



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 560 OF 2012

ASHOK K. SHAH.....PLAINTIFF

-VERSUS-

NATION MEDIA GROUP LIMITED....DEFENDANT

J U D G M E N T

The Plaintiff in this suit was at all material times relevant to the case, the Managing Director as well as the Chief Executive Officer (CEO) of Insurance Company known as APA Insurance Co. Limited (APA) having its headquarters in Nairobi and branches in Nakuru, Mombasa, Kisumu, Naivasha among other towns in Kenya and Kampala in the Republic of Uganda.

The plaintiff's case as pleaded in paragraph 5, 6, 7 and 8 of the plaint dated 15th November, 2012 and filed in court on 18/11/2012, is that, in the Business Daily Weekend Edition of Friday November 18th to Sunday, November 20th 2011, the Defendant published the following article which was defamatory of the plaintiff:

Loss of motor car that got Ashok Shah's deal with CMC cancelled".

"When retired President Arap Moi's Range Rover was stolen from CMC's Industrial Area premises in 2008, the then Chief Executive of the motor dealing company, Martin Forster, filed a compensation claim with APA insurance. Ashok Shah, the Chief Executive of the Insurance firm and a board member of CMC refused to pay kshs. 18 million claim for the luxurious sports utility car.

A furious Mr. Foster promptly cancelled the Insurance contract that APA had held with CMC for nearly two decades"

The plaintiff avers that at no time at all had he entered into any kind of deal whatsoever with CMC Motors Group Limited (CMC) nor did he at any time refuse to pay the claim by CMC arising from the theft of former President Moi's car from CMC's workshop. He averred that, the allegations contained in the said publication, that he refused to pay the claim, are not only false but also malicious and downright libelous.

The plaintiff further pleaded that through his Advocate's letter dated 25th day of January, 2012, addressed to the defendant, his Advocate clarified to the defendant that he did not refuse to pay the claim but simply pointed out that the figure claimed was not justified under the relevant policy but eventually CMC accepted the settlement of the claim under the correct policy but despite the said clarification the Defendant in its Saturday Nation of 8th September, 2012 repeated the same allegations as follows:

"After the car was stolen, the then CMC Chief Executive Mr. Martin Forster, filed a Kshs. 18 million compensation claim with APA Insurance. And when Ashok Shah, the Insurer's CEO and a CMC board member rejected the claim, Mr. Forster cancelled the Insurance contract that the motor dealer had held with APA for two decades".

The Plaintiff contends that the scandalous, scurrilous and malicious allegations contained in the said publication were and remain factually wrong and a gross misrepresentation of the truth. Further, the said publication is demeaning of the plaintiff, its derogatory disparaging and libelous of the plaintiff's character and reputation. He contends that, the aforesaid words and statements are libelous of his character and reputation and the same are actionable.

He further contended that the publication has caused him a high degree of embarrassment, disparagement and distress and that, as a result his as well as APA's public esteem, character and reputation have been seriously eroded, besmirched and scandalized. He has set out the natural and ordinary meaning and/or by imputation or innuendo of the said publication, in paragraph 11 of the plaint.

He averred that the Defendant published the said words out of malevolence and/or spite towards him and without regard to the consequences thereof and/or incidental thereto in that, the respondent knew or ought to have known, that the allegations and innuendos contained in the

publication were false and lacked basis in fact or at all.

The plaintiff has claimed general damages for libel, exemplary, punitive and aggravated damages together with interest on the above and the costs of the suit.

The defendant denied the claim vide its defence filed in court on the 5th day of February, 2013. Though it admitted having published the article in question on the 18th November, 2011 it denied that the Article was defamatory of the plaintiff. It averred that the words used in the article formed part of an article the whole of which, the defendant will refer for the contents and true meaning of the words complained of.

Further, the defendant denied that the publication is libelous of the plaintiff's character and reputation and that the same is actionable per se or at all. It also denied that in their natural and ordinary meaning, the words and statements complained of, in their context, bore or were capable of bearing the meanings and/or imputation and /or innuendo as pleaded in paragraph 11 (a) and (b) of the plaint or any meaning defamatory of the plaintiff.

In the alternative and without prejudice, the defendant stated that in so far as the words in the publications, in their natural and ordinary meaning bore and were understood to bear the meanings set out in the plaint, the same were true in substance and fact in that, there was an insurance agreement between CMC Motor Group Limited and APA Insurance Company Limited where the plaintiff is the Chief Executive officer; that the said agreement was in respect of a Range Rover Motor vehicle valued at Kshs. 18 million; compensation claim for the full amount was raised by CMC motors Group Limited Pursuant to a theft of the said vehicle at their premises and that the said claim was not settled but instead, APA insurance paid the policy under a sum of Kshs. 5.5 million as compensation.

The defendant stated that if the plaintiff did suffer any injury, distress or embarrassment, the same was not as a result of the publication in question as the publication was not motivated by ill will and/or malice as alleged or at all. Each and every allegation of malice and/or ill will set out in paragraph 16(i) to 16(ii) is denied.

The Defendant concludes its defence by contending that the plaintiff is not entitled to any award of damages sought by reasons of the matters pleaded hereinabove and that no basis has been laid for awarding exemplary or aggravated damages or any other damages sought by the Plaintiff. It has urged the court to dismiss the plaintiff's claim with costs.

In his evidence, the Plaintiff adopted his witness statement dated the 15th day of October, 2012. He also produced the documents filed in court on 16th November, 2012 as exhibits. In his aforesaid statement he stated that, at the time of the publication, he was Managing Director and Chief Executive Officer (CEO) of APA Insurance Company Limited. He was also a Director of CMC Holdings Limited.

It was his evidence that on the 12th November, 2008, AON Mint Insurance Brokers limited wrote to APA Insurance Limited informing them that their client (CMC) which was APA's insured had lost a new motor vehicle whose estimated value was Kshs. 18 million. That APA by its letter dated 19th November, 2008, instructed Cunningham Lindsey Kenya Limited and Rapid Investigations Services, to jointly investigate the circumstances surrounding the said loss. That at the time of the loss, APA was providing insurance covers to CMC, the relevant ones being Burglary and Fidelity Guarantee Policy.

It was his further evidence that by a letter dated 23rd January, 2009, AON Minet Insurance Brokers Limited forwarded to APA a claim form for the loss of the vehicle in which CMC was claiming Kshs. 13,100,000/- for the loss of the motor vehicle under the Burglary policy. By this time, APA had not received the investigation report on the circumstances of the loss of the vehicle in which case, it was not in a position to decide with finality whether the claim fell under the Burglary or the Fidelity Guarantee Policies.

That upon receipt of the investigation report by APA from Rapid Investigations Services dated 23rd February, 2009, the same showed that the vehicle had been stolen from CMC's workshop in industrial area between 1.00pm on 8th November, 2008 and 8.00am on 10th November, 2008 and that the theft had been executed with the active involvement of some members of staff of CMC. This position was supported by the report on investigations that were carried out by Tide Management who had been commissioned by CMC itself to carry out independent investigations.

The Plaintiff further stated that from the above facts and documentary evidence, it was obvious to APA that the claim by CMC fell under Fidelity Guarantee Policy and not Burglary as reflected in the claim form submitted by CMC to APA through the broker.

That by its letter dated 19th March, 2009, addressed to the brokers APA offered to settle the claim under Fidelity Guarantee Policy for a sum of Kshs. 2,700,000/- which offer was rejected by CMC vide its letter dated 20th day of April, 2009 and the dispute finally landed in court in Nairobi Hcc. No. 542 of 2010 (CMC Motors Group Limited vs. APA Insurance Limited in which the plaintiff claimed a sum of Kshs. 12,322,585 based on the Burglary Policy. The matter was defended but parties eventually recorded a consent in which CMC was paid Kshs. 5,500,000/- in full and final settlement of the claim. The payment was made on 9th August, 2011.

The Plaintiff stated that from the foregoing, it is quite clear that at no time whatsoever did APA refuse to pay the claim made by CMC. That throughout the negotiations, APA consistently offered to settle the claim under Fidelity Guarantee Policy which eventually was accepted by CMC and therefore he was shocked when he saw the Article in the Business Daily Weekend Edition.

He further stated that when the Article was published, the CMC claim had already been paid and the matter closed and so, the allegation in the article that he as the Chief Executive Officer of APA had refused to settle the claim was therefore clearly false.

He stated that looking at the article, any reasonable person would assume that he had personally made a deal with CMC for his own benefit which words he stated, carries connotations of a secret bargain and was intended to cause maximum damage to his character and reputation.

According to the plaintiff, the words and statements in article, in their natural and ordinary meaning and/or by imputation or innuendo meant and were understood to mean inter alia that he was a dishonest person, he was dishonest and dishonorable director of CMC, he had entered into an underhand dealing with a company to which he was a director i.e. CMC, he had used his position as a director to gain undue advantage and that he had abused his office as a director.

He stated that as a result of the unfounded, untrue and libelous publication, his character esteem and reputation as well as that of APA have been severally eroded and scandalized which has caused him a lot of embarrassment and distress. That his character and reputation as an experienced, respected top executive in the Insurance Industry has been gravely lowered in the estimation of the right thinking members of the society generally but more so among the players in the Insurance Industry. That the defendant knew or ought to have known that the allegations contained in the publication were false and lacked any basis in fact or at all.

Kennedy Ochieng testified as PW2. He adopted his witness statement filed in court on the 13th day of December, 2017. It was his evidence that in the course of his professional interactions, he came to know the plaintiff as a person of high moral standing and a respected top executive in the insurance industry both in Kenya and regionally. He stated that he held the plaintiff in very high esteem.

It was his evidence that on Friday November, 2011, he obtained a copy of the business Weekend Edition and while reading the same, he came across the articles the subject matter of this suit. He stated that the information in the articles shocked and surprised him that a person he held in high esteem and who was the Chief Executive Officer of a company with a regional reach, was apparently a dishonest person who entered into underhand deals in a company he served as director, abused his position as a director, was corrupt and headed an insurance company that was unreliable. That the articles lowered the esteem in which he regarded the plaintiff and led him to question his character and reputation. To his mind, the plaintiff's reported conduct was scandalous and rendered him unfit for any position as Company Director and of the position he held. That he contacted the Plaintiff who clarified to him that the articles were force.

On its part, the Defendant called one witness, Washington Gikunju Njaramba. At the material time, he was employed as a reporter by the defendant. He stated that he authored the article dated 18th November, 2011 and the background of the article revolved around the ongoings at CMC Holdings Limited. That sometimes in March, 2011, there were widespread reports of underhand dealings by members of the CMC board of directors which included instances where the companies associated with members of the CMC board of directors were trading or dealing with CMC to its detriment.

That at the material time, CMC was listed at the Nairobi Stock Exchange as a public company with thousands of ordinary investors on its shareholder's register. In the course of their investigations, they came to learn that CMC's claim for compensation for a motor vehicle Range Rover valued at kshs. 18 million had been rejected by APA Insurance. The plaintiff was by then the managing Director of APA Insurance Company Limited and a member of the Board of Directors of CMC.

It was his evidence that the publication was made purely in public interest and it sought to highlight the situation prevailing at CMC where directors were doing business with CMC through companies associated with them thereby leading to a potential conflict of interest.

Parties filed written submissions in support of their respective cases which the court proposes to consider while making its analysis in the case.

The plaintiff filed his statement of issues on 15th August, 2014 in which he identified 10 issues which can be collapsed into the following issues;

- 1. Whether the article was defamatory of the plaintiff**
- 2. Whether the publication was motivated by ill will and/or malice**
- 3. Whether the words complained of in the article are true so as to afford the defendant a defence of justification**
- 4. Whether the plaintiff is entitled to damages**
- 5. Who should bear the costs of the suit?**

I now proceed to consider the issues as set out hereinabove.

It is clear that the plaintiff's cause of action is based on defamation. According to *Salmond on the law of Torts, 7th edition*, the word defamation is defined as follows:-

“The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification”

In the case of *Ondonkara Vs. Asties* (1970) EA 374 a defamatory statement was described as follows:

“..... A statement is defamatory of a person of whom it is published if it is calculated to lower him in the estimation of the ordinary just and reasonable men”.

The common law of defamation protects every person from harm to their reputation by false and derogatory remarks about their person

known as defamation. The same protection is anchored in the Constitution under Article 33 (1)(a) as read with clause (3) thereof both of which provides:

33(1)(a) every person has a right to freedom of expression which include freedom to seek, receive or impart information or idea.

Clause (3) provides” In exercise of the right to freedom of expression, every person shall respect the rights and reputation of others”.

The essence of a defamatory statement is its tendency to injure the reputation of another person. It is however, upon the plaintiff to show or establish how he was exposed to public hatred, contempt or ridicule or that the words had caused him to be shunned or avoided by certain people (*see Gatley on libel and slander 8th edition*). The plaintiff has to prove the actual words complained of and it is not sufficient to show the defendant made a defamatory statement.

In this case, circumstances surrounding the alleged defamation are two publications in the Business Daily Weekend Edition on Friday November, 18 to Sunday November 20th 2011, and the other in the Saturday Nation of 8th September, 2012. The Plaintiff avers that the said articles were defamatory of him. On the other hand, the Defendant contends that the publications were factual and has relied on the defence of justification.

The first issue that this court will consider is whether the article was defamatory of the Plaintiff. Before I delve into that issue, it is not in dispute that the article was published by the Defendant. In actual fact, the Defendant has admitted having done so but has mounted a defence of justification.

In its submissions, the Plaintiff avers that the article is defamatory from its headline. That the words “*Ashok Shah’s deal*” in their ordinary meaning, by imputation and/or innuendo connotes an underhand illegal activity. He has referred to the meaning of words “deal” in the oxford illustrated dictionary which defines it as “a secret bargain in commerce”

The Plaintiff further submitted that the words in the body of the article had no truth in them and are downright false. That the plaintiff did not enter into any kind of deal whatsoever with CMC neither did he refuse to pay CMC’s claim arising from theft of the subject motor vehicle as alleged in the article.

On its part the defendant submitted that the article was true in that, at the time of the publication, the plaintiff was the Managing Director and Chief Executive Officer of APA. That he was also a Director of CMC Holdings Limited when the subject motor vehicle was stolen from the premises of CMC, that APA was offering insurance services to CMC, that CMC was a listed company at the time of the theft among others.

The Defendant has relied on Section 14 of the Defamation Act in support of its defence of justification. They have also relied on the case of *Nation Media Group vs. Jakayo Midiwo (2018) eKLR* in which, the court of appeal held that where what the appellant published was truthful, and that words in their ordinary meaning did not defame the respondent, the respondent’s claim for defamation would not succeed. The case of *Alfred Aluvaala vs. Moses Mutui & Thomas Ogola (2017) eKLR* was also relied on.

The Defendant further submitted that the words published were substantially true and the inference to be drawn from them was substantially true and the defendant need not prove each and every allegation of fact.

For the court to determine whether the articles were defamatory, the articles have to be read in context. The title of the article refers to the plaintiff in his personal capacity as Ashok Shah and not as a Director/CEO of APA Insurance Company Limited. It is also important to note the usage of the word deal in the articles. While I concur with the defendant’s submissions that at the material time the Plaintiff was the CEO of APA and also a Director of CMC, the heading used in the article refers to him in person and not to him in his official capacity. As submitted by the plaintiff, the usage of the word “deal” cannot also escape the attention of this court. The meaning of the said word as quoted by the Plaintiff and confirmed by this court, refers to a secret bargain in commerce.

From the evidence on record, the plaintiff had not entered into any deal with CMC. The relationship that existed between them was a contractual one between CMC Holdings Limited and APA insurance Company Limited. The Plaintiff, as a person was not a party to that relationship/contract. This fact is borne out in the discharge voucher dated the 27th July, 2011.

The claim the subject matter of the alleged defamation arose out of theft of motor vehicle from CMC’s Premises. There is evidence on record that the vehicle was insured by APA Insurance under Burglary Policy and also under the Fidelity Shield Guarantee policy. This was not disputed by the defendant. After the theft took place there was a dispute as to which policy the claim was payable under, and both parties i.e CMC and APA could not agree on the same and this culminated into filing of civil suit number, 542/2010.

The defendant in its submissions has heavily relied on the assertion that the initial claim by CMC was rejected. They have relied on the letter dated 20th April, 2009 from CMC to AON Minet which the plaintiff produced as exhibit 6. The court has carefully read the letter. It is true that it refers to a letter dated 3rd April 2009 that was addressed to the Chief Accountant of CMC Holdings, one Mr. E. Kinyanjui. The letter dated 20th April, 2009 was written by Mr. M. H. Forster, the Group Chief Executive Officer of CMC Holdings Limited. In this letter he notes that the insurer who in this case, was APA have proposed a settlement of Kshs. 2.7million under the Fidelity Guarantee Policy. He further writes that, they do not accept that settlement under the Fidelity Guarantee Policy and that they expect full amount claimed to be settled.

Looking at the letter, what the court gathers is that the insurers had proposed a settlement and it’s not true as submitted by the defendant that they had rejected the claim. The letter dated 3rd April, 2009 was not availed to this court and therefore, the full contents of the same remains

unknown but some inference can be made upon reading the letter dated 20th April, 2009.

In the absence of the said letter, this court cannot state with certainty that APA rejected the claim and therefore, that statement by the defendant cannot be taken to have been factual.

From the foregoing this court would not hesitate to find that the article was defamatory of the Plaintiff.

As to whether the words complained of are true. The Defendant states that they are, while the Plaintiff contends that they are not. With regard to the settlement of the claim, the court has already noted that there is no concrete evidence that APA rejected the claim. Though CMC filed a case in court after they rejected the offer made to them by APA the matter was settled out of court and a discharge voucher was executed by CMC for Kshs. 5,500,000/- under their policy number P/10/2008/1011/248 which was the Fidelity Guarantee Policy and not under the Burglary Policy. The claim was settled in full and final. This amount was paid to CMC on 3rd August, 2011 as per exhibit 11 which is a payment voucher. The Articles complained of were published in the month of November, 2011 and September, 2012. The articles were published long after the claim was settled.

In the circumstances aforesaid, can the defendant's defence of justification and public interest stand? In support of these defences, the defendant relied on the case of Nation Media Group vs. Jakayo Midiwo (2018) eKLR where the court of Appeal quoted the case of Fraser Vs. Evans & others (1969) all ER.6 that;

“There are some things which are of such public concern that newspapers, the press and indeed everyone is entitled to take known the truth and make their comments on it. This is an integral part of the right of speech and expression. It must not be whistled away”

They also relied on an extract from Rocks Treatise on libel and slander as quoted in the case of Jakoyo Midiwo (supra)

“For the defence of fair comment to succeed it must be proved that the subject matter of the comment is a matter of legitimate public interest. That the facts upon which the comment is based are true and that the comment is fair in the sense that it is relevant to the facts and in the sense that it is an expression of the honest opinion of the writer”

In his evidence DW1 stated that the publication was made purely in public interest and it sought to highlight the situation prevailing at CMC where directors were doing business with CMC through companies associated with them thereby leading to a potential conflict of interest.

It is trite that, for the defences of justification and fair comment to succeed the Defendant must prove that the article was true and that the facts upon which the comment was based are true. Upon perusal of the article, vis-à-vis the evidence on record, the Defendant did not convince the court that the Plaintiff refused to pay the claim and/or rejected the claim. It should also be recalled that by the time the Article was published, the claim had been settled. In the circumstances, therefore, the article is false and both defences cannot succeed.

As to whether there was malice on the part of the defendant in publishing the article, evidence of malice can be inferred and for the court to infer malice, the language of the publication ought to have altered the facts and their meaning and there ought to be animosity. In the case of Phineas Nyagah Vs. Gitobu Imanyara (2013) eKLR Odunga J held,

“Evidence of malice may be found in the publication itself if the language used it utterly beyond or disproportionate to the facts. That may lead to an inference of malice.... malice may also be inferred from the relations between the parties.

The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.

In his evidence, DW1 stated that he knew the plaintiff as the CEO of APA insurance Company Limited and he did not deal with APA in his personal capacity. He further stated that it is APA that “refused” to pay the claim which means that it was not the plaintiff who “refused” to do pay. He admitted that the article was published after the claim had been settled. He also admitted that he did not have any evidence to show that the plaintiff was personally involved in “rejecting” the claim by CMC. According to him, by the time he wrote the article he was not aware that the claim had been settled. On being asked about the article published on 8th September, 2012 he stated that he was not the one who wrote it and he does not know the person who did.

He further stated that his article was about a listed company, CMC Limited which was in disarray and there were many wrangles that exposed a lot of weaknesses in the company and some members of the Board were using their positions to get lucrative businesses from the company to the detriment of the shareholders. Though he stated that the chairman of the board had called for investigations into those allegations, he could not offer any evidence of the plaintiff's involvement and he could not tell the court how the contract between APA Insurance and CMC Holdings Limited was entered into. He was categorical that he did not allege any underhand dealings between CMC and APA though he contended that he got the information from an interview he carried out with the CEO of CMC who told him that APA refused to pay the claim. He however, did not call this CEO as a witness to testify to that allegation. In any event, according to him, the said interview took place on 17th November, 2011 by which date the claim had already been paid and it's doubtful that the chairman of CMC could have told him the claim had not been paid when it had indeed been long settled.

In those circumstances, the court find that there was malice on the part of the defendant in publishing the article as the author did not bother to find out the truth and indeed the article was not true. This came out clearly during the cross examination of DW2.

Having made a finding that the article was defamatory, I now turn to the issue of damages. From the evidence of plaintiff and that of PW2, it is clear that the plaintiff was defamed and his reputation was negatively affected by the publication, no doubt the positions that the plaintiff

held at the material time spoke volumes about his reputation, in that APA and CMC were by no means small companies. It was his evidence that many of his friends called him to enquire about the publication seeking to know if indeed it was true. As the court rightly put it in the case of **Vein V. John Raira & Sons Property Limited 177 CLR 115, 150.**

“it seems to me, properly speaking a man defamed does not get compensation for his reputation that is simply because he was publicly defamed. For this reason, compensation by damages operates in few ways..... as vindication of the Plaintiff to the public and as a consolation to him for a wrong done.

In awarding damages, the court draws considerable support in the guidelines in the case of ***Jones Vs. Poland (1997) EMLR 233 - 243*** where a checklist of compensatable factors in libel actions were enumerated as follows”,

- 1. The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it was published, and any repetition***
- 2. The subjective effect on the plaintiff’s feelings not only from the provinces itself, but from the defendant’s conduct thereafter both upto to and including the trial itself.***
- 3. Matters tending to mitigate damages, such as the publication of an apology***
- 4. Matters tending to reduce damages***
- 5. Vindication of the plaintiff’s reputation past and future.***

Being guided by those factors and the submissions by the parties, the plaintiff has urged the court to award general damages of Kshs. 10,000,000/- relying on the case of ***Daniel Musinga t/a Musinga & Co. Advocates vs. Nation Newspaper Limited***, that of ***Ambassador Chirau Ali Mwakwere vs. Nation Media Group Limited***, and that of ***Hon. Musikari Kombo vs. Kenya Broadcasting corporation*** where sums of Kshs. 10,000,000, 8,000,000 and 7,000,000 were awarded.

On its part the Defendant has urged the court to make an award of between Kshs. 200,000/- - 500,000/- and has cited the cases of ***Emmanuel Omenda vs. Safaricom Limited (2012) eKLR*** that of ***Jones Maghanga Solomon vs. Eliud Majani (2015) eKLR*** and that of ***Jacob Kipngetich Kotonor vs. Nation Media Group Limited (2017) eKLR*** in which Kshs. 200,000, 500,000 and 200,000/- respectively were awarded.

The court has considered the submissions on quantum and the circumstances of this case, I find an award of **Kshs. 3,000,000** as reasonable in the circumstances. The court has also considered the volume of circulation of the publication.

The plaintiff has also sought for exemplary, punitive and aggravated damages. In this regard the court wishes to rely on the case of ***John Vs. Man Limited (1990) 2ALL ER*** where the court held

“Exemplary damages on the other hand goes beyond compensation and are meant to “punish” the defendant”. Aggravated damages will be ordered against a defendant who acts out of improper motive where it is attracted by malice, insistence on a flurry defence of justification or failure to apologize.

In this regard, the plaintiff submitted that he should be awarded damages because the defendant aggravated matters by repeating the defamatory publication and failed to publish an apology despite being served with a demand letter dated 25th January, 2012. He has asked the court to award him a sum of Kshs. 1, 500,000/- and has relied on the case of ***Hon. Musikari Kombo vs. Royal Media Services*** and that of ***Miguna Miguna vs. Standard Group Limited***.

On it part, the defendant submitted that no award should be made under this head as the plaintiff has not laid any basis for the award of the same.

The court has considered this aspect of the claim, I am persuaded by the plaintiffs arguments that, by republishing the article the defendant should be liable for aggravated damages. The court also notes that the defendant failed to publish an apology even after a demand letter stating the correct state of affairs was written to it. For those reasons, I proceed to award a sum of kshs. 500,000 as exemplary, punitive and aggravated, damages.

The Plaintiff is also awarded the costs of the suit.

Dated, Signed and Delivered at Nairobi this 20th Day of JUNE, 2019.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... For the Plaintiff

..... For the Defendant