Amolo & 3 others v Siama (Civil Appeal 19 of 2010)
[2023] KEHC 2490 (KLR) (28 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2490 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CIVIL APPEAL 19 OF 2010

WM MUSYOKA, J

MARCH 28, 2023

BETWEEN

GEORGE O AMOLO ..... 1ST APPELLANT

HILLARY OJIAMBO ..... 2ND APPELLANT

LEO ONGOMA ..... 3RD APPELLANT

OPIYO MADARA ..... 4TH APPELLANT

AND

MICHEAL OUMA SIAMA ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. SO. Omwenga, Senior Principal Resident Magistrate, delivered on 18th July 2001, in Busia RMCCC No. 200 of 1999)

JUDGMENT

1. The suit before the primary court was by the respondent against the appellants, for compensation, for defamation, allegedly arising from remarks made in a letter, dated 28th October 1998, written by the appellants, and addressed to the Busia District Commissioner, about and concerning him. The suit was opposed. The appellants filed a defence, dated 29th April 2000, amended on 2nd June 2000, where they averred that the respondent had failed in his duties to stop a public facility being alienated by his relatives, and pleaded that the said publication was innocent and they had made amends, and that they were raising the defence of justification and fair comment, and that no demand was made before suit was filed.

2. A trial was conducted. The 1st appellant and the respondent testified. The respondent, being the plaintiff, testified first. He stated that the appellants wrote a letter to the District Commissioner, alleging that he had grabbed the local cattle dip land, and had portions of it registered in the names of his relatives. He averred and produced documents, showing that the issue was raised with the authorities,

and it was resolved that there was no wrong-doing on his part. The 1st appellant testified that the respondent did not take steps to prevent the cattle dip land being registered in the names of individuals. He stated that they wrote a letter of amends, after the District Commissioner wrote to the respondent asking him to withdraw the suit. He conceded that he was among the persons who wrote the letter that triggered the suit. He stated that the said letter was addressed to the District Commissioner, and was not read to anyone else. He said that the respondent had grabbed the cattle dip land, and shared it out amongst his relatives. The court delivered a judgment on 18th July 2002, wherein it found the appellants liable for defaming the respondent.

3. The appellants were aggrieved, hence the appeal. They aver that the trial court erred in finding Fanuel O. Ocholla liable, yet he had not authored nor signed the letter complained of, the trial court allowed production of documents that had not been pleaded and that had effect of allowing the respondent to depart from his pleadings, the court failed to consider that the land originally belonged to the cattle dip but was registered in the names of the relatives of the respondent, the appellants had a right to raise legitimate complaints to the appropriate forum in public interest, the trial court did not frame and record the issues for determination, the trial court did not consider the defence, there was no evidence that the letter was published, it was not considered whether or not the letter lowered the estimation of the respondent in the minds of right thinking members of the society, the respondent did not call independent and objective witnesses, the remedy in damages for defamation was not available to public officials in the discharge of their duties, the defence of justification and fair comment and truthfulness were not considered, the provisions of section 10 of the Chiefs Act, Cap 128, Laws of Kenya, were not taken into account, the award of damages was inordinately high, and the award was not supported by any principles.

4. Directions were given on 25th September 2018, for disposal of the appeal by way of written submissions. Both sides have complied. I have written submissions herein filed by the appellants on 20th September 2021, dated 17th September 2021, and by the respondent on 22nd November, 2021, which are neither dated nor signed.

5. The appellants have grouped their 15 grounds of appeal into 5. In the first group, it is submitted that the letter complained of did not bear the subject of Fanuel O. Ocholla, the contents of the respondent's exhibits numbers 1 to 14 had not been pleaded, the lands in question belonged to the kinsmen of the respondent and members of the committee for the cattle dip only raised a concern, and based on that judgment was entered against them without basis. The second batch of grounds is with respect to failure by the trial court to frame issues, and not addressing the many issues that arose. Appollo Insurance Company Limited vs. East African Development Bank and another [2016] eKLR (Koome, GBM Kariuki & Otieno-Odek, JJA) is cited. It is suggested that there was a mistrial. The third batch of grounds is that the requisite elements of defamation had not been met. It is argued that the letter was published only to the District Commissioner, and it did not make any conclusion or express any personal opinion, for it only stated facts, and the same was written within privilege. It is submitted that the defences of justification and fair comment were not considered. They cite Andrew Mukhule Musangi vs. Standard Group Ltd [2012] eKLR (Ouko, J). The third batch of grounds plead qualified privilege, on grounds that the respondent owed the appellants a duty of care, being the Chair of their committee. They expound that, citing Halsbury's Laws of England 4th edition vol. 8 para. 109, qualified privilege would be applicable where the subject statement was made in discharge of a public or private duty, the appellants had an interest in the subject-matter, and it was made to redress a grievance. It is submitted that since the respondent was a government official, and a member of the cattle dip committee, he owed a duty to the appellants, and the letter was, therefore, made in discharge of public duty, hence it was not defamatory in nature. It is submitted that the respondent did not demonstrate how the letter subjected him to ridicule, or that he lost anything as a result. On the final grounds, the

appellants cite Kenya Tea Development Agency Ltd vs. Benson Ondimu Masese T/A BO Masese & Co. Advocates [2008] eKLR (Tunoi, Onyango-Otieno & Aganyanya, JJA) and Johnson Evan Gicheru vs. Andrew Morton & another [2005] eKLR (Tunoi, Omolo & Githinji, JJA), on what is taken into account in assessment of damages for defamation. Hezekiah Oira vs. Standard Group & another [2016] eKLR (Aburili, J) and Francis Cherono Ngeny & 11 others vs. Sammy Kiprop Kilach [2017] eKLR (Githua, J) are also cited.

6. On his part, the respondent submits, on Fanuel O. Ocholla, that he was a member of the committee, and was involved in making the decision to write the letter, and participated in writing the same. It is argued that the said Fanuel O Ocholla, never sought to distance himself from the matter at any stage. On whether the contents of the letter were defamatory, it is submitted that what is required to be proved is that the words had a propensity to lower a person's reputation in the eyes of right-thinking persons, or that they would cause the person to be rejected or disliked. Joseph Njogu Kamunge vs. Charles Muriuki Gachari [2016] eKLR (Mativo, J) is cited. It is submitted that the words were published, and the letter was not written in good faith. He cites a report by the District Officer which highlighted that the property on which the dip stood was private. He submits that the appellants had no justification to make offending utterances which they could not substantiate. He submits that the letter was publicized, to the extent that it was addressed to the District Commissioner. Finally, it is submitted that the trial court was justified in awarding damages.

7. I will start with the first band or batch of grounds. The first issue is about Fanuel O. Ocholla. It is common ground that he did not sign the impugned letter. Liability cannot attach to him on that account. He cannot be bound to the contents of a letter to which he did not subscribe, and in respect of which he cannot be said to have been an author. Secondly, he was the 7th appellant at the filing of the appeal. The appeal, with respect to him, was withdrawn on 24th September 2018, on the strength of a letter of even date, which indicated that he is since deceased.

8. The second issue in that first batch relates to documents that the respondent placed on record as exhibits. It is argued that they were not pleaded, and the court ought not have allowed them to be placed on record. Not much should turn on this ground, as the court did not rely on them to come to its final determination. Regarding them, the trial court said that no allegation of defamation had been made with respect to them in the plaint. It its own words, the trial court said: "The Plaintiff produced other letters as exhibits but there was no allegation of defamation in the plaint in connection with the other letters."

9. The third issue, in the first batch, is about the parcels of land in question belonging to the relatives of the respondent. Evidence was led to effect that some of the alleged buyers of the parcels in question were related to the respondent in one way or the other. However, no evidence was led to demonstrate that the respondent was the driver behind the registration of the said persons as owners of the subject parcels. Other than that they were related to him, there was no proof that he was the one who orchestrated the registration, and was in fact the actual beneficiary of the transactions. It was not established that the said individuals were minors, and the assets were caused to be registered in their names by the respondent, to hold for him. It would appear that the said persons were all adults, and it has not been shown why the respondent should be held vicariously liable for their actions.

10. The last issue in the batch is that the appellants had only raised a concern as a committee. The appellants, in their defence, through the 1st appellant, produced a number of documents to support their case. What emerged from those documents was that the issue of the cattle dip land was being handled by the District Officer for Matayos Division, GD Gathii. Several documents attributed to that officer were placed on record, but the most crucial, in my view, are minutes of a meeting that was held on 19th March 1998, chaired by Mr. Gathii, and attended by, among others, the respondent, some of the

appellants, the man who allegedly owned the land on which the dip stood, and the man who allegedly bought the portion where the dip stood. The appellants present were Peter G. Mondo, George Amollo, Lawrence Wanjala and Ursula Musumba. The initial owner of the land and the donor of the portion was Paul Ojiambo Muchori. The alleged buyer was Calistus Wafula Amolo.

11. The critical portion of those minutes is Min No. 3/3/98, which reads as follows:

> " MIN NO. 3/3/98: The chairman called upon Mr. Calistus Amollo to explain to the members how he came to purchase land meant for the Dip. In response, Mr. Amollo told the panel of elders that he became interested in the plot and not the Dip. It is at this stage that he approached Mzee Muchori for a ¼ acre who agreed to transact the sale deal. He however confirmed to the chairman that when he purchased the parcel of land the cattle dip was inclusive. Standing in support of the buyer Mr. Samson Nabwire who is a son of Mzee Muchori informed panel members that he witnessed when the sale discussion took place, and that the oldman indicated to him the area he wished to sale. Then from there, the team proceeded to the ground to establish the piece of land meant for the dip, and the one sold to Mr. Calistus Wafula Amollo.

Findings On The Ground

While on the ground; Mzee Muchori positively identified the area he donated for the cattle dip in 1970 thus exempting plot 127, which belongs to the Asst. Chief Michael Siama and plot No. 914 for the Hospital. At this stage, the surveyor interpreted the map and concurred with Mzee Muchori. However, the oldman failed to identify the plot he sold to Mr. Calistus Amollo before the DO and the Dip Committee members who were present thus making it difficult for the surveyor to interpret Mr. Amollo's plot on the map.

Other than where the dip stands, of which Calistus was registered as the rightful owner. After going through the land control board sittings. Mr. Calistus has since subdivided the piece of land plot No. Bukhayo/Matayos/1271 (where the cattle dip stands) into four portions and transferred them to the people indicated below by way of sale in 1985

Plot No (1271) Person Registered

New Nos

Bukhayo/Matayos/1322 Calistus Wafula Amollo

Bukhayo/Matayos/1323 Leonard Barasa Amollo

Bukhayo/Matayos/1324 Rosebella Anyango Siama

Bukhayo/Matayos/1325 Moses Dan Whako – has since sold to Mr. Martin Kunguru

As it stands, the Cattle Dip is not registered as having any piece of land despite the fact that it exists."

12. The resolutions that the committee passed following those findings are also set out in the said minutes. It is recorded as follows:

> " Resolutions
>
> The committee deliberated over the cattle dip issue and passed resolutions as under

1. The chairman to request the DC to recover four Title Deeds Nos. 1322, 1323, 1324 and 1325 respectively issued out of the Dip plot and impose restrictions on them.

2. The Committee further recommended that the government should step in and to compulsorily acquire the four pieces of land and register them as Matayos cattle Dip."

13. In compliance with those resolutions, the District Officer, as Chairman of the Committee, wrote a letter dated 26th October 1998, to the District Commissioner, in effect communicating the proceedings of the meeting of 19th March 1998. It would appear, from the wording of the letter, there was delay in making the communication, as the committee was trying to get the buyer, Calistus Wafula Amollo, to surrender the titles, but he had refused. It would appear that there were efforts to approach the other beneficiaries of those transferred, which were hampered by deaths of some of them. The letter communicated to the District Commissioner the purport of the proceedings and deliberations of that day, as well as the resolutions passed.

14. 2 days later, the appellants then wrote their own letter of 28th October 1998, to the selfsame District Commissioner. Rather than capturing the substance of the proceedings and resolutions of 19th March 1998, the appellants drew in the respondent into the matter, accusing him of getting his relatives to have the four parcels of land registered in their names. They said that one of the parcels actually belonged to him, Bukhayo/Matayos/1325, but he caused it to be registered in the name of Moses Dan Wako, who subsequently sold it to Mr. Martin Kunguru.

15. What emerges from the above is that the matter was investigated by the committee chaired by the District Officer, who was then mandated to share the substance of the deliberations and resolutions of the meeting with the District Commissioner, which he did by a letter dated 26th october1998. It is rather curious, that 2 days later, the appellants wrote the letter of 28th October 1998, to the District Commissioner, referring to the same issues but bringing in the respondent as the culprit, when the matter of the respondent in the whole saga did not arise in the meeting. The matter was in the hands of the authorities, and it was being acted upon, one would wonder why the appellants chose to write to the District Commissioner, blaming the respondent for the debacle when the role of the respondent in the same had not arisen in the meeting. The said letter was written so soon after that by the District Officer, and it conveyed facts alternative to those officially communicated by the District Officer, suggesting an ulterior motive, and perhaps an attempt to undermine the message conveyed by the District Officer, and to cast the respondent in bad light in the eyes of his superior. If the respondent was involved in some sort of mischief, why was that not raised with the District Officer, for onward conveyance to his superior, the District Commissioner.

16. The second band of the grounds of the appeal, is that the trial court did not frame the issues, and, therefore, it did not properly address all the issues that arose in the proceedings, and there was a mistrial. I agree that the trial court did not frame the issues. It also did not make an analysis of the issues in the pleadings, and the testimonies, before concluding that the respondent had been defamed. After narrating the evidence presented by the 2 witnesses, one for each side, the trial court went straight into finding that the respondent had been defamed, albeit after stating that it had considered the testimonies and the written submissions by the parties.

17. For avoidance of doubt, this is what the trial court stated at paragraph 3 of the judgment:

> "I have carefully considered the plaintiff's case and the defendant's case and the submissions filed by both Counsels. It is not in dispute that the defendants wrote the letter Ex. 1 dated 28/10/98. The letter Ex.1 was addressed to the District Commissioner Busia (K). The Plaintiff produced other letters as exhibits but there was no allegation of defamation in the plaint in connection with the other letters. I find the letter Ex.1 of 28/10/98 written to the DC Busia (K) the defendants to be defamatory. The letter EX.1 has defamed the plaintiff as it shows that he is:-

a. land grabber

b. a dishonest person

c. capable of performing public duties

d. aids and abets commission of crimes

e. he is a nepotist

> By the publication of the words in Ex.1 the plaintiff has been greatly infared in his reputation as an assistant Chief and he has been brought into scandal odium for which I find all the defendants liable. The plaintiff was an assistant chief in charge of a sublocation in Matayos Division, he was thus a civil servant in the Government Service of the Republic of Kenya. In the letter Ex.1 it is stated in Ex.1 that the plaintiff and Calistus Okello got two plots each. The letter Ex.1 further states that the cattle management committee was inactive because of the plaintiff's influence and letter Ex.1 further states that the plaintiff colluded with his cousin Calistus Wafula Akello who surveyed the cattle dip land. I find that the defendants in their letter Ex.1 defamed the plaintiff. The defendant defamed the plaintiff in the public caution in the letter Ex.1..."

18. However, the mere fact that the body of the judgment does not set out the issues, nor gives an analysis of the evidence, does not, of itself, mean that the trial court did not have the issues in mind, nor did not appreciate the evidence. It could be the case that the trial court did not frame the issues and did not analyze the evidence, but still, at the end of it, come to the correct determination. It is possible for a determination to be the correct one, although the trial court fails to frame issues or to analyze the evidence, in the body of the judgment. It is not a practice that should be encouraged, for the parties are entitled to understand how the court has come to the final determination, but that of itself does not render the determination invalid. That alone cannot render the proceedings a mistrial. In any case, the issue of finding a trial to be a mistrial, which renders the final determination null or invalid, on account of procedural challenges, is a concept in the criminal process, which is yet to be imported into civil practice.

19. The third batch of ground is that the requisite elements of defamation had not been met. The issues are around the publication being to just one individual, the letter only stated facts and was written within privilege, the same did not express a personal conclusion or opinion, and it constituted fair comment and justification.

20. Let me start by considering the elements of defamation, which is defined to mean publication of a statement that lowers a person in the estimation of right-thinking members of society or lead them to shun or avoid the person. The alleged defamation in this case falls in the category of libel, for it was published in a letter, taking a permanent form. Libel is actionable per se, without proof of damage.

There are 3 principal considerations. The first is that the words must be defamatory in their ordinary or natural meaning. What would matter would be the impression that the statement creates in the minds of right-thinking members of the public. The second consideration is that the statement must be one which refers to the plaintiff. The third consideration is that the publication must be to a person other than the plaintiff. The trial court did not make an effort, in the judgment, to indicate whether or not these elements were present in the matter that was before it.

21. The question then is whether, from the material on record, the statement made by the appellants was defamatory, when measured against the 3 elements identified above. I will start with whether the words used, in their ordinary natural meaning, were defamatory. In the letter of 28th October 1998, the main contention is around the cattle dip land. the letter indicates that the management committee had been strong all through, until the respondent settled next to the cattle dip, when problems began, for the committee became inactive, because of influence from the respondent. Then the respondent colluded with his cousin, Calistus Wafula Amollo, to have the land subdivided and registered in the names of individuals. It is asserted that one of the plots in fact belonged to the respondent, being Bukhayo/Matayos/1325, and it was only that he had it transferred to a person that he had sold it to. It is asserted that the land sold to Calistus Amollo had in fact been grabbed by the respondent.

22. Do these items highlighted from that letter suggest defamation? It is suggested that the respondent strategically moved to land next to the cattle dip, in a scheme to grab it from the community. For that reason, he weakened the cattle dip committee and colluded with his cousin to have the land subdivided, and registered in the names of individuals. It is further said that he owned one of the parcels in question. A suggestion to the superior of the respondent that he schemed to grab public land, and actually acquired a portion of it, is defamatory, when one considers the facts in the context of the minutes of 19th March 1998. The land in question, where the cattle dip stood, was owned by Mzee Muchori. He indicated that he sold it to Calistus Akello, who then subdivided it and had subtitles created and issued. In those minutes, the name of the respondent did not come up, and the appellants did not provide material to demonstrate that the respondent was the brains behind the sale between Mzee Muchori and Calistus Akello, and the subsequent subdivision, sales and transfers. They have also not provided any material to show that the respondent owned Bukhayo/Matayos/1325. The language used in the letter, of collusion and land grabbing, is not innocent, bespeaks an intent to shed someone in bad light. Anyone reading the statement would consider the subject of the letter to be a person who was not trustworthy, and who did not merit holding a public office. The words in that letter are clearly defamatory, and I fully agree with the findings by the trial court.

23. The second consideration is as to whether the statement refers to the respondent. Does it? Yes it does. Paragraph 4 of the letter refers to the respondent both in name and office, as Michael Ouma Siama and Assistant Chief. Paragraph 8(4) refers to him by his title, Assistant Chief. The same paragraph, 8, says specifically that the land sold to Calistus Akello was grabbed by the Assistant Chief. There is no doubt therefore, the words used in the statement refer to the respondent. The third consideration is as to whether the statement was published to a person other than the respondent. The said letter was not written to the respondent, but to the District Commissioner. It was, therefore, published to a person other than the respondent, with a possibility that it was exposed a lot more than just the addressee, for it could have been handled by his staff, both before and after he received it.

24. Based on what I have stated above, it would be clear that the statement in question met the test for a proper defamation case.

25. Did the letter just state facts? I do not think it merely stated facts. A true statement of facts takes the form of the minutes of 19th March 1998, a narration of the facts as they are, without embellishment or judgment, so that the recipient of the statement gets an unbiased picture of the situation. The picture

that emerged from the minutes was that the land on which the cattle dip stood belonged to Mzee Muchori. He donated a portion of it for the purpose of a hospital and the cattle dip, then sold a portion of it to the respondent, and another to Calistus Akello. The cattle dip was not on the portion sold to the respondent, but ended up in the portion sold to Calistus Akello, which was eventually subdivided and sold. The respondent, according to those minutes, was not one of those who bought the subdivisions from Calistus Akello. Those are the facts that ought to have been stated to the District Commissioner, for the objective was to secure the cattle dip, which was now sitting on land registered in the name of Calistus Akello. A mere statement of facts, ought not to include accusatory words, such as collusion and land grabbing.

26. Was the letter written within privilege? Privilege is a defence to defamation. Obviously, the appellants could not claim absolute privilege, for such would be available only with respect to parliamentary and judicial proceedings. Perhaps it could fall under qualified privilege. It would not be of the type falling under statements in pursuance of a legal, moral or social duty, for the appellants were under no such duty to make such statements to the District Commissioner, concerning his subordinates, such as the respondent. The statement was not a fair and accurate report of any meeting that the appellants attended which was protected by privilege, and even if one were to argue that the meeting of 19th March 1998 was protected by privilege, the statement in the letter of 28th October 1998 is not a fair and accurate statement or report of the proceedings of that meeting, for the issue of the respondent scheming and colluding to grab public property did not arise, going by the minutes on record. Perhaps it falls under the qualification of a common interest in the statement, by both the appellants and the District Commissioner. The appellants were subjects of both the respondent and the District Commissioner. The respondent was an officer subordinate to the District Commissioner, and, as such, the appellants and the District Commissioner had a common interest in his behaviour, and could exchange communication on it under qualified privilege. However, there is a catch, the same would be protected, subject to the communication not being prompted by malice. It would appear that the communication herein fell under qualified privilege. The question is, was it innocent or was it laced with malice? As indicated elsewhere, there was official communication on what had transpired with respect to the land in question, through a letter by the District Officer. In that communication, and the minutes on record, the respondent did not feature as the person behind the alienation of the cattle dip. The tone of the official communication was to find a solution to the problem, by legal means, as the owner of the land, who had apparently gotten the registration through legal processes, had declined to surrender the land. The cattle dip did not stand on government or public land as such, but on private land, which had been donated. It would appear that a donation for the purpose of a hospital was protected by way of transfer and registration, but that for the dip was not taken through the same process. The minutes indicate that the donor of the land for the dip was the one who sold it to Calistus Akello, and since the dip stood on private land, the Government had no way of forcing him out, unless it followed the process of compulsory acquisition. The official communication and records did not point any finger at the respondent, but, despite the records, the appellants chose to use accusatory language against the respondent, without providing proof of his complicity. One can read malice in that communication, when it accuses him of colluding to grab public land, instead of using more palatable language. Where such coarse language is used, one can read malice, and qualified privilege would be lost, as in this case.

27. On whether the same did not express a personal conclusion or opinion, one has to look at it in the context of the minutes of 19th March 1998 and the letter by the District Officer to the District Commissioner of 26th October 1998. The minutes and the letter by the District Officer just set out the cold facts, without expressing any opinion, or making any value judgment. The letter by the appellants did the opposite. It was not in neutral language, meant to leave it to the addressee of the letter to

investigate. Their letter was accusatory, and was laden with personal conclusions and opinions, that the respondent had settled next to the dip in a scheme to grab it, that the respondent colluded with Calistus Akello to buy the dip land and to have it transferred to their names, and that it identifies the respondent as a land grabber. It cannot, therefore, be said that that letter did not express personal conclusions and opinions, in view of that.

28. Did the letter constitute fair comment and justification? Fair comment is a defence to defamation, based on the fact that a person is entitled to express opinion or comment on matters of public interest. This, of course, would relate to persons who are not in the know about the matters in controversy. The appellants were not outside bystanders with regard to the matter of the cattle dip, but individuals who were managing the cattle dip. They were privy to the true facts about the land, for they were party to the meeting of 19th March 1998. They were not entitled to express opinions or make comments on matters that they were seized of as the committee of management of the cattle dip. They were privy to the true facts, and they knew that the respondent did not buy the cattle dip land from Mzee Muchori, but that that sale happened between Mzee Muchori and Calistus Akello. They knew that none of the sub-divisions from that land were registered in the name of the respondent. They had insider information, which information was different from what they were ferreting to the District Commissioner.

29. Justification is also a defence, where the defendant would be asserting that the statement was true. Was the statement by the appellants that the respondent had colluded with Calistus Akello and had grabbed the land true? The neutral facts are those contained in the minutes of 19th March 1998, and communicated to the District Commissioner by the District Officer, through his letter of 26th October 1998. They give a narration of what happened, and what can be supported by documentation. The claims by the appellants, that the respondent was the brains behind the sale of the cattle dip land, or owned some of the subdivisions sold by Calistus Akello, or grabbed the land, is not supported by any documents. Their allegations cannot be justified, when looked at as against the minutes of 19th March 1998, communicated to the District Commissioner by the District Officer through his letter of 26th October 1998.

30. The fourth batch of grounds essentially revolves around the defence of privilege, and I believe that I have dealt with it exhaustively hereabove.

31. The final batch is about assessment of damages, that the trial court did not disclose the principles it relied on in assessment of damages, suggesting that the award was merely plucked from the air. Although the appellants set out the principles in Johnson Evan Gicheru vs. Andrew Morton & another [2005] eKLR (Tunoi, Omolo & Githinji, JJA), in their written submissions before me, they have, themselves, not cited any case law that they say would have guided the court in making a fair assessment of damages. They equally did not cite any case law on assessment of damages in their written submissions that they filed before the trial court on 6th June 2002. I agree though with them, that the principles that ought to guide the court are those set out in Johnson Evan Gicheru vs Andrew Morton & another [2005] eKLR (Tunoi, Omolo & Githinji, JJA). I could add Lakha vs. Standard Limited t/a East Africa [2009] KLR (Bosire, Onyango-Otieno & Nyamu JJA). The defamation was grave, as it was directed at an officer who was way superior to the respondent, with, no doubt, an intention to cause him trouble at his place of work. His immediate superior was the Chief, and after that the District Officer, and then from there the District Commissioner. It was not demonstrated that the appellants had offered an apology.

32. In view of everything that I have said above, I find that the appeal herein has no merit, and I hereby dismiss the same, with costs.

JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28TH DAY OF MARCH 2023

W MUSYOKA

JUDGE

Mr. Etyang, Court Assistant.

Appearances

Mr. Makali, instructed by JO Makali & Company, Advocates for the appellants.

Mr. Michael Ouma Siama, the respondent, in person.