REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CORAM: R. MWONGO, J.

HCCC NO.9 OF 2018

(Formerly HCCC No 365 of 2012 Nairobi, Milimani)

JEAN NJERI KAMAU.....PLAINTIFF

VERSUS

ASSOCIATION OF ACTION AID INTERNATIONAL.....1ST DEFENDANT

ACTION AID INTERNATIONAL KENYA BOARD.....2ND DEFENDANT

WILLIAM NTOINA.....3RD DEFENDANT

JUDGMENT

Background

1. This suit is for damages for defamation, breach of confidentiality, and for injurious falsehood which the plaintiff claims against the defendants following her exit from employment. The 1st defendant (hereinafter AAI) is an umbrella organization registered in The Hague. The 2nd Defendant (hereinafter AAIK) is a Non-Governmental Organisation registered in Kenya and coordinating the 1st defendant's work in Kenya.

2. The plaintiff was, at the time of the hearing of this case, the Kenyan ambassador to South Africa. According to the plaint, at the time of the events leading to this case in November, 2011, she was an employee of the 1st and 2nd defendants. She had worked with the defendants from 2009 to 2011. On 10th February, 2011, her contract as Country Director of the 2nd defendant, was renewed for a further three years effective 1st March 2011. According to her contract, she would report to the Chairperson of AAIK.

3. It is not in dispute that soon after the extension of her contract, fundamental irreconcilable differences arose between the plaintiff and the 2nd defendant. These involved, inter alia, differences in how she was running the institution, and claims that she was mismanaging staff and other administrative matters in the organization. Consequently, she and the 2nd defendant decided to separate through a negotiated arrangement which was documented in a separation agreement dated 25th May, 2011, (the "Separation Agreement"). The Separation Agreement provided for the termination of her services to be formally effective on 31st May, 2011.

4. According to her evidence, after her separation from employment, the plaintiff entered into a consultancy contract with the AAIK from June to November, 2011.

5. In November 2011, a vacancy was advertised for the position of Chairperson in a newly created constitutional body, namely, the National Police Service Commission (hereinafter the NPSC). She applied for it, and was shortlisted for the post. Her interview, which was announced in the press, was scheduled for 2nd December, 2011, by the National Police Service Commission Selection Panel (the "Selection Panel").

6. At the interview before the Selection Panel it was alleged, the 3rd Defendant, who was also a board member of the 2nd Defendant, appeared before the Selection Panel and proffered information to it that was adverse to the plaintiff. According to the plaintiff, the adverse information included two documents respectively entitled:

> "***Report of the Investigations of Whistle Blowing and Grievances by AAI International Audit***" authored by Lenre Amao 1st Defendant's Head of Internal, Audit, and

"Draft AAIK Board Meeting Minutes of 6th May, 2011 held at the AAIK Conference Centre"

7. The said documents were produced and exhibited in common at the hearing by the plaintiff and defendants. It is not disputed that the 3rd defendant availed these documents at a hearing of the Selection Panel at which the plaintiff whereat the plaintiff had applied to be the Chairperson of the NPSC.

8. According to the plaintiff, these documents were internal to the defendants only, and by virtue and in terms of the Separation Agreement, they were barred by confidentiality clauses from disclosure, publication or circulation outside of or beyond the parties. She alleges that upon their publication to the Selection Panel, the documents became public documents and were published in the media through media houses and beyond. The said publication was malicious, vengeful, and vicious, and calculated to mortally injure the plaintiff's reputation and standing and to instigate or provoke the rejection of the plaintiff as a nominee for the post of Chairperson of the NPSC.

9. In paragraph 13 of the plaint, the plaintiff asserted that the injurious allegations made by the 3rd defendant with the active or tacit consent, encouragement, concurrence or approval of the 1st and 2nd defendants, included the following:

> ***"a) That during her tenure as Country Director for the 2nd defendant, the plaintiff sacked the staff she found and replaced them with persons from her Kikuyu ethnic group swelling their numbers to 157 out of a staff establishment of 202;***
>
> ***b) That the plaintiff was not a competent manager and had failed in her role and performance as Country Director for the 2nd defendant"***

10. The plaintiff asserts in paragraph 14 of her plaint that the allegations against her made before the Selection Panel were, in their ordinary and natural usage, intended to mean, did convey and were understood to mean that:

> ***"a) The plaintiff is an unashamed tribalist.***
>
> ***b) The plaintiff is an ethnic supremacist.***
>
> ***c) The plaintiff is parochial and unprofessional.***
>
> ***d) The plaintiff is callous, heartless and vindictive.***
>
> ***e) The plaintiff is dishonest and unworthy of trust.***
>
> ***f) The plaintiff is incompetent, inept and incapable of delivering on a professional mandate.***
>
> ***g) The plaintiff is a professional failure.***
>
> ***h) The plaintiff is unfit and unworthy to hold national or other office of responsibility"***

11. The allegations said to have been made against the plaintiff before the Selection Panel, and which are alleged to be defamatory in terms of paragraph 9 of the plaint, are not specifically spelt out in the plaint. That is, to say, the plaintiff did not set out a transcription from the alleged defamatory documents of the alleged defamatory words that were purportedly uttered before the Selection Panel. This will be a critical consideration in this matter, as we shall see.

12. At the hearing the plaintiff's case was made out by the plaintiff herself. Her other potential, and star witness as regards what transpired in the Selection Panel hearing, Lydia Gachoya, who was a Commissioner on the Selection Panel was ruled to be ineligible or compellable as a witness since, under the provisions of **Section 24(2)** of the **National Police Service Commission Act, 2011**, she fell under the privileged communications bar, and could not give disclose or give evidence of the events at the Commission or its proceedings. Her witness statement, supporting documents, and any cross examination touching on material filed by or in relation to her were thus expunged.

13. The 1st and 2nd defendants' cases were made out by Elizabeth May Wakilo, who was a board member of the 1st defendant, and had previously been on the board of the 2nd defendant. The 3rd defendant gave evidence on his own behalf.

14. The plaintiff asserts that the ingredients for defamation were proved at the hearing, and seeks damages of Kshs 30,000,000/- made up as follows: General damages of Kshs 20,000,000/-; Aggravated damages of Kshs 3,000,000/- and Exemplary damages of Kshs 7,000,000/-.

Issues Agreed by Parties

15. Prior to commencement of the hearing, and at the insistence of the Court, the parties agreed and signed a joint statement of issues dated 13th March, 2017. The parties' joint statement identifies the issues for determination as follows:

> 1) Whether there was any negotiation in respect of separation of the plaintiff from the 1st and 2nd defendants?
>
> 2) What were the terms of the separation?

3) Whether any party was in breach of the separation agreement

4) Whether or not the 3rd defendant's representations before the National Police Service Commission Selection Panel was his own personal initiative or at the behest or with the consent of the 1st and 2nd defendants? Whether or not the contents of the documents tabled before the said selection panel were defamatory?

5) If the answer to No 5 is in the affirmative, were the contents of the documents justified, privileged, and or in the public interest?

6) Whether the plaintiff is entitled to the reliefs sought?

16. Notwithstanding the fact that the parties listed their agreed issues, it is always for the Court to isolate and frame what are the real propositions of law and fact that have been brought out from the pleadings, evidence and documents presented by the parties, that require determination. This is the court's responsibility in terms of **Order 15 Rules 1& 2** of the **CPR**. In this case, I think *the issues* may be summarised as follows:

a. What was the nature and effect of the terms of the Separation Agreement in relation to the plaintiff's allegations that the Agreement was breached?

*b. Whether the 1st or 2nd defendant gave the 3rd defendant authority or consent to appear before the selection panel, i.e. Whether the 3rd Defendant's Involvement at the Selection Panel was a personal initiative or was co-ordinated with 1st and 2nd defendants***?**

c. Which, if any, of the contents of the documents tabled before the Selection Panel were defamatory or were justified, privileged or in the public interest?

d. What reliefs, if any, are available to the plaintiff?

Analysis and determination

17. This suit has been presented primarily as one for damages for defamation, although breach of confidentiality and injurious falsehood are also alleged by the plaintiff. Simply defined, defamation is the word used to describe both libel – which occurs in written form as alleged in this case – and slander, which is spoken. Whether it is libel or slander, defamation harms a person's reputation.

18. The parties cited many authorities which I have considered. Significantly, for their propositions, the plaintiff and the 1st and 2nd defendants all cited **Joseph Njogu Kamunge v Charles Muriuki Gachari [2016]eKLR,** in which a number of other authorities are cited. The 1st defendant also cited the case of **Jacob Mwanto Wangora v Hezron Mwando Kirorio [2017]eKLR** in which the Court of Appeal added that the defendant must be shown to have been at fault and that the plaintiff suffered injury.

19. In addition, the 2nd defendant further cited the case of **Phinehas Nyaga v Gitobu Imanyara [2013]eKLR** where the court stated:

> ***"16. …An action for defamation is essentially and action to compensate a person for the harm done to his reputation. Defamation is not about the publication of falsehoods against a person; it is necessary to show that the published falsehood disparaged the reputation of the plaintiff or tended to lower him in the estimation of right thinking members of society generally. An injurious falsehood may jot necessarily be an attack on the plaintiff's reputation. The words must be maliciously published and malice can be inferred from a deliberate or reckless or even negligently ignoring of facts"***

20. Essentially, and in summary of the propositions in the authorities cited, the law provides that the following matters must be proved for a finding of defamation to hold:

1) That there was a statement of fact. For defamation to have occurred somebody must have made the statement that is alleged to be defamatory. To be considered defamatory, the statement must concern a matter of fact not simply an opinion.

2) That the statement must have been a published statement.

3) The statement must be shown to have caused injury.

4) The statement must be shown to have been false.

5) The statement must be shown to be not privileged.

6) The defendant was legally at fault

21. The parties also reviewed the law on justification, privilege and whether or not the alleged defamatory statements were made in the public interest.

22. In the **Defamation Act, sections 12, 14** and **15** focus on the defences in relation to malicious publication, justification and fair comment:

"12. Publication without malice

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

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

14. Justification

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

15. Fair comment

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

23. I turn to deal with each of the issues which were isolated for determination in light of the representations and evidence of each of the parties.

What was the nature and effect of the terms of the Separation Agreement in relation to the plaintiff's allegations that the said Agreement was breached?

24. The Separation Agreement is, fortunately, a written document of a legal nature set out formally, and dated 25th May, 2011. The parties to the Agreement are the plaintiff and the 1st defendant. The plaintiff signed it together with one Thembisa Bekwa who signed on behalf of the 1st defendant and was its International Human Resources Manager. The contract is witnessed by one Chris Kinyanjui, who was the then International Director, East and Southern Africa of AAI.

25. To fully understand the Separation Agreement, it is necessary to appreciate the relationship between the 1st and 2nd defendants, and also the plaintiff's employment contract. These are elaborated in the AAIK Governance Manual and the plaintiff's employment agreement, both of which were produced in the plaintiff's list of documents.

26. The Governance Manual: Para 2.1 indicates that AAI was established in 2003 as an international development organization, and AAIK became an associate of AAI in 2006 and progressed to Affiliate status in 2009. AAIK has a two tier governance structure consisting of a General assembly and a Board, with overall governance resting with the General Assembly which delegates governance powers to the Board (Para 3.0 & 3.1). The Board provides leadership and guidance to management (Para 5.0). One of its roles is to appoint and dismiss the Executive Director in consultation with the Chief Executive of AAI (Para 5.1.4.11). The AAIK is represented at the Assembly of AAI by an AAIK Board member, usually the Chair, and an AAI representative sits on the AAIK Board to provide linkage (Para 8.0). the International Secretariat of AAI provides management support to the governance functions of AAIK (Para 8.3).

27. According to the Manual, AAIK has an office of Executive Director who is the link between the staff and the Board (Para 3.2). The Executive Director's performance is appraised by the Chair of AAIK in consultation with the chairpersons of Board Committees. No reference is made in the Manual to the office of Country Director, although it is clear that the plaintiff as Country Director also weilded executive authority in AAIK.

28. In the present case, the plaintiff's employment extension contract was with AAIK. Her position was that of Country Director according to the letter extending her services for three years, which appreciated her ***"leadership of AA Kenya over the last three years".*** There is no clear indication that there was also an Executive Director working at the time for AAIK, in accordance with its Manual. The plaintiff reported to the AAIK Board Chairperson who signed the employment extension letter, where the other signatory was the international Director East & Southern Africa, on behalf of the International Secretariat of AII. According to the extension letter, her contract was ***"administered"*** by the International HR Manager, and her appointment was on the ***"Terms and Conditions of Employment for AII Positions National".***

29. Thus, it is clear that AAI and AAIK definitely worked in very close co-ordination in the employment of the plaintiff. In this regard, the legal differentiation between the 1st and 2nd defendants as juristic entities is absent for all practical purposes, which explains why the Separation Agreement was entered into between the plaintiff and the 1st defendant. In the Separation Agreement, the 1st defendant is referred to as the plaintiff's ***"employer"*** and she is referred to as its ***"employee".*** Further, it is not in dispute, as asserted by the plaintiff in paragraph 6 of the plaint, that she was ***"in the employment of the 1st and 2nd Defendants as the Country Director of the 2nd Defendant".***

30. It is also not in dispute that there were differences between the plaintiff and her employers. The audit/ investigation report of April 2011 by Lenre Amao, and the Minutes of the AAIK meeting held on 6th May, 2011, show in detail that the relationship between the plaintiff and

her employers had collapsed. This led to a Notice to Show Cause (NTSC) being issued by the AAIK Board to the plaintiff, and the NTSC proceedings are reflected in the said AAIK Minutes. The reasons for the collapsed relationship are shown in the minutes as being due to the allegations that:

- *She failed to issue letters for redundancy to certain identified staff members;*

- *She failed to implement a Board resolution to renew the contract of the Head of Finance;*

- *There were issues raised in the April 2011 Audit Report by Lenre Amao to which she failed to give a management response;*

- *There were specific instances in which she had been insubordinate to the Board and did not recognize the Board's authority.*

31. The fallout after the said Board meeting resulted in the parties' strained relationship leading to termination of the plaintiff's employment. They entered into a Separation Agreement which indicates that the reason for termination of the plaintiff's services, was due to irreconcilable differences between employer and employee. The details of the irreconcilable differences are, however, not elaborated in the Separation Agreement.

32. The date of release is indicated in the Separation Agreement as 31st May, 2011. Reference to benefits and terminal dues is made in clause 2. An ex gratia payment is included in clause 2.5. Clause 3 makes it clear that the Agreement covers full ad final settlement of all claims as between the parties, and highlights that there are no outstanding disputes between the parties.

33. Given the date of the Separation Agreement, and the antecedents that occurred immediately prior, there is no doubt that the Agreement was negotiated following the April report of Lenre Amao and the meeting of the AAIK Board of 6th May, 2011. The emails exchanged between the plaintiff and AAIK at pages 17-22 of the plaintiff's bundle clearly indicates the nature of the negotiation. At page 19 plaintiff's bundle, for example, the plaintiff wrote a long email on 16th May, 2011, to the AAI International HR Manager Thembisa Bekwa and Chris Kinyanjui then International Director, East and Southern Africa of AAI, in which she stated in part:

> ***"…Let me start by thanking you both for this opportunity to negotiate a harmonious termination to my current contract. I am confident that we will find an amicable solution and bring this matter to a close…."***

34. In that same letter at page 25 of the plaintiff's bundle, the plaintiff proposed a settlement that includes: three months' notice; payment of outstanding leave entitlement; termination payment; references and reasons for leaving, and included:

> ***"…. a 'No Bad mouthing' clause that binds me and the AAIK Board not to say or do anything that brings me or AAIK to disrepute. This will also bind the organization and myself to requirements of confidentiality and not referring to the compromise agreement"***

35. In response to the plaintiff's said letter, Thembisa Bekwa, writing with a copy to Chris Kinyanjui, stated:

> ***"In preparation for our meeting we have drafted a 'without prejudice' separation agreement for your reference to discuss when we meet"***

36. Ultimately, the issues proposed by the plaintiff were all included in the signed Separation Agreement. Thus, I can answer one of the issues herein as to the nature of the Separation Agreement relating to whether there was any negotiation in respect of separation. There can be no doubt at all that there were indeed negotiations between the plaintiff and her employers leading to the Separation Agreement. I so find.

37. However, it is also true that the details of the negotiations, though culminating in the Separation Agreement, were purposely omitted and not set out or included as part of the Agreement itself. Instead of citing the various disputes between the parties, the Agreement merely treated them as fully acknowledged and resolved. That is to say, the individual disputes that arose between the parties in their approach to work, their relationship, financial aspects and challenges, and so on, were dealt with in Clause 3 of the Agreement in a fairly simple, un-emotive and conclusive manner. The clause provides as follows:

> ***"3 FULL AND FINAL SETTLEMENT***
>
> ***3.1 This Agreement is in full and final settlement of all or any claims of whatsoever nature that the EMPLOYEE may have against the EMPLOYER, including but not limited to any claims in terms of the Employment Act of 2007 of Kenya and the EMPLOYEE'S contract of employment.***
>
> ***3.2 No outstanding disputes exist nor are any other monies payable"***

38. Not only were all the various aspects and details of the disputes fully and finally dealt with, but also in line with the concept that no disputes or matters would be carried forward, neither too, could the details of the disputes recited and carried into the Agreement. Thus, it was provided at clause 5 the Agreement that everything concerning the disputes was in fact as contained in it. Clause 5 provides:

> ***"5 THE WHOLE AGREEMENT***

5.1 This Agreement constitutes the entire Agreement between the EMPLOYEE and the EMPLOYER and no alteration or variation thereto shall be of any force or effect unless reduced to writing and signed by both the EMPLOYEE and the EMPLOYER"

39. To the extent that what is set out in the Agreement is the entirety of the issues agreed or resolved, this provision set out all and no more or less than the entire contract of the parties. **Odgers Construction of Deeds and Statutes** (5th Edn) at pg 106, emphasizes that the rule that no parol evidence is admissible should be observed in construing the terms of a written contract:

"It is a familiar rule of law that no parol evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. The rule applies as well to deeds as to contracts in writing. Although the rule is expressed to relate to parol evidence, it does in fact apply to all forms of extrinsic evidence."

40. Referring to that passage in **Odgers**, the Court of Appeal in **Prudential Assurance Company of Kenya Limited v Sukhwender Singh Jutney and Another**, **Civil Appeal No. 23 of 2005** held that:

"The supporting rationale for this rule is that, since the contracting parties have reduced their agreement to a single and final writing, extrinsic evidence of past agreements or terms should not be considered when interpreting that written contract agreement, as the parties had consciously decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written contract to contradict the ultimate contract that has been reduced into writing."

41. In **Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited [2017] eKLR** the Court of Appeal recently stated that:

"…[W]here the intention of parties has in fact been reduced to writing, under the so called parol evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention, or to contradict, vary or add to the terms of the document, including implied terms. Courts adopt the objective theory of contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when construing a contract. This is what sometimes is called the principle of four corners of an instrument, which insists that a document's meaning should be derived from the document itself, without reference to anything outside of the document (extrinsic evidence), such as the circumstances surrounding its writing or the history of the party or parties signing it."

42. I cite these authorities to emphasise that once parties have put in writing an agreement, it is construed as a wholistic document, unless there is a provision in it that itself allows it to be construed beyond the words written in it. In this case, it is clear that the parties meant by clause 5 that no more was to be read into the parties' agreement than what the parties expressly included in it.

43. Moving on to the issue of whether the confidentiality of the parties was breached, I note that Clause 4 of the Agreement safeguarded the confidentiality of the parties' Agreement. It provides:

"4. CONFIDENTIALITY

4.1 The terms hereof are confidential between the parties and may not be divulged to any third party without the other party's prior written permission being obtained.

4.2 Failure by the EMPLOYEE to abide by the provisions of this clause will result in the EMPLOYER having the right to recover the amount reflected in clause 2.5 from the EMPLOYEE.

4.3 In the event that the EMPLOYER has to exercise its right in terms of clause 4.2 the EMPLOYEE will be liable for all legal costs incurred by the EMPLOYER on the Attorney and Client scale.

44. The plaintiff in her evidence on cross examination urged that the phrase "***the terms hereof"*** in the Agreement were to be understood as meaning:

"…the content of the agreement is in Clause 1-5 plus all deliberations leading to this agreement including the without prejudice communications….. I believe the terms of separation include this agreement and prior deliberations on telephone, email, conversations." (Emphasis added).

Despite taking this position, however, the plaintiff nevertheless recognized that the signed agreement did not contain the details of the parol deliberations when she admitted:

"I don't have the transcripts of the telephone conversations. This agreement did not refer to the Investigations Report [by Amao]. It did not refer to the Minutes [of the AAIK Board] in PW1's Bundle…"

45. As already pointed out in the **Fidelity Commercial Bank case**, the use of parol evidence to interpret a written contract is frowned upon by the law, because the contract must be construed according to what is contained within its four corners. In this case, the Agreement itself describes its express content as being the "*Whole Agreement*". As such, there is no room to incorporate terms not specified within its four corners.

46. Applying the above authorities, two points may in my view be noted from the wording of the clause. First, it may be noted that the confidentiality protection is accorded to and limited to the terms of the Agreement itself: ***"the terms hereof"***. That is, nothing contained in the Agreement could be disclosed without the written consent of the other party. Second, the confidentiality agreement is as between and binds the employer and employee, that is the plaintiff and the 1st and 2nd defendants. Neither the employer nor employee was entitled to divulge ***"the terms hereof"*** – namely, any information from or in the agreement, without the written consent of the other.

47. In this case, I find that what must be proved is that the employer divulged or caused to be divulged any of the terms hereof or information in the Agreement. I make this finding noting: that the terms bound the employer and employee; that there was nothing binding an individual staff member – in his personal capacity – to comply with the provision; that third parties who, through whatever means, came into contact with the ***"the terms hereof"*** or information in the Agreement were under no obligation to maintain confidentiality.

48. What the plaintiff alleges in paragraphs 9-12 of the plaint is that that the defendants disclosed the confidential material contained in the two documents. Paragraph 9 states in part that whilst the plaintiff maintained confidentiality, the defendants:

> ***"…flagrantly and blatantly violated the confidentiality of the Separation Agreement and have caused or suffered to be disclosed and published matter and material that has been false, malicious and grievously injurious to the Plaintiff as further set out hereunder". (Paragraph 9, plaint)***

The accusation is levelled against all the defendants. Paragraphs 10 and 11 assert the 3rd defendant was the one who released the documents to the Selection Panel, and paragraph 13 asserts that the 3rd defendant acted:

> ***"…with the active or tacit permission, consent, encouragement, concurrence and approval of the 1st and 2nd defendants…"***

49. The plaint clearly suggests that the defendants themselves violated the confidentiality clause; or caused the confidentiality to be disclosed; or that they suffered or allowed the confidentiality to be disclosed and published. The plaintiff's submission on this was that the 3rd defendant as a Board member of the 2nd defendant was bound by the Agreement not to disclose any of the information under the confidentiality clause. The evidence alleged was that the 1st and 2nd defendants facilitated the 3rd defendant's attendance at the Selection Panel where he made the disclosures.

50. On their part, the 1st and 2nd defendants provided evidence through DW1 Elizabeth Wakilo, that they had no role in disclosing the confidential information. She stated that she was a board member of AAIK and was also presently a Board member of AAI. She also stated that the head of Human Resources, Thembisa Bekwa, had left the 1st defendants employment and was not available to testify. She also testified that the Investigation Report and the Minutes were internal documents and were not disclosed by the 1st or 2nd defendants.

51. With regard to the 2nd defendant's Governance Manual, DW1 stated in cross examination that Board members had a general duty to maintain confidentiality. She pointed out paragraph 5.6.1 bullet three of the Manual where this is indicated. She also testified, however, that neither the Minutes, nor the Investigation Report, or the Separation Agreement were specifically required to be confidential under the Board's Open Information Policy shown at pg 91 of the plaintiff's bundle. That policy document provides as follows on confidentiality:

> ***"Confidentiality will be retained in relation to personal details of staff (address, family details, income, property, sexual orientation, illness), and any specific agreements (Intellectual property or legal disclosure agreements), disciplinary matters and information dealing entirely with internal administration or operating systems which has no direct effect outside the organization, or internal documents written by staff to their colleagues, supervisors or subordinates, unless those documents are intended for public circulation, as well as fund raising information, sharing of which will jeopardise Action Aid International's competitiveness in fundraising capacity.***

52. My own reading of that policy is that amongst the matters protected by confidentiality are *"information dealing entirely with internal administration or operating systems which has no direct effect outside the organization"*. I think that, having perused the Minutes of the AAIK Board Meeting and the Lenre Amao Report, they fit into that category of material dealing with internal administrative issues which attract confidentiality.

53. It is further clear from the policy that Board members are responsible for ensuring adherence to the policy on confidentiality. This is clarified in the Open Information Policy where it is stated that:

> ***"The boards of all members are ultimately accountable for ensuring adherence to this policy (with this accountability being delegated through the International Secretariat in the case of associates and CPs)".***

54. Further, as pointed out by the plaintiff, section 5.6.1 of the AAIK Governance Manual provides that board members should maintain confidentiality for all information emanating from the Board in the following terms:

> ***"5.6.1 A Board member makes a commitment to the organization to place the organisation's interest first. Board members have to take into consideration:***
>
> ***……..***
>
> - ***Confidentiality: all information emanating from the board is Confidential and should be treated as such"***

55. There is an important distinction between the confidentiality obligated by the Separation Agreement and that demanded under the policies of the 1st and 2nd Defendants. It is essential to avoid conflating the two issues of confidentiality in relation to the Separation Agreement and those concerning confidentiality generally. My understanding is that the confidentiality clause in the Separation Agreement bound the signatories to keep the terms of the Agreement confidential. On the other hand, the policy placed a general responsibility on Board members to maintain confidentiality of board information as indicated.

56. The 3rd defendant admitted in paragraph 10 of his witness statement, that he, a Board member of AAIK, is the one who produced the two documents to the Selection Panel. As such, I find that to that extent there was breach of confidentiality under the policy as regards their production. I am, however, unable to agree with the plaintiff that the breach of confidentiality involved a breach of the Separation Agreement because no evidence was adduced to show that the confidentiality protected by the Separation Agreement in terms of the confidentiality clause of the Agreement itself, was breached. In other words, there is no evidence to suggest that any provision or any of the confidential *"terms hereof"* in the Separation Agreement *"were divulged to any third party without the other party's prior written permission"* in terms of clause 4.1 of the Separation Agreement. Thus, to answer the question posed on confidentiality, it is clear that the two documents presented at the Selection Panel were confidential documents within the meaning of the AAIK policy. Their production by the 3rd defendant, a board member of AAIK, was a breach of such confidentiality.

57. As one of the plaintiff's prayers is for: ***"Damages on the footing of General, Aggravated and Exemplary damages for breach of confidentiality, defamation and injurious falsehood"***, I will later herein deal with the question as to whether or how the breach identified herein is actionable, if at all.

Whether the 3rd Defendant's Involvement in the Selection Panel was a personal initiative or in co-ordination with and consent of 1st and 2nd defendants?

58. The plaintiff's case on this issue is that the 3rd defendant attended the Selection Panel with full knowledge of the 1st and 2nd defendant; that he was a Board member of AAIK and yet produced the AAIK Minutes and Lenre Amao Reports to the Selection Panel; that the information in those reports defamed her, and was leaked out to the media, resulting in undermining her chances to be presented for appointment as the chair of the NPSB despite being second in the interview.

59. She referred to newspaper reports (Pages 82-84 plaintiff's bundle) in which it was reported that: the plaintiff performed well in the interview but was replaced because of integrity considerations (page 82 PB1); that the plaintiff left the defendants employment as Country Director in controversial circumstances – information garnered from dossiers and audit report presented to the Selection Panel (page 83 PB1); that a Selection Panel member (one, Lydia Gachoya) claimed that fellow panelists removed the plaintiff's name from the list for consideration by the President and Prime Minister for appointment as Chair of NPSB after interviewers considered documents presented by her former employers (page 84 PB1).

60. In cross examination, she was shown an email on page 17 of her bundle which is a draft letter to all staff in which she informs them that she was leaving AAIK following due to challenges within AAIK secretariat. She added that the letter was a draft, that she did not send out the Notice of departure letter; and that it was up to the Board to decide on the circulation of the said Notice of Departure letter.

61. The 1st and 2nd Defendants' case is that they were uninvolved in the 3rd defendant's presentation of documents to the Selection Panel; that the 3rd defendant acted independently as a Kenyan citizen who had certain knowledge of the plaintiff; that the 3rd Defendant had freedom of speech and in any event that the information he gave the Selection Panel was privileged and protected as a matter of public interest.

62. Further the 1st defendant pointed out that they had learned of the disclosure of the Lenre Amao audit report to the Selection Board, they had immediately written to the Selection Panel and categorically stated that the 1st defendant was not a party to the tabling of the impugned documents; that the documents were for the sole purpose of the 1st and 2nd defendants' internal use as they were not authorized by the 1st and 2nd defendants for disclosure. Their letter dated 13th December, 2011, states, inter alia:

> ***"The said report is an internal report arising out of an investigation into internal governance issues and is not intended for external circulation, distribution or use……***
>
> ***This letter is to therefore inform the National Police Service Selection Panel that the AAI Internal audit report authored by Lanre Amao is not authorized. The contents of the report cannot be used to inform, validate or justify any deliberations or decision making about any of the mentioned staff members or board members mentioned in the report "*** (See document TBB4)

63. Equally, the 2nd defendant pointed out that in their reply to the Selection Panel's request to authenticate the documents disclosed by the 3rd defendant, their new Country Director, Tennyson Williams, wrote to the Chair of the Selection Panel and stated:

> ***"„ I hereby wish to confirm that these are genuine and authentic documents of AAIK. However, while we confirm that Mr Ntoina is indeed a board member of AAIK, it should be noted that his submission to the Selection Panel was not on behalf of AAIK but purely as a Kenyan. In addition, AAIk does not wish to avail itself the opportunity to make official submissions to the Selection Panel"*** (See page 75 PB 1)

64. Finally, the 2nd defendant implored the Court to make a finding that by their letter of 13th December, 2011, the 2nd defendant took the necessary mitigating actions to retract the reliance on the documents by the Selection Panel.

65. The 3rd defendant's case is simply that he was invited by the Selection Panel to submit any information that he had on the list of candidates for the post of Chairperson; that since the Selection Panel's process was a public process he honoured the invitation as a patriotic citizen and attended the hearing on 2nd December, 2011 in his private capacity; that the date of the hearing coincided with the dates, 2nd and 3rd December, 2011, when the AAIK Board was also holding a Board retreat at Maasai Lodge; that the 2nd Respondent paid for his attendance to the Board retreat; and that the 2nd and 3rd defendant's had nothing to do with his attendance at the Selection Panel.

66. Further, he stated that came to learn of the plaintiff's resignation through a communication by the plaintiff dated 22nd May 2011 – the Notice of Departure communication. The communication, which is at page 17 of the plaintiff's bundle stated, inter alia:

> ***"I write to share some news about management changes in Action Aid International Kenya.***
>
> ***<u>As you may have noted from the latest AAI Internal audit report sent out in May 2011</u>, there have been challenges within the AAIK Senior Management Team and between myself and the AAIK Board. These matters have been discussed and deliberated upon and it is evident that there will need (sic) for staff changes and a restructuring process will take place. As a result I will be leaving my post of Country Director for AAIK from end of May 2011. The selection process for an interim Country Director who will manage AAIK has begun and you will no doubt receive more information about this."***

67. In addition, the 3rd defendant denied that the receipts provided by the plaintiff to show that the plaintiff's travel from upcountry to the Selection Panel meeting was paid for by the AAIK Board.

68. I have perused the claim form and receipts for the 3rd defendant's reimbursement of his travel costs at the time of the Selection Panel's meeting in issue. They show his travel from Alale in Kacheliba on 1st December, terminating with a trip from Jomo Kenyatta airport to Nairobi and then taxi fare from Nairobi to Maasai K Lodge on 2nd December, 2011. Noting in these receipts or any other document shows that the 1st and 2nd defendants were aware of the 3rd defendant's intended attendance at the Selection Panel, or that they had a hand in his attendance at the Selection Panel.

69. He further denied that the documents he released to the Selection Panel had any adverse effect on the Panel, since the plaintiff eventually scored the second highest result in the interview, thus the panel were not influenced in any way; that there was no concrete evidence that the documents he submitted resulted in the Selection Committee not forwarding her name for consideration for the post sought; that the publications in the media were all made well after the interview had occurred, and had no effect on her selection or otherwise; and that the information he availed the Selection Panel was protected in law and privileged as it was given in the public interest.

70. It is trite law that the burden of proof of any particular fact rests on the person who alleges it. **Section 109** of the **Evidence Act** states:

> ***"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that proof of that fact shall lie on any particular person"***

71. I have carefully considered the evidence adduced on this issue. I am unable to find anything to link the 3rd defendant's attendance at the Selection Panel with the 1st and 2nd defendants. There is nothing to suggest that the 3rd defendant was acting with the support, connivance or at the behest of the 1st and 2nd defendants. There being no law requiring otherwise, the plaintiff was obliged to show that the 3rd Defendant's involvement in the Selection Panel was not his personal initiative but was clearly done in co-ordination with, or with the express or tacit support or consent of 1st and 2nd defendants. The plaintiff has not discharged this burden.

72. I thus find and hold that the 1st and 2nd defendants had no role in the 3rd defendant's appearance at the Selection Panel. In fact, what the evidence discloses is this: that the 1st and 2nd defendants were very alive to the fact that the documents presented to the Selection Panel were internal confidential documents that could not be relied upon elsewhere; and that once they were aware of the disclosure they made every effort to assert their confidentiality and dissuade from their reliance by third parties, and also sought to mitigate any damage that might be caused by such disclosure.

Breach of confidentiality

73. As indicated, I found that the 3rd defendant disclosed the impugned documents and that the disclosure was in breach of the policies of the AAIK and AAI. Since one of the plaintiff's prayers is, inter alia, for: ***"Damages on the footing of General, Aggravated and Exemplary damages for breach of confidentiality…."***, it is proper to deal with the confidentiality breach.

74. I have to be careful here, for the parties did not address me on this question on its merits. It is a question that is within the realm of breach of contract.

75. **Francis Gurry** in his ground breaking book, **'Breach of Confidence (2nd Edn) 1984** characterises breach of confidence as follows:

> ***"The basic attribute which information must possess before it can be considered confidential is inaccessibility. Information must not be common knowledge, ie in the public domain. This attribute is fundamental to the action for breach of confidence."***

76. Similarly, Lord Greene, MR in **Saltman Engineering Co Ltd & Others v Campbell Engineering Co Ltd [1963] 3 All ER 413** said:

> ***"The information, to be confidential must . . . have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."***

77. Much later, in **Attorney General v Guardian Newspapers Ltd (No 2) [1988] 3 All ER 545** Lord Goff of Chieveley stated:

> ***"I realize that, in the vast majority of cases, in particular those concerned with trade secrets, the duty of confidence will arise from a transaction or relationship between the parties, often a contract, in which event the duty may arise by reason of either an express or an implied term of that contract. It is in such cases as these that the expressions "confider" and "confidant" are perhaps most aptly employed. But it is well-settled that a duty of confidence may arise in equity independently of such cases; and I have expressed the circumstances in which the duty arises in broad terms, not merely to embrace those cases where a third party receives information from a person who is under a duty of confidence in respect of it, knowing that it has been disclosed by that person to him in breach of his duty of confidence, but also to include certain situations, beloved of law teachers, where an obviously confidential document is wafted by an electric fan out of a window into a crowded street, or where an obviously confidential document, such as a private diary, is dropped in a public place, and is then picked up by a passer-by. I also have in mind the situations where secrets of importance to national security come into the possession of members of the public …"*** (Emphasis added).

78. As a general rule general damages are not recoverable in cases of alleged breach of contract. This is the position set out in the Court of Appeal decision in **Kenya Tourism Development Corporation v Sundowner Lodge Ltd [2018] eKLR.** The reason for this was explained by the court in the case of **Consolata Anyango Ouma v South Nyanza Sugar Co. Ltd (2015)eKLR** as follows:

> ***"The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin phrase restitution in integrum (see Kenya Industrial Estates Ltd v Lee Enterprises Ltd NRB CA Civil Appeal No. 54 of 2004 [2009] eKLR, Kenya Breweries Ltd v Natex Distributors Ltd Milimani HCCC No. 704 of 2000 [2004]eKLR). The measure of damages is in accordance with the rule established in the case of Hadley v Baxendale (1854) 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see Standard Chartered Bank Limited v Intercom Services Ltd & Others NRB CA Civil Appeal No. 37 of 2003 [2004]eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others, NRB CA Civil Appeal No. 192 of 92 (UR) and Charles C. Sande v Kenya Co-operative Creameries Ltd, NRB CA Civil Appeal No. 154 of 1992 (UR))".***

79. Thus, a claimant for general damages for breach of contract who does not prove that he suffered loss is all the same entitled to damages, though nominal. **In Anson's Law of Contract, 28th Edition** at pg 589 and 590 the law is stated to be that:

> ***"Every breach of a contract entitles the injured party to damages for the loss he or she has suffered. Damages for breach of contract are designed to compensate for the damage, loss or injury the claimant has suffered through that breach. A claimant who has not, in fact, suffered any loss by reason of that breach, is nevertheless entitled to a verdict but the damages recoverable will be purely nominal".***

80. **Halsbury's Laws of England, Third Edition vol. II**, defines nominal damages as follows:

> ***"388. Where a plaintiff whose rights have been infringed has not in fact sustained any actual damage therefrom , or fails to prove that he has; or although the plaintiff has sustained actual damage, the damage arises not from the defendant's wrongful act, but from the conduct of the plaintiff himself; or the plaintiff is not concerned to raise the question of actual loss , but brings his action simply with the view of establishing his right, the damages which he is entitled to receive are called nominal… Thus in actions for breach of contract nominal damages are recoverable although no actual damage can be proved."***

81. In **Kinakie Co-operative Society v Green Hotel (1988) KLR 242**, the Court of Appeal held that where damages are at large and cannot be quantified, the court may have to assess damages upon some conventional yardstick. But if a specific loss is to be compensated and the party was given a chance to prove the loss and did not he cannot have more than nominal damages – See **Nyamogo & Nyamogo Advocates v Barclays Bank of Kenya Limited (2015] eKLR.**

82. In this case, whether or not the court would make an award for breach of confidentiality is a question of the rather tenuous nature of the contract in place. If there was a contract concerning confidentiality, it was not between the plaintiff and the 3rd defendant. The duty of confidentiality that I have found to have been breached was owed by the 3rd defendant to the 1st and 2nd defendants. It is contained in the policies and internal guidelines of AAIK and AAI as already indicated. These rules were to be observed by the 3rd defendant as a Board member of the 2nd defendant. It is thus the 2nd defendant that is entitled to enforce the contract, and in my view, the plaintiff could claim through the 2nd defendant.

83. Ultimately, I see no basis for recovery by the plaintiff on this ground. I also note that both the 1st and 2nd defendants quickly admitted confidentiality and sought to mitigate the situation by asserting that no third party could use the confidential information disclosed. If any recovery were to be made at all, I would have awarded nominal damages of Kshs 250,000/-.

84. I need say no more on this.

Which, if any, of the contents of the documents tabled before the Selection Panel were defamatory or were justified, privileged or in the public interest?

85. As already noted, it is not in dispute that the Minutes of the AAIK Meeting and the Lenre Amao Reports were, as put by the plaintiff, *"owned and internal to the 1st and 2nd defendants"*. It is also not seriously disputed that the Governance Manual and internal policies of the 1st and 2nd defendants prohibited the 1st and 2nd defendants from disclosing them willy-nilly to third parties.

86. I have already found that the 1st and 2nd defendants were not party to the disclosure of the impugned documents. I have also found that the 3rd defendant disclosed the documents, and being a board member of AAIK, did so contrary to internal policies binding him to confidentiality.

87. All that now remains is to determine whether the impugned documents or statements in them were defamatory or otherwise and to identify what consequences befall the 3rd defendant, if any. Here, I am dealing with libelous statements, that is, written statements alleged to have brought the plaintiff into disrepute.

88. The main challenge I am facing in making this determination, however, is that the plaintiff did not specify what written statements in the impugned documents carry the libelous charges. I have considered the numerous authorities placed before me by the parties. Without exception, where the charge concerns libel, the plaintiffs have identified and specified the statements that were published and alleged to be libelous or defamatory. They have then gone on to indicate the alleged meaning of the published statements or how they were construed by the audience as defamatory or injurious to the plaintiff as tending to lower his estimation in the minds of right thinking members of society.

89. There is no doubt in my mind that where the impugned statements are not oral but in a written form, the words that signify the meaning which is sought to be construed as defamatory must be identified by the plaintiff. In a suit for libel, it is essential for the plaintiff to cite the libelous words which are alleged to have harmed his or her reputation.

90. Thus, for emphasis and as an example, in **Johnson Evan Gicheru v Andrew Morton & another [2005] eKLR** the allegation was that libels had been published in the book: ***Moi the Making of an African Statesman,*** published in 1998, and soon thereafter availed for sale in Kenya. The book was serialized by one of the popular local dailies. The Court found that the offending words appear in Part III Chapter 12 page 228, of the book. It is this precision that is expected in a suit for libel.

91. In this case, what the plaintiff has done is to condense into two statements her conceptualisation of what the overall implication of the impugned documents is. This is contained in what the plaintiff has isolated at paragraph 13 of her plaint as being the injurious statements. They are the following:

> ***"a) That during her tenure as Country Director for the 2nd defendant, the plaintiff sacked the staff she found and replaced them with persons from her Kikuyu ethnic group swelling their numbers to 157 out of a staff establishment of 202;***
>
> ***b) That the plaintiff was not a competent manager and had failed in her role and performance as Country Director for the 2nd defendant"***

I have unsuccessfully sought to find these statements in the impugned documents.

92. I have read through the twelve (12) page Draft Minutes of the said AAIK Board meeting of 6th May, 2011. I have also perused the twenty-three (23) page Lenre Amao Report. The charge in the plaint at paragraph 11 states that the 3rd defendant placed before the Selection Panel the two documents. Paragraph 12 asserts that the documents were confidential, and as I have indicated, their confidentiality is not disputed.

93. Unless it is the plaintiff's case that the whole of the documents and statements in the impugned documents are defamatory, one would have expected her to isolate the specific words or statements in the documents that carry or exemplify the defamation. This was not done. As stated, I have read through both of the impugned documents. I saw in them pages which are wholly innocuous, such as a page describing the methodology of information gathering for the report.

94. When the plaintiff abandons their role of identifying the libelous defamatory statements in the documents filed, it cannot be for the Judge to pore over the mass of papers thrown at him, and to then choose and pick from that mass those statements hidden in the morass which the Judge might consider to be the defamatory. That is not the role of the Judge in a defamation suit underpinned in libel. The pleadings should identify the libelous or slanderous statements, and the complainant should show how those statements lower the plaintiff's esteem in the eyes of the reasonable man. The judge should not be placed in the position of reading a mass of documents and selecting the defamatory statements, for then he would be entering the arena where he is also the referee; at a stage when the defendants would have no opportunity to comment on or respond to the selection of the alleged libelous words.

95. Further, in this case, it would defeat the purpose of the law of defamation to try to attempt to isolate whether or not there was justification, or if privilege or public interest elements attached to any of the statements in the documents, in light of the fact that no specific statements in them were identified as being allegedly libelous.

96. Let me put this in another way for clarity. The Lenre Amao report is divided into sub titles as follows: an introduction, methodology, background and current risks and challenges, detailed findings and observation, the restructuring exercise, the role played by key support

groups, conclusion recommendations and an appendix. Within these, I have not seen the allegedly defamatory statements set out in the plaint. The plaint should have pointed out the defamatory statements so that when the court peruses the documents exhibited, it can satisfy itself that they are truly contained in a document that was published, and determine if the publication was to the detriment of the plaintiff.

97. As for the Minutes of the AAIK Board Meeting, they consist essentially of a discussion on a notice to show cause issued to the plaintiff, issues arising under the notice; the plaintiff's responses to the issues; members' comments, and a resolution on each issue. I have not seen in the Minutes, the statements isolated in the plaint as being defamatory.

98. For the above reasons, the court cannot pick and choose elements from the documents impugned that contain words that, by interpretation, approximate to the alleged defamatory statements set out in the plaint. It was for the plaintiff to demonstrate the allegations she has made with evidence supporting the allegations contained in the documents.

99. Accordingly, I am unable to make a finding from the evidence, that the statements alleged by the plaintiff to be defamatory, are contained in the impugned documents.

Disposition

100. In summary, the conclusions and disposition I have arrived at are as follows.

101. In answer to the issue as to the nature of the Separation Agreement relating to whether there was any negotiation in respect of separation, I have found that there were indeed negotiations between the plaintiff and her employers leading to the Separation Agreement.

102. I have found that what must be proved is whether the employer divulged or caused to be divulged any of the terms of or information in the Separation Agreement, noting as follows: That its terms bound the employer and employee; That there was nothing binding an individual staff member – in his personal capacity – to comply with its provisions; and that third parties who, through whatever means, came into contact with the ***"the terms hereof"*** or the information in the Agreement, were under no contractual obligation to maintain confidentiality.

103. Further, on confidentiality, it is clear that the two documents presented at the Selection Panel were confidential documents within the meaning of the AAIK policy. Their production by the 3rd defendant, a board member of AAIK, was a breach of such confidentiality.

104. On the ground breach of confidentiality by the 3rd defendant, I have ultimately found no basis for recovery by the plaintiff. I have also noted that both the 1st and 2nd defendants quickly admitted confidentiality and sought to mitigate the situation by asserting that no third party could use the confidential information disclosed. If any recovery were to be made at all from the 3rd defendant for the breach, I would have awarded the plaintiff nominal damages of Kshs 250,000/-.

105. On the 3rd defendant's attendance at the Selection Panel hearing, I have found that the 1st and 2nd defendants played no role in the 3rd defendant's appearance at the Selection Panel. On the contrary, the evidence discloses that the 1st and 2nd defendants were very alive to the fact that the documents presented to the Selection Panel were internal confidential documents that could not be relied upon elsewhere.

106. Finally, from the evidence, I was unable to make a finding that the statements alleged by the plaintiff to be defamatory, are contained in the impugned documents.

107. For all these reasons and in light of the foregoing discussion, I hereby dismiss the plaintiff's suit with costs to the respondents.

Administrative directions

108. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Zoom/Teams video/tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Deputy Registrar/Executive Officer, Naivasha.

109. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

110. Orders accordingly.

Dated and Delivered via videoconference at Naivasha this 5th Day of August, 2020

_____

RICHARD MWONGO

JUDGE

Delivered by video-conference in the presence of:

1. Mrs Rotich for the Plaintiff

2. Mr Tiego for the 1st Defendant

3. Mr Weru holding brief fo Mr Obura for the 2nd Defendant

4. Court Clerk - Quinter Ogutu