advocate was practicing. That is when I gave instructions. I don't know if they wrote to the advocate. If the Daily Nation had done investigations....Ref. the article....I was requesting the Daily Nation to help me. I did not complain to the police Media house will not recover money. The article was not out of malice. The paper should not have been published without the facts. I have filed the formal investigation claim against advocate. I dint have results talking of defamation of complainant. I dint have results. I don't have results from advocate tribunal. Never wrote demand letter to the advocate. In my letter I said advocate was unqualified. He did not have a practicing license.”

23. On cross examination by counsel for the Appellants, he stated that:

“...Money was received by the advocate. I trusted him. We grew up together were friends. I wrote to advocate complaints commission ref letter dated 17.2.2010. The advocate complaint commission wrote to me. They wrote to GG Mugambi 29.6.2018. Mugambi did not respond. It is copied to me. I was never copied his response. I wrote to Daily Nation. All the complaints are captured. Ref document no. 19 - letter form LSK it is dated 3rd October 2018. I instructed the plaintiff on 15th November 2007. I instructed him for children's case in 2009. Defamation suit 2008. My instructions were 2007, 2008, 2009. The latter was active in 2007 but inactive in 2008, 2009. He was suspended. The suspension relates to disciplinary tribunal case No. 120/2016. It is not because of my case.”

24. On re-examination, he stated that:

“Receipts were for legal services. I referred to plaintiff as being unethical. He took money from me and did not represent me. In 2008 his status was inactive. He filed papers for me in defamation case. In children's case he did not file papers.”

Submissions

25. The Appellants urged that the alleged defamatory article was in its proper context accurate and true in substance and fact. They urged that since the 1st Respondent had failed to provide evidence to support his case, the same ought to have failed. They faulted the trial court for failing to hold that they had proved that the publication was true and the defence of justification had been proved. They urged they did not deliberately attempt to attack the 1st Respondent's reputation, as the article merely gave a fair



report of the allegations made by the 2nd Respondent and it did not demonstrate spite or ill will or even the recklessness complained of. They faulted the 1st Respondent for failing to prove that he has lost clients after the publication of the alleged defamatory article. They urged that the evidence presented in court was clear that there was no malice in the publication of the alleged defamatory article, thereby making the defence of qualified privilege available to them, and relied on *Wycliffe A. Swanya v Toyota East Africa Ltd & Another* (2009) eKLR and *Ndung'u Njoroge & Kwach Advocates & Another v Standard Limited & 8 Others* (2018) eKLR. They urged that the general damages of Ksh. 6,000,000 were arrived at without due consideration of the evidence on record and void of any legal basis, and as such, the same ought to be set aside, and cited *Kemfro Africa Limited t/a Meru Express Service (1976) & Another v AM Lubia & Another N o. 2* (1985) eKLR and *Butt v Khan* (1978) eKLR. They proposed to the court to award the sum of Ksh. 200,000 as nominal damages, in the event it found that the 1st Respondent had indeed been defamed, in view of the fact that his reputation had long been tainted, by the suspension by LSK, and cited *Jacob Kipngetch Katonon v Nation Media Group Limited* (2017) eKLR. They urged that no evidence was adduced by the 1st Respondent to show that they had conducted themselves in a manner that caused him increased injury, and thus the award of Ksh.800,000 for aggravated damages ought to be set aside.

26. The 1st Respondent urged that the appeal was an afterthought and meant to waste the court's precious time. He accused the Appellants of coming to court with unclean hands by failing to disclose that they had already paid the entire decretal sum plus costs to him, and prayed for the appeal to be dismissed. He accused the 2nd Respondent of flouting the laid down procedure by changing advocates after judgment without leave of court or consent of the advocates. He urged the court not to disturb the trial court's award as it was based on proper adjudication, and relied on *Nicholas Kingoo Kithuka v Jap Quality Motors & Anor* (2021) eKLR, *First Assurance Co. Ltd v Florence Wavinya Mutua* (2021) eKLR and *Nancy Musili v Joyce Mbete Katisi* (2018) eKLR.
27. The 2nd Respondent did not file any submissions.

Analysis and Determination

28. The issues for determination are whether the 1st Respondent was defamed by the Appellants and the 2nd Respondent and whether the award of General Damages of Ksh.6,000,000 and aggravated damages of Ksh. 800,000 by the trial court was inordinately high.
 29. Black Law's Dictionary 8th Edition defines defamation as "the act of harming the reputation of another by making a false statement to a third person."
30. The Court of Appeal in *S M W v Z W M* [2015] eKLR, (Karanja, Mwilu & Azangalala JJ.A) held:-

"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."
31. The 1st Respondent pleaded that on 4/3/2010, the Appellants, acting on instructions from the 2nd Respondent, maliciously, falsely and without conducting any investigations, published an article in their Daily Newspaper namely the Daily Nation, which negatively impacted on his reputation as a person and an Advocate of the High Court of Kenya. As a result of the said malicious publication, which depicted him as a cheat, a liar, a criminal and an unethical person, he lost 3 of his biggest clients among other clients, forcing him to close down his law firm at Maua. His reputation, character and profession were subjected to public odium and ridicule, and he was shunned by members of the society.



PW2 and PW3 testified that their opinion of the 1st Respondent had drastically dropped after the said publication, and they had since distanced themselves from him.

32. The 2nd Respondent, even after insisting that the publication was true and accurate, and made without any malice, admitted on cross examination by counsel for the 1st Respondent that the same was indeed made before any investigations had been conducted. He stated that:

“... I did an article before I went to the advocate’s complaints commission. The newspaper does not determine complainants. Before doing an article the liability of the advocate had not been determined. 2007 the advocate was practicing.... I did not complain to the police Media house will not recover money.... The paper should not have been published without the facts. I have filed the formal investigation claim against advocate. I dint have results talking of defamation of complainant.... I don’t have results from advocate tribunal. Never wrote demand letter to the advocate. In my letter I said advocate was unqualified.”

33. Malice can be inferred from a deliberate or reckless ignoring of facts. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. Malice may also be inferred from the relations between the parties before or after the publication or in the conduct of the defendant in the course of the proceedings. (See Court of Appeal case of Raphael Lukale v Elizabeth Mayabi & anor (2018) eKLR).
34. It thus clear from the evidence on record that the publication, having been made without the requisite facts, was malicious, reckless and defamatory. The testimonies of PW2 and PW3 were consistent that the Appellants’ publication had lowered the 1st Respondent’s reputation to the right thinking members of the society.
35. This court finds that the 1st Respondent proved on a balance of probabilities, that the publication made by the Appellants in their Daily Newspaper, was not only defamatory and malicious, but also referred specifically to him and adversely lowered his reputation and character.

Inordinately high award of general damages

36. Having found that the 1st Respondent proved his case against the Appellants and the 2nd Respondent, he was entitled to damages in accordance with section 16A of the *Defamation Act*, which provides that, “In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just.”
37. In the English Court of Appeal decision of *John v MG Ltd* [1996] 1 ALL E.R. 35 the Court held that; “The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will compensate him for the wrong he has suffered. That must compensate him for damages to his reputation, vindicate his name, and take account of the distress, hurt and humiliation which the defamatory publication caused.”
38. For instance, in *Habihalim Company Limited v Barclays Bank of Kenya Limited* [2019] eKLR (J. K. Serگون J) awarded general damages of Ksh.4,000,000 for slander. In the case of *Rose Okinyi v Dinah Kerebi Nyansinga* [2020] eKLR (E. N. Maina J) awarded the appellant a sum of Ksh. 60,000 as general damages for slander. In *Joyce Wambui Njuguna v Paul Ihungo Kahenya* [2021] eKLR, (E. N. Maina J) awarded general damages of Ksh. 100,000 for slander.



Principles for appellate interference with award of damages

39. It must be remembered that the award of damages is purely at the discretion of the trial court and, as stated by in *Butt v Khan* (1981) KLR 349, (per Law JA) –
- “ [A]n appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respects, and so arrived at a figure, which was inordinately high or low.”
40. The Appellants submitted that the award of general damages of Ksh.6,000,000 was excessive, considering the fact that the 1st Respondent had already been suspended by the Law Society of Kenya.
41. This court agrees that the general damages awarded by the trial court were indeed excessive, in the circumstances, taking into account the magnitude of the allegations made in the said publication, and the fact that the same had not been repeatedly circulated. This court, however, deplores the Appellants’ and the 2nd Respondent’s conduct of publishing a defamatory article regarding the 1st Respondent’s profession, which is perceived, and rightly so, as a noble profession, deserving of the highest esteem and admiration. If, indeed, the 2nd Respondent was aggrieved by the 1st Respondent’s actions and inactions in representing him, he ought to have channelled the same to the relevant institutions for the appropriate action and/or relief.
42. This court is of the view that an award of one million (Ksh.1,000,000/-) as general damages for defamation would meet the justice of the case for libel.

Aggravated damages

43. Were there aggravating factors in this case to warrant an award of Ksh.800,000 as damages under this head? The 1st Respondent testified that he lost 3 big clients namely Eco Bank in Mt. Kenya region, Maruti Merchants Hardware and supplies and Mutuati Farmers Sacco, as a result of the said publication. On cross examination by counsel for the Appellants, he stated that:
- “...The matter was at pleadings stage I incurred loss as a result of this publication. I have not presented a statement of accounts...No cessation of office documents I used to act for Ecobank. I have not filed a letter of appointment. I have no document showing termination of business...No letter of termination form Maruti Merchants.”
- On cross examination by the 2nd Respondent’s counsel, he stated-
- “...I have not mentioned Ecobank, Maruti Merchants. I have not mentioned these 3 major clients.... Nothing to show my witness was not my client.”
44. In the circumstances of this case, it is this court’s finding that the award of aggravating damages was unjustified, as the 1st Respondent failed to prove that the closure of his law firm at Maua flowed directly from the publication of the alleged defamatory article, and the alleged loss of the 3 clients, which was not proved.

ORDERS

45. Accordingly, for the reasons set out above, this Court finds the Appellants’ appeal to be merited, and it is allowed to the extent and in the following terms:



1. The trial court's award of general damages of Ksh.6,000,000 is substituted with an award of Ksh.1,000,000/-.
2. The award of Ksh.800,000 as aggravated damages is set aside.
3. The costs of the appeal are awarded to the Appellants against the 1st Respondent while the costs at the trial court are awarded to the 1st Respondent against the Defendants therein jointly and severally.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JANUARY 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Janmohammed for the Appellants.

M/S for 1st Respondent

N/A for the 2nd Respondent

