



**Dhanjal v Standard Group & another (Civil Suit 53 of 2019)
[2023] KEHC 17535 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 53 OF 2019
DKN MAGARE, J
APRIL 28, 2023**

BETWEEN

DALJIT SINGH DHANJAL PLAINTIFF

AND

STANDARD GROUP 1ST DEFENDANT

WILLIS OKETCH 2ND DEFENDANT

JUDGMENT

1. Willis Okech, a journalist in his normal duty scouring through Court proceedings in the best way he could, produced a story. His editors were pleased and had the same published at page 27 of the Standard, Kenya's oldest newspaper. The publication was done on June 25, 2019.
2. Today is the day the parties will know whether this was a wise decision or rue the day it was made. Whichever the way, it is my sincere hope that lessons will be learnt and tomorrow will be better than yesterday.

Background and Introduction

3. The impugned article was titled 'Tycoons Daughters to Get Share of his Estate - siblings to confirm today if all property documents have been surrendered.' The first part above was given prominence. With that outline the journalist gives a story, whose subject matter this judgment is concerned about. As the old adage goes, publish and be damned. These were words spoken and lived by the duke of Wellington over 220 years ago to his former mistress. It appears like this as the mantra Willis Okech, the first Defendant was operating under.
4. Today, my duty is to determine whether the Defendants were damned or not. These are normal vagaries in a journalists' life. It is expected and must be anticipated by media houses. My duty is not



to condemn either. It is to find, within the confines of the law, knowing I am walking on tight rope balancing rights and tyranny of the pen.

Plaintiff's pleadings

5. By a plaint dated July 15, 2019 the plaintiff pleaded that on July 25, 2019 June 25, 2019, the Plaintiff sought the following prayers: -
 - a. General damages for libel
 - b. Aggravated or exemplary damages for defamation.
 - c. An order of injunction directing that the Defendants do publish whether by themselves, servants or agents; an unreserved and unconditional apology in the standard newspapers as prominently, in the same page and in a similar manner as the libelous Article(sic)
 - d. A permanent injunction restraining the Defendant whether by themselves, servants or agent servants(sic) or otherwise from further publishing or causing to be published any news report, articles or words in respect of the proceedings in succession cause no 20 of 2006 in the matter of the estate of Jaswant Singh Dhanjal
 - e. A permanent injunction restraining the Defendants whether by themselves, agents or servants from publishing, further publishing, or causing to be published any statements, articles or reports defamatory to the plaintiff.
 - f. Costs of the suit

(I have corrected grammar, where possible, to avoid an uninformed reader, from thinking the same arose from my carelessness; where it is not possible, I use the words(sic).
6. In a rather strange way of pleading, the Plaintiff underlined in red, the alleged defamatory words. This is improper and should not be encouraged. This caused delay in starting to write the Ruling as I was looking for the original plaint. Order 8, Rule 7 of the [Civil Procedure Rules](#) provide as doth:
 - ' Mode of amendment [Order 8, rule 7.]
 - (1) Every pleading and other documents amended under this Order shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or, if no order has been made, the number of the rule in pursuance of which the amendment was made.
 - (2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.
 - (3) Colours other than red shall be used for further amendments to the same document.
7. The proper way is to exclude from the pleadings, non- defamatory words and write only the excerpts of words the Plaintiff are said to be defamatory.
8. The convention on Pleadings should be maintained. Nevertheless, nothing turns on this. This is due to the constitutional imperative provided by Article 159(2) (d) which dictates that the court should



administer justice without undue regard to procedural technicalities. Article 159(2) of the Constitution provides as doth: -

- ' (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles
- a. Justice shall be done to all, irrespective of status;
 - b. Justice shall not be delayed;
 - c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
 - d. Justice shall be administered without undue regard to procedural technicalities; and
 - e. The purpose and principles of this Constitution shall be protected and promoted.

9. Words complained of were said to be as a result of proceedings in an already filed case- Mombasa High Court Succession Cause No 20 of 2006- in the matter of the estate of Jaswant Boor Singh Dhanjal(Deceased).

10. For avoidance of repetition, I will set out, the words complained of and dissect the same. These words were: -

- a. Judge orders administrators of sh 15 billion estate to surrender documents to court today.
- b. The high court of Kenya has ordered that two daughters locked out of the father's estate sh 15 billion estate get equal share with three brothers
- c. On Friday, justice Mugure Thande ordered that Japspal Kaur Nagi and Sunkwnt Kaur Dhanjal Kundi had a right to get a share of tycoon Jaswant Singh Boor's estate in Kenya and Despite being married.
- d. Sukhwant and Jaspal had complained that their brothers had locked them out in sharing the estate of their father because the Plaintiff were married. The judge orders their brother, Daljit Singh to surrender all documents including title deeds and bank accounts, to court today.
- e. The Plaintiff accused Daljit of Plundering their father's estate with his in laws.
- f. The judge gave this order after she found that Daljit was wrongly appointed as the sole administrator, as that was against succession laws, which dictate that every child has a right to equal share of their father's wealth
- g. Justice Thande also ordered that the disputed property remain under the court's jurisdiction until succession dispute is determined.
- h. All property under dispute must be surrendered and remain under the court for determination by the court after hearing, said Thande.
- i. The judge made the order after Joginder and Sunkwant claimed Daljit had transferred some of the shares to himself.



- j. Fighting over the estate for the last 15 years are all expected in court today.. to confirm if Daljit has surrendered all property documents in court as per the judge's order.
11. The above words were said to be defamatory and particulars innuendos and meaning were set out in paragraphs 6 and 7 of the Plaintiff. Paragraph 8 sets out particulars of falsehoods. Particulars of malice are set out in paragraph 10 of the Plaintiff.

Defendants' Defence

12. It is important that we start with the defence offered by both Defendants.
13. Upon entering appearance on August 5, 2019, the Defendant filed a joint defence on October 1, 2019. This defence was subsequently amended. The Plaintiff state in paragraph 4, 7, 10 thereof that: -
- a. There was an error in reference to Friday.
 - b. The publication is a true reflection of the contents in the application dated March 10, 2015 and August 8, 2018 in succession cause No 8/8/2018.
 - c. The reasons given resulted in the plaintiff being replaced in the estate of the late Jaswant Singh Boor Singh Dhanjal.
 - d. The plaintiff was replaced as an administrator
 - e. The publication was in exercise of freedom of expression and media guaranteed by the Defamation Act, Article 33 and 34 of the Constitution.
 - f. The article was not actuated by malice.
14. The Defendant filed an amended defence dated October 23, 2020. The Defendants admitted the Application but denied that the same was malicious. Their defences were: -
- a. The reports were fair and accurate report of court proceedings in Mombasa high court succession cause no 20 of 2006- in the matter of the estate of Jaswant Boor Singh Dhanjal(Deceased).
 - b. The Plaintiff deny the meaning of the words in their ordinary and natural meaning, were defamatory.
 - c. In paragraph 6, the Plaintiff set out the meaning of those words. In their ordinary and natural meaning.
 - d. The Plaintiff deny the imputations and innuendos.
 - e. The Plaintiff state that the report was a true reflection of proceedings and were not reckless.
 - f. The defence offered in Articles 33 and 34 of the Constitution as their shield.
 - g. The words were justified in their bid to impart knowledge on the public. Particulars of truth and justification was set out in paragraph 13(i)- (iv)
 - h. The defence set out particulars of privilege pursuant to order 2 rule 7 of the civil procedure rules.
1. Order 2 rule 7 provides as doth: -
- ' 7. Particulars in defamation actions



- '(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense.
- (2) Where in an action for libel or slander the Defendant alleges that, in so far as the words complained of consist of statements of fact, the Plaintiff, are true in substance and in fact, and in so far as the Plaintiff is consist of expressions of opinion are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
- (3) Where in an action for libel or slander the plaintiff alleges that the Defendant maliciously published the words or matters complained of, he need not in his plaint give particulars of the facts on which he relies in support of the allegation of malice; but if the Defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the Defendant was actuated by express malice, he shall file a reply giving particulars of the facts and matters from which the malice is to be inferred.'

16. The particulars of absolute privilege were given as follows: -

- a. There is an ongoing succession cause over the Plaintiffs' father's estate
- b. The plaintiff's sisters complained of being locked out in sharing of the father's estate.
- c. The court ordered that all documents be surrendered to court
- d. The Plaintiff's siblings claimed that the plaintiff transferred some of the shares to himself.

Evidence

17. The plaintiff testified, before Hon Lady Justice Njoki Mwangi on December 6, 2021. He adopted his witness statement dated February 22, 2021 and list and supplementary list of documents. He amended the date of the cause of action as June 25, 2019 not July 25, 2019. He introduces himself as a managing director of Dhanjal Properties Ltd. He stated that the article was a fabrication.
18. On cross examination, the Plaintiff confirmed that it is the company that borrows and not himself. He was cross examined and admitted the complaint by the sisters Sunkhwant Kaur Dhanjal Kundi as set out in paragraph 36, 37 of an affidavit filed in succession cause No 20 of 2006.



19. The Plaintiff was not aware that the 1st Defendant can write matters in court. However, as the adage goes *ignorantia juris non excusat*, that is vernacular for 'ignorance of the law excuses no one'. This presumes that a person is deemed to know the law.
20. He can know directly or in fact ought to know. For plaintiffs., it is even dire as the legal advisors will always way and tell them the truth, before going to court.
21. The Plaintiff was upset because the 2nd Defendant relied on an affidavit by his sister. His view was that the standard should have waited for the Ruling of the court. P2 - Inderjeet Singh Main OGW, adopted his statement dated December 1, 2021. He has known the plaintiff since childhood. He denied that the estate could not have been 15 billion. He says that in their community women do not inherit.
22. He was not aware of full details of the case. On being shown the court order nullifying the administration and inventory he said he was not aware, of some things in the deceased's family. His ignorance was monumental. Reading proceedings, get an impression that he has a false sense of personal importance and s=eschews learning even elementary truths that we hold dear.

Defence Evidence

23. DW1 – Willis Oketch testified that he is a reporter of over 30 years. He adopted his witness statement dated September 30, 2021. He produced as bundle of documents. He says he came across a case where ladies from the Asian Community were allowed to inherit, he thought it is of public importance. He has no grudge against the plaintiff whom he referred to as the 'Contractor'.
24. On cross examination he said that the affidavit of Kaur Dhanjal Kundi was more detailed. He confirmed that there is no conflict between the article and the affidavit of Sunkhwant Kaur Danjal Kundi.

Plaintiff's Submissions

25. The plaintiff filed submissions on March 1, 2023 in 7 paragraphs he repeated the pleadings and evidence of the witnesses. I will not read the same as I have the record. The Plaintiff identifies, issues for determination and address each of the issues seriatim.
26. The first issue was whether the publication was fair and accurate. Paragraph 10 misrepresents the correct position. However, there is an admission that the Plaintiff was removed as an administrator of the father's estate.
27. The reason for removal was the agreement between the plaintiff and his uncles which the court found was not in adherence to the *Law Of Succession Act*. The grant was confirmed on June 10, 2019 by consent of the parties.
28. The Plaintiff relied on the authority of *Phineas Nyaga =vs= Gitobu Imanyara (2013) eKLR*, where Justice Odunga stated as doth, regarding similar subject matter at paragraph 15 as doth: -

- ' 15. However, before determining the above issues it is important to set out the various principles of the law of defamation. Under article 32(1) of the *Constitution* every person has the right to freedom of conscience, religion, thought, belief and opinion and provides that the freedom to express one's opinion is a fundamental freedom. Article 33(1)(a) provides that every person has the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas. However, clause (3) provides that in the exercise of the right to freedom of expression, every person shall respect



the rights and reputation of others. This, in my view, is the constitutional fulcrum of the law of defamation. Accordingly, the law of defamation is not just anchored on a statutory enactment but has been given a constitutional underpinning as well. In a tort for defamation the Court is therefore under a duty to balance the public interest with respect to information concerning the manner in which its affairs are being administered with the right to protect the dignity and reputation of individuals.'

29. The Plaintiff stated that their main issue was giving only one side of the story. The Plaintiff relied on section 1 on the code of conduct. Made under the *Media Council Act*. The allegation is that the Defendant did not address the other side of the story.
30. The Plaintiff stated that there was no order giving the tycoon's daughter properties. I note that this order de not relate to the Plaintiff. At the time of the order, the Plaintiff was not an administrator.
31. It is not his property that was being subdivided. I don't see where this refers to him. It is the other administrator, Joginder sign who could complain as an administrator. I need not say more.
32. The Plaintiff also raise issues with the finding that the Plaintiff illegally appointed himself as a sole administrator. This is contrary to submissions in paragraph 10 of their own submissions.
33. Issues 2 and 3 are basically the same issue. This is, whether the publication reflects fairly and accurately the proceedings in Mombasa HC P& A 20 of 2006. The Plaintiff seeks to explain the limits of section 6 of the *Defamation Act*, which provides as doth: -

' 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.'

34. The Plaintiff also relied on the authority of *JP Machira t/a Machira & Co Advocates v Wangeci Mwangi & another [2018] eKLR*, where the court, held as doth: -

' 32. It is clear that, to qualify for the protection of absolute privilege under section 6, a newspaper report must have the following characteristics:

- 1) It must be a report of proceedings heard before a court exercising judicial authority;
- 2) It must be a fair report of those proceedings;
- 3) It must be an accurate report of those proceedings and
- 4) It must not contain any blasphemous, seditious or indecent matter.

If this four-point Section 6 test is satisfied by the newspaper report, absolute privilege automatically attaches.



35. The Defendants placed reliance on the case *Khasakhala v Aurah (1995-1998) 1EA 112* in which the court stated at pages 118-119:

' The Defendants were reporting proceedings in a court of law. As such they were entitled to absolute privilege under section 6 of the *Defamation Act*, Chapter 36 laws of Kenya. This is not qualified privilege requiring explanation and contradiction and therefore proof of malice. But absolute privilege under section 6 will only be enjoyed by a Defendant who has made a fair and accurate report in his newspaper provided that such a report does not contain blasphemous, seditious or indecent matter'

36. Issue number 5, the Plaintiff dealt with the intention to portray the plaintiff in bad light. He relied on the authority of *Phinneas Nyaga (supra)*. The Plaintiff also pray for damages and costs.

37. The Plaintiff prayed for damages of Ksh 5,000,000/=

Defendant's Submissions

38. In a 135 page long submissions with authorities, the Defendants submitted on quantum and liability, after giving a 7 paragraph introduction. The Defendant identifies four issues namely: -

- a. Was the publication defamatory
- b. Was the publication actuated by malice
- c. Are the defences of justification, truth and absolute privilege available to the Defendants
- d. Is the plaintiff entitled to the reliefs sought.

39. The Defendants rely on their Amended defence dated October 23, 2020. The Defendant pleaded the defence of absolute privilege under Section 6 of the *Defamation Act*, as enunciated in the locus classicus case of *Khasakhala vs= Anrah 1995 – 1998 1 EA 112*, where the Court stated:-

' The Defendants were reporting proceedings in a court of law. As such they were entitled to absolute privilege under Section 6 of the *Defamation Act*, Chapter 36 laws of Kenya. This is not qualified privilege requiring explanation and contradiction and therefore proof of malice. But absolute privilege under section 6 will only be enjoyed by a Defendant who has made a fair and accurate report in his newspaper provided that such a report does not contain blasphemous, seditious or indecent matter.'

40. The Defence maintained that the publication was absolutely privileged, fair and justified as it was an accurate report by newspaper of court proceedings. This was the basis of their 3 defences, truth, justification and absolute privilege.

41. The Plaintiff also relied on the decisions of *Wycliffe A Swanya = vs= Toyota EA and another (2009) eKLR*, *Kudwoli and another =vs= Eureka Educational and Training Consultants and 2 Others (1993) eKLR*. From these decisions the Plaintiff posits that the court ought to consider the natural and ordinary meaning of words, which is gotten in the wider of the case.

42. The Defendant urged the court to look at the whole publication for context and meaning. The words must also be communicated to someone else other than the Plaintiff.

43. The last authority, calls for the context of the words uttered. Consequently, words must not be taken in isolation but as part of a whole picture. The publication must be viewed whether it is calculated to



injure the Plaintiff. This is thus a wholesome test where words which may appear defamatory may be explained away in the same article. This calls for proportionality.

44. In the case of *Radio Africa Versus Gitobu Imanyara (2013) eKLR*, was also referred to the English case of *Cassel & Co Ltd (1727) d AC 1027*, where the law Lords pointed out to the fact the baselessness of the publication should be seen from the level of award, where an officious bystander will be convinced on the defamatory character of the publication.
45. Whether the publication was malicious. Defendant relied on the decision of Phineas Nyaga =vs= Gitobu Imanyara (2013) eKLR. Their view was that the complaint by Shukhwant Kaur Dhanjal Kundi, the plaintiff's sister is that her complaint was that the plaintiff was using the late father's estate asset for sole beneficial use and that is the fact the Defendant reported on.
46. Further, the Defendant placed a heavy burden on themselves as seen in section 14 of the law of *Defamation Act*. They relied on the decision of Mativo J, (as then he was) in *Joseph Njogu Kamunye =vs= Charles Muriuki Gachari (2016) eKLR*, where the Court stated: -

' Terminologically, justification as used in the law of defamation, means 'truth'. The defence calls for the Defendant to demonstrate that the defamatory imputation is true. He cannot get away with it by saying that he believed that the matter complained of was true. He has a burden to prove the words are true.'
47. The Defendants state that the plaintiff entered into an agreement dated March 9, 2006 where the plaintiff distributed the estate and excluded the two daughters. The position was supported by PW2 who stated that Indian girls are not supposed to inherit.
48. The Defendant therefore prayed I dismiss the suit. In their view is that an award of Ksh 600,000/= as damages is sufficient.
49. This was informed by the decision of *Cecil Guyana Miler = vs= Nation Media Group and another (2016) eKLR*, *Mary Koli Kitonga = vs= Ghetto Radio Ltd (2020) eKLR*, *Jacob Kipngetich Katito =vs= Nation Media Group (2017) eKLR* and *Bernard Sisungu =vs= tom alwaka T/a weekly citizen & Anor (2007) eKLR*.

Analysis

50. Analyzing the pleadings, I note that four issues arise, they are: -
 - a. Whether the publication of June 25, 2019 was defamatory.
 - b. Whether the publications refer to the plaintiff
 - c. Whether the defences set up by the defence are tenable
 - d. Reliefs available
51. It is important to remember the words of *Gatley on Libel and Slander*, where the learned authors define defamation as follows:

' The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally. To be



defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency. A true imputation may still be defamatory, although its truth may be a defence to an action brought on it; conversely untruth alone does not render an imputation defamatory.'

Whether the words refer to the plaintiff.

52. Whether, the words are defamatory or not, we don't want to waste judicial time solving things that do not relate to the Plaintiff. As at June 25, 2019, the administrators of the estate were Joginder Singh Danjal and Sunkhwant Kaur Danjal Kundi. Therefore, any reference to administrators refer to the duo.
53. The alleged defamatory words, set out in paragraph 5 of the plaint, and repeated in paragraph 10 of this judgment, can be divided into 2. Words that do not refer to the plaintiff and words referring to the plaintiff directly or through innuendo.
54. I will deal with each of the 10 sets of words said to be defamatory.
 - a. Paragraph (a) does not refer to the Plaintiff. The administrators were Joginder Singh Danjal and Sunkhwant Kaur Danjal Kundi. He has no locus to complain.
 - b. Paragraph b, refers indirectly to the Plaintiff. However, the words are true since by a grant given on June 10, 2022 but issued on June 22, 2019, the court ordered the property to be shared equally. There is a certificate of confirmation of grant to that effect.
 - c. Paragraph b is correct. The two daughters complained of not only being locked out but being locked out by the Plaintiff. The court heard and determined the Application on grant of indeed, the certificate for confirmation of grant dated April 26, 2007, which is the last document in the Plaintiff's list of documents, the two sisters are excluded.
 - d. Dhanjal Properties ltd, which is one of the properties of the estate is what the plaintiff proudly said to be his business and he is a director therein.
 - e. Certificate of renunciation were prepared in Mombasa for sisters who were out of the country.
 - f. Paragraph c and d are covered by the exhibits produced by the Defendant, the affidavit of were Sunkhwant Kaur Danjal Kundi.
 - g. Paragraph e is proved by the Plaintiff's own testimony regarding the agreement set out in paragraph 10 of the submissions.
 - h. The application filed by Joginder Singh to remove the Plaintiff is self-evidence regarding the complaint in paragraph f.
 - i. paragraph g and h do not refer to the Plaintiff.
 - j. Paragraph i is borne out of proceedings. The ruling of October 13, 2016 is sufficient. The memorandum of November 25, 2005 signed away a huge chunk of the estate to third parties for a benefit to himself. All these documents show that the Plaintiff were part of court proceedings and as at the time of publication, were true reflection of the court process.
 - k. Paragraph j is true in fact. The cause was filed in 2006. The decision was in 2019. It is not a short period.
 - l. The issue of the value of the estate is not the domain of the Plaintiff. There are administrators with rights to protect the estate. In any is valuing and under valuing the estate is not defamatory. To beneficiaries.



55. It is shocking that despite the Ruling of the Court nullifying the settlement agreement as fundamental and contrary to Section 45 of the Act, the plaintiff still uses the same in this case as if nothing real happened. To him the Ruling by justice Mugure Thande was a set of ignorable suggestions.
56. The court has already rendered a decision on the issue of intermeddling with the estate against the Plaintiff. There had been appeal against such binding. They are binding in rem.
57. It then remains that the plaintiff was removed as an administrator pursuant to an affidavits sworn in the file by Joginder Singh and Sunkhwant Kaur Danjal Kundi.
58. I have placed the article side by side with the evidence on record. I see no falsehood. If for any reason, the article lowered the dignity of the plaintiff, it is not because, it is false, it is that the plaintiff had falsely placed himself in high echelons of moral probity, when the reverse is true.
59. It was simply adjustment to this correct moral worthiness. Consequently, I find no defamation for three reasons;
 1. The information published is a correct fair and accurate record of court proceedings.
 2. The words themselves even if were false are not defamatory.
 3. Most of the words do not by innuendo or directly refer to the plaintiff.
 4. The words are absolutely privileged being a true reflection of the court record. Any minor deviation are clerical and fairly understandable.
 5. From the Ruling of Justice Thande, the words published are true in fact.
60. This case therefore should be dismissed. The words as published were not defamatory and are privileged absolutely.
61. There was a small issue that the estate is not worth 15 billion. This can only be raised on behalf of the estate of the deceased. The worth of the father's estate has nothing to do with the son's standing.
62. The prayer for an injunction against publication against the estate of the late Jaswant Singh Boor Singh Danjal (deceased) is a nonstarter. The Plaintiff was removed as an administrator for fraudulently dealing with the estate and failing to administer the same. It is only the administrators who can sue on behalf of the estate. He is not one of the administrators. He was not one when he filed suit. Only lawful representatives of that estate can sue for such an order.
63. In so far as the estate of the late Jaswant Singh Boor Singh Danjah (deceased) is concerned the Plaintiff is a busy body with no locus to sue. That prayer is thus dismissed in limine.

Damages

64. The Plaintiff submitted that an award of 5,000,000/= could have sufficed. The plaintiff did not show how the information, if it was true it could have affected. It is allegation where his companies were affected. The companies allegedly defaulted in their obligations and lost respect. That could be well so. The companies were not party to this suit. They were never defamed.
65. In *Joseph Kobia Nguthari v Kiegoi Tea Factory Company Limited & 2 others [2016] eKLR*, the court stated as doth: -

' My understanding of the said provision in the Election Manual is that the litigation envisaged therein is with the company and not with the shareholders or directors or its



officials. This follows after the greatest legal innovation of separate corporate legal entity which was formulated in the case of Salomon Vs Salomon [1897] AC 78, that:-

'The company is at law a different person and altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act'.

66. Given that the companies chose not to sue, I take it that they are satisfied with their status. This fact can also be turned on its head. It became clear that some of the companies belong to the estate of the late Jaswant Singh Boor Singh Danjal (deceased). It is the same estate the Plaintiff is accused of keeping his sisters off. He now calls his father's companies his.
67. It also was clear that certain arrangements that had been made through a 'settlement agreements' which distributed the estate and excluded 2 heirs of the estate. Instead of the sisters and his two brothers, the Plaintiff included uncles and other persons, without authority to do so. These arrangements were made by the plaintiff in total disregard of section 45 of the Succession Act,. Section 45 of the succession act provides as follows: -

' No intermeddling with property of deceased person

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall—
 - (a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) Be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

68. When he distributed the estate, he was not an administrator. Essentially he was an intermeddler. To make matters worse the Plaintiff's brother applied to set aside the grant under section 76 of the [Law Of Succession Act](#). The said section provides: -

- a. 'Revocation or annulment of grant A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
 - i. That the proceedings to obtain the grant were defective in substance;
 - ii. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- b. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



69. The complaint which I find in the court record was by the plaintiff's sisters and brother. This was that the Plaintiff concealed the existence of the sister and forged the renunciation forms. The sisters were not in the country at the time they alleged renounced their rights in favour of and the benefit of, among others er the Plaintiff.
70. The above position was granted judicial authority when Justice Mugure Thande allowed the applications by the sister and the brother, Joginder Singh Danjal. The record shows, and it has not been set aside on appeal that the brother and sister's allegation of fraud against the plaintiff were proved. This resulted in the Plaintiff being removed as an administrator. All these events occurred and are recorded in the court records.
71. Instead of keeping peace after admitting the fraud (not his words, but that is the effect of transferring the deceased property to himself and Third parties) he alleged he did so through coercion. He never annexed any report of him complaining to the police that he was forced to sign documents of title to himself and his uncles. In short though the settlement agreement, he tried and almost succeeded in disinheriting the sisters. This is what the Defendants called locking out of the father's estate. There is no twisting of the king's English to have a different meaning to the Plaintiff's works and deeds.
72. The Plaintiff's witness was not useful. He is a man mired in 13th century Indian culture that was swept away and has not been in place in the last 400 years. Inheritance by girls is part of the Indian and Kenyan culture and constitutional order. Honestly, I don't know the value of such a witness. To his credit he confirmed, not in many words, that the words as published were true in fact that
73. Other than the foregoing, the record in HC P& A 20 OF 2006 confirms that at the end of the day the plaintiff was removed for misconduct as an administrator. That is a fact Judicially determined and there is no appeal to date.
74. Even if the Defendants were to be divested of the defence absolute privilege, the defence of justification succeeds. It is not just to believe that the words were true. The words published were true in fact. It is true that the words portray the plaintiff as a fraudulent man, a cheat, a crook, a liar fraudulent and corrupt.
75. I have not found evidence that the foregoing is a lie. The Plaintiff blatantly attempted to defraud the estate and lock out his sisters. In law we call it disinherit. This was before Hon Justice Thande ran him out of town and stopped his fraudulent activities, thanks to the Application by the current administrators of the estate of Jaswant Boor Singh Dhanjal (Deceased), that is, Joginder Singh Danjal and Sukhwant Kaur Danjal Kundi.
76. The Intended victims were his own siblings. The transfer of estate property to his name and amounted to enriching himself from the estate without letters of administration and sanction of the court. The plaintiff sadly, had the audacity to come and say he was defamed. The choice words he used on himself reflect the man I get from the proceedings.
77. Paragraph 8 of the plaint contains untruths as it has become apparent from the evidence. Each of the particulars are apparent from the proceedings as can be seen below: -
 - a. The issue of marriage of the sisters was subject of proceedings for revocation at paragraph 83 of the affidavit dated August 1, 2018 by the Plaintiff's sister, Sukhwant Kaur Danjal Kundi
 - b. The question of an order to surrender the estate property is on record. It was given in relation to fraudulent transfer vide an agreement dated March 9, 2006, christened, 'settlement agreement'.



- c. A court order had been issued and admittedly so to remove the plaintiff unfit to be an administrator and the court replaced him with his bother Joginder Singh and thereafter on of the sisters was included.
- d. The court did not sit on June 22, 2019 but the relevant order was extracted on the said date.
- e. The plaintiff transferred to himself land parcel number as per the proceedings. This issue was raised by the Advocates on record and conceded by the Plaintiff. He had his explanation. However, the explanation does not make the words published untrue.

Defence of Absolute privilege.

- 78. Notwithstanding the truth so far proved, the Defendants were entitled in fact to rely on the defence of absolute privileges. The defense is not applicable if the publication was actuated by malice. I have been unable to see evidence of malice. I cannot do so without stretching the facts.
- 79. The Defence was thus applicable. This is because each of the matters were covered in the court proceedings and the ruling of the high court. Media can be ruthless sometimes but where the truth is, it must stand out like a sore thumb. The truth must remain, however, ugly it appears. There was no character injured. In fact, the article exposed the Defendant for who truly he is, a fraud.
- 80. The defendant was able to discharge the burden of proof on them. In JP Machira t/a Machira & Co Advocates v Wangethi Mwangi & another [2018] eKLR the court stated ,

' 33. The defendants placed reliance on the case *Khasakhala v Aurah* (1995-1998) 1EA 112 in which the court stated at pages 118-119:

'The defendants were reporting proceedings in a court of law. As such they were entitled to absolute privilege under section 6 of the *Defamation Act*, Chapter 36 laws of Kenya. This is not qualified privilege requiring explanation and contradiction and therefore proof of malice. But absolute privilege under section 6 will only be enjoyed by a defendant who has made a fair and accurate report in his newspaper provided that such a report does not contain blasphemous, seditious or indecent matter'

- 81. There was no allegation that the report contained not contain blasphemous, seditious or indecent matter. In any case, the plaintiff does not fall into the categories that can sue for blasphemy or sedition.
- 82. The error on the date is an error only the court can complain of, in terms of the reporting of its proceedings. To enable me deal with whether the complained words were defamatory, it is important to note that the article was written in the context of court proceedings.
- 83. The equality of shares between the 2 sisters and three brothers is borne from the certificate of confirmation of grant dated June 14, 2019. To that extent, the report is fair and accurate. As to whether the sisters had been locked out of the estate, it is clear that the objectors Jaswant Joginder Singh Dhanjal and Surkhwat Kaur Dhanjal Kundi are the administrators of the confirmed grant.
- 84. However, the Applicant for letters of administration as seen from the form S1 is the plaintiff Daljit Singh Dhanjal. It is therefore true in fact that the plaintiff was removed as an administrator. I have also confirmed that the confirmation into equal shares was done by Justice Mugure Thande, Judge.



85. I have equally read lengthy affidavits by the plaintiff and the sisters of particulars interest are paragraphs 32, 38 and 40 of the plaintiffs witness statement dated January 29, 2018., which is in the court file which state as follows
- a. After confirmation of grant, and agreed in the settlement agreement I conveyed my father's shares in Dhanjal investments and Dhanjal properties to the 3 uncles the consideration of which was a sum of 1000/=
 - b. Form 38 – succession included mandatory consent to be signed by all the beneficiaries for two beneficiaries, namely Jaspal and Sukhwant these consent had to be witnessed by a recognized persons in UK which was allegedly done but there is now denial her intention not to benefit from the estate. At paragraph 40 of her affidavit, Sukhwant, states as follows: -

' As a legal and bona fide beneficiary I have not benefited from the estate of my late father due to intermeddling and poor administration by the former administrator.'

 13. The Plaintiff proceeded that the sister like all beneficiaries renounced their right to take the administration of the estate. On June 10, 2019, parties agreed in the court, that the letter be revoked.
86. Further from pages 10, there is a confirmation that land Parcel No Galu/Kinondo/670 which was in the name of Dhanjal Properties ltd. Some parties were alleged, in particular request by Advocate Oloo that some properties were concealed and as such the plaintiff should make full disclosure.
87. There is also a statement by Khalid advocate that some properties were transferred through the impugned settlement agreement. This is the agreement the plaintiff and his brothers signed and which was bitterly contested by the sisters and one administrator. The effect of the agreement was to disinherit the beneficiaries.
88. In the application dated March 10, 2015, the Joginder Singh Dhanjal sought to revoke grant issued to the plaintiff for: -
- a. Failure to disclose existence of a settlement agreement.
 - b. Failed to include shares of the Deceased as part of the Assets.
 - c. Disposed of assets before issuance of grant through settlement agreement.
 - d. Failed to include bank of Baroda account in spite of having knowledge of the same.
 - e. Disposing assets of the estate.
 - f. Frequently disinheriting beneficiaries.
89. The application was supported by a 38 paragraph affidavit of Joginder Singh Dhanjal.
90. In paragraph 15 the applicant complains that the plaintiff transferred substantial assets of the deceased without disclosing what basically the brother is saying is that the plaintiff intermeddled with the estate contrary to Section 45 of the *Law of Succession Act*.
91. An order issued on July 25, 2018, the application was allowed and the current administrators were appointed, that is Joginder Singh Dhanjal. That another application was filed dated August 8, 2018 was made by Sukhwant Kaur Dhanjal alleging that the new administrator and the plaintiff were colluding to disinherit them



92. Pursuant to that application the grant to Joginder Singh was revoked and issued to Joginder Singh Dhanjal and Sukhwat Kaur Dhanjal Kundi as joint administrators. In effect, the girls who were excluded were now included. This order was made by Hon Lady Justice Mugure Thande on October 31, 2018.
93. This is the grant that was confirmed on June 14, 2019. In the confirmation all the 5 children, that is, three sons and 2 daughters were to share equally. That order was made on Friday June 14, 2019. The only error in the article in this Friday instead of Friday June 14, 2019. Otherwise all the reports are correct and true reflection of the proceedings of the court. The court was to hear the matter on June 25, 2019 as reported. The court did not proceed with the matter, but that is after fact.
94. It is actually true that the plaintiff was removed as an administrator pursuant to his brother's allegations which the court found to be true that: -
- a. Daljit was plundering the estate and had disposed off a huge portion through an agreement with some relatives that the guise of 'settlement agreement.'
 - b. The plaintiff was not fit to be a sole administrator for intermeddling with the estate.
 - c. All beneficiaries had an equal right to be involved. This was stated as the true sister was added as an administrator.
95. Regarding the words, Judge orders administrators of Sh 15, billion estate to surrender documents to the court today; I have an interesting view. The court may not have ordered that. However, as at June 25, 2019, the administrators of the estate of Jaswalt Singh Boor Singh Dhanjal were Joginder Singh Dhanjal and Sukjhwant Kaur Dhanjal Kundi. The plaintiff ceased being an administrator on being replaced by his brother Joginder Singh Dhanjal on July 25, 2018. Therefore, any order to the administrators, is not an order to the plaintiff. The words do not refer to him.
96. It is equally true accurate and a fair reflection of the court proceedings that Sukhwat Kaur Dhanjal Kudni and Jaspal Kaur Nagi complained to the court that the Plaintiff were excluded and their signatures were forged by the plaintiff in signing the Renunciation forms.
97. This particular dispute is admitted by the plaintiff in paragraph 39 of the witness statement filed in the succession cause. The words complained of are in the proceedings and affidavit. In fact the author has distinguished in his article, words that are from the Ruling of the Court, proceedings and affidavits. The issue of the disputed properties reflects the decision of the Court on June 11, 2019.
98. The ruling of the court given on October 13, 2016, stated in paragraph 27 that: -
- ' It is quite clear that the administrator, the respondent has not administered the estate in the best interest of the estate or beneficial in that he has done. What is contrary to what is clearly stated in the certificate of confirmation of grant.'
99. Further in paragraph 32 the Court stated: -
- ' Likewise, in the instant case, the settlement Agreement which purported to deal with assets of the estate of the deceased before grant was issued was in complete violation of the [Law Of Succession Act](#) and the acquiescence of the applicant did not make it legal. I need not say more.



Quantum

100. I have been referred to decisions to award damages for defamation. The plaintiff referred to the cases of Phineas Nyagah =vs= Gitobu Manyara (2013) eKLR, *Miguna Miguna =vs= The Standard Limited and 4 others (2017) eKLR* *Raphael Lukela =vs= Elizabeth Mayabi and Another (2018) eKLR*, *John =vs= NGM LTD (1997) QB 586*, English authority. This the Plaintiff say will show that the plaintiff deserves an award of 5,000,000/=.
101. Had the plaintiff proved defamation, the issue that, could be defamation had the same not been in court, is the aspect of disinheriting sisters. This was true in fact had it been false, and outside court, will have awarded Kshs 2,500,000/= as damages on the basis of the following actions.
102. The principles to be considered in award of damages were set out in a case is the Nation Media Group Limited & 2 others vs Joseph Kamotho & 3 others where the court observed:
- ' In actions of defamation or in any other actions where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily or even more highly subjective element, such action involved a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charges.'
103. *Paramount Bank Limited v Vaqvi Syed Qamara & another [2017] eKLR*, the court of appeal set aside an award of Kshs 2,500,000/ =in a scenario where employability of the plaintiff was not affected. The law Lords stated as follows: -
- 'Thirdly, the learned Judge having found that the criminal charges notwithstanding, the 1st respondent was able to immediately secure another job with better pay, there was no basis to hold that he was stigmatized by the negative publicity which;'
- ' Damaged his employability and potential employers in the industry in which the Claimant was a longtime servant, would find his attractiveness diminished. His stock in the market dipped.'
104. *Mwananchi Credit Limited & another v Anerlisa Muigai [2019] eKLR*, the court held as doth:
- ' 12. The plaintiff had also prayed for exemplary and aggravated damages. Exemplary damages are meant to punish the defendant. Maraga, J (as he then was) in Abdul Hamid Ebrahim Ahmed V Municipal Council of Mombasa, [2004] eKLR held that:
- 'Exemplary damages are damages that are punitive. They are awarded to punish the defendant and vindicate the strength of the law. They are awarded in actions in tort, and only in three categories of cases. The first category relates to the oppressive, arbitrary or unconstitutional actions of servants of government. The other two categories are where the defendant's conduct is calculated to earn him profit and the third one is where exemplary damages are expressly authorized by statute.'



15. The upshot of this judgment is that the plaintiffs' suit succeeds to the extent that general damages are awarded to the 2nd plaintiff against the defendant in the sum of KShs 2,500,000. The amount will attract interest from today's date until payment in full. Orders of prohibitory and mandatory injunctions are also issued on the terms stated above.'

105. Nevertheless, the plaintiff has miserably failed. I therefore dismiss the entire claim with costs to the Defendants 1st and 2nd Defendants.

106. The proper costs of the Defendants failing to consider all the relevant factors, drawings, allowances and the fact that those allowances were in Mombasa for a Nairobi based witness, I find costs of Kshs 380,000/= to be sufficient for the Defendant. The plaintiff should pay the same in the next 30 days, failing which the Defendant shall be at liberty to exparte. The file is closed.

Determination

- a. The plaintiff suit is hereby dismissed as it lacks merits. For avoidance of doubt the defence of absolute privilege as set out in Section 6 of the Succession Act succeeds.
- b. The Defendants are awarded costs of Kshs 380,000/=
- c. Stay of 30 days.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 28TH DAY OF APRIL, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:

Mr Charana for the plaintiff

Mr Limo for the Defendants

Court Assistant - FIRDAUS

