REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 162 OF 2009

LIVINGSTONE MWANGI……PLAINTIFF

VERSUS

SHERIA CO-OPERATIVE SOCIETY…….....……..…DEFENDANT

JUDGMENT

1. **Pleadings:**

The plaintiff sued the defendant for general, aggravated and exemplary damages for defamation; he also sought for costs of the suit and interest on both damages and costs.

At all times material to the suit the plaintiff was a member of the defendant, which is a society, duly registered under the **Co-operative Societies Act (Cap. 490).** The basis of the plaintiff's action against the defendant is a letter dated 17th December, 2008 addressed to the plaintiff by the defendant's manager, one K. Ondiala and due to its centrality in the dispute between the parties, it is necessary that I reproduce it here verbatim:

> *17th December 2008*
>
> *Livingstone Mwangi*
>
> *P.O Box 70-10100*
>
> ***NYERI***
>
> *We have noted with a lot of concern that you are not servicing Development and Emergency loans since August and October 2008 respectively.*
>
> *You are reminded that it is your obligation to repay promptly the loan advanced to you by the Society.*
>
> *The office demands Kshs 91,828 being the amount in arrears within 21 days from the date of this letter failure to which a decision will be made concerning your membership.*
>
> *By a copy of this letter, we wish to inform your gurantors (sic).*
>
> *Yours faithfully*

K. Ondiala

MANAGER

/an

The letter was copied to twenty one other people whom its author described as the plaintiff's guarantors although the plaintiff denied that two of them were his guarantors as alleged. The plaintiff also denied that he had any emergency loan from the defendant as suggested by K. Ondiala in his letter.

It was the plaintiff's case that the words referred to and were understood to refer to the plaintiff were in their natural and ordinary meaning understood to mean by right thinking members of the society that the plaintiff is not only not creditworthy but that he had also failed to honour his financial obligations and fallen into loan arrears amounting to Kshs 91,828/=. The plaintiff also contended that the words meant and were understood to mean by way of insinuation and innuendo that he was impecunious and a person of questionable financial character and that he was bent on exposing his guarantors to financial losses having failed to repay his loan promptly. By the same innuendo or insinuation, the plaintiff was understood to be a person who is not fit to be a member of the defendant.

The plaintiff averred that at no time had he failed to honour his obligation to repay the loan advanced to him by the defendant and therefore the contents of the defendant's letter were false and malicious and merely meant to injure and lower his reputation in the eyes of the members of the defendant to whom the letter was copied. The defendant's ill motives were in fact achieved, so the plaintiff averred, when his guarantors called and questioned him on his ability to repay the loan they had guaranteed. According to the plaintiff, his reputation has been brought into public ridicule, scandal, odium and contempt by the defendant's acts.

The plaintiff also averred that despite having brought to the attention of the defendant the true state of affairs as far as their relationship is concerned, the defendant was unapologetic and never took any steps to make amends for defaming the plaintiff.

The defendant on its part denied all the plaintiff's claims; in its amended defence, the defendant averred that sometimes in March 2008 the plaintiff had borrowed a loan of Kshs 700,000/= from the defendant and that this loan was to be repaid in 48 months on a reducing balance method; however, just a month after taking the loan, the plaintiff sought to repay it on the basis of a flat rate rather than by the reducing balance formula. The plaintiff's request was accepted and the total sum comprising the principal and interest recoverable from the plaintiff on a monthly basis was calculated at Kshs 17,940/=.

With the change of formula of repayment of the loan, so the defendant contended, the plaintiff's loan repayment code changed and this in effect meant that the plaintiff's old account under which he was to repay the loan on a reducing balance method started reading nil deductions.

The defendant's case is that the plaintiff knew or ought to have known that since his loan code had changed yet he was still repaying the loan, he ought to have informed the defendant of these changes and reminded it that he was up to date with the repayment of his loan and that no arrears were outstanding in any event.

In what appears to me to be equivocal or evasive defence, the defendant denied having written to the plaintiff's guarantor's but that if at all it wrote to them as alleged, it was out of abundance of caution to secure its members' savings. It further contended that out of its membership of 6000 people, it only wrote to the guarantors of the plaintiff's loan and this cannot be said to have been malicious at all. According to the defendant, these guarantors are the only people who would be affected if the plaintiff defaulted in the repayment of the loan and because they were parties to the loan agreement, they cannot be deemed to be third parties before whom the plaintiff can be said to have been defamed. Its letter, so it averred, did not injure the plaintiff's reputation or expose him to ridicule or was otherwise meant to ridicule or defame the plaintiff as alleged or at all.

Finally, the defendant admitted having received the notice of intention to sue from the plaintiff; it responded to it but still the plaintiff instituted this suit against it.

2. **Evidence:**

The proceedings commenced before my brother, Wakiaga J who took the evidence of the plaintiff; my learned brother left the station before he could proceed any further and conclude the matter. When I was seized of the case I proceeded from where he had left and took the evidence of the rest of the plaintiff's and defendant's witnesses.

a. **Plaintiff's Case:**

The plaintiff testified that he was a librarian and held both a bachelor's degree certificate and a diploma certificate from Egerton University. He testified that he was an employee of the judiciary and was working at Kerugoya law courts. He was a member of the defendant which he joined on 11th December, 1999 and that he was also a delegate representing the Nyeri law courts' members.

As a member of the defendant, the plaintiff testified that sometimes in March, 2008 he applied for a loan of Kshs 850,000/= from the society. Upon evaluation of his application, he was advanced the sum of Kshs 700,000/=. In his application of the loan, he gave a list of eight guarantors but only three were approved as qualified guarantors.

The plaintiff testified that he applied to repay the loan at a flat rate and that his application was approved on 9th July, 2008; he accordingly commenced and continued servicing his loan until the 17th December, 2008 when he received a demand letter from the defendant demanding the sum of Kshs 91,828/= being the outstanding arrears of the loan which had accrued as a result of non-service.

It was the plaintiff's testimony that he had never defaulted in repayment of the loan and therefore he was surprised that he had been served with the demand notice. The letter of demand was copied to 21 members of the defendant who were not all his guarantors. These members were quite concerned and incidentally, some of them were the plaintiff's senior colleagues at his place of work; they included the Chief magistrate, the principal magistrate, the deputy registrar and the state counsel all of whom received copies of the defendant's letter before the plaintiff received his. The plaintiff testified that the letter was even copied to persons who were not his guarantors and that it had affected him psychologically.

He instructed his advocates to respond to the defendant's letter; this they did and after about three weeks the defendant responded acknowledging receipt of the plaintiff's advocates' letter and promising to revert but as at the time this suit was filed the defendant had not reverted as promised.

According to the plaintiff the defendant's letter frightened him and was also intimidating; he thought that the members whom he represented as a delegate must have viewed him as a loan defaulter and someone who was not financially trustworthy.

Despite his demand for apology, the plaintiff never received any form of apology and neither did any of the other persons the letter was copied to. The plaintiff asked for damages and an apology from the defendant. He testified that as a delegate he was aware that the record keeping of the defendant was bad and that members had complained about it.

At his cross-examination the plaintiff admitted that previously there had been a problem of double deductions apparently on his remittances but that the defendant noted the error and corrected it; he therefore, testified that he still had faith in the defendant and was still its member despite the recurrent errors.

The plaintiff also admitted that guarantors are entitled to information regarding the repayment of the loan they have guaranteed and more so when the borrower defaults.

One of the persons who were listed as the plaintiff's guarantors was one **Stanley Wachira Mugo (PW2);** he testified that he knew the plaintiff as a workmate at Nyeri Law Courts though he was later transferred to a different station. The witness testified that they were both members of the defendant and that he had been listed as one of the plaintiff's guarantors in the plaintiff's application for the loan; however, perhaps he did not meet the conditions required of a guarantor, he was disqualified from guaranteeing the plaintiff's loan. But even then, he still received a copy of the alleged defamatory letter as one of his guarantors. His idea of the plaintiff after he read this was a person who was dishonest and lacked integrity.

One **Lydia Ihiga (PW3)** also received a copy of the impugned letter; her testimony was that although she was listed as one of the guarantors, she did not guarantee the plaintiff's loan. She admitted that she knew the plaintiff and that they were both members of the defendant. It was her evidence that though she had guaranteed the plaintiff's previous loans he had obtained from the defendant, she did not guarantee this particular one.

(b) Defence case:

The author of the letter that provoked the plaintiff's suit, Kenneth Ondiala, testified on behalf of the defendant; he said that he is the defendant's Chief Manager, Business Development and Operations. It was his evidence that the defendant has a membership of about 10,000 people and 95% of them have been advanced loans by the defendant. The witness told the court that the plaintiff is one such member and that like most of the defendant's members, the plaintiff had successfully applied for a development loan on 13th March 2008. According to Mr Ondiala, the loan was to be repaid in 48 months on a reducing balance basis which meant that the interest was to be computed on the outstanding balance at the end of every month. Later, the plaintiff applied to have the mode of calculation of the interest varied to that of a flat rate instead of computing it on a reducing balance basis.

The changes were effected but apparently the system was not picking the deductions on the new mode; according to the witness, this was as a result of the system failure but before the error was detected the defendant had written and sent to the plaintiff the letter of 17th December, 2008 which it also copied to the guarantors.

It was the defendant's evidence that there was no malice at all and that the defendant did not intend to defame the plaintiff; as a matter of fact, the plaintiff was still its member. According to Mr Ondiala, the system then showed, though mistakenly, that the plaintiff was in default and it was usual that whenever any member defaulted in loan repayments, he was informed accordingly; it was his evidence that the letter of 17th December, 2008 was written and sent in these circumstances.

Mr Ondiala admitted that though Lydia Ihiga was not amongst the plaintiff's guarantors, the impugned letter was copied to her; however, when she called the defendant's office, the issue was clarified though not in written. He also admitted that the plaintiff's advocates' letter demanding an apology was received by the defendant's office but that the latter neither responded to the letter nor apologised as demanded or at all. The witness confirmed that the defendant did not write any letter to the supposed guarantors to whom the offending letter had been copied, at least to set the record straight as far as the plaintiff's loan account was concerned.

3. **Analysis of the Evidence & Issues for determination:**

It is clear from the evidence that the defendant is a society with a relatively wide membership; amongst the benefits that its members enjoy are loans at apparently lower interest rates. It is also apparent from the evidence of Mr Ondiala that such loans are repaid over ascertained period of time through monthly instalments that are computed using either of the two methods-the reducing balance method or the flat rate method. The repayment of these loans is secured by the loan beneficiary's fellow members who guarantee that in the event the borrower fails or defaults in repayment of the loan they would take over the burden and repay the loan to extent of their guarantee. Whenever there is such a default, so I understood Mr Ondiala to testify, the borrower and the guarantor would be informed accordingly.

It is not in dispute that the plaintiff was a member of the defendant society and was still such a member at the hearing of his suit against the defendant. It is also not in dispute that like most of the defendant's members, he applied for and was granted by the defendant a 'development loan' which I understand to be amongst the various financial facilities that the defendant offered to its members. At some point after receiving the loan, he sought for alteration of the repayment method; his request was granted and it would appear that it was this alteration of the mode of repayment that triggered the events that culminated in this suit.

The bone of contention between the parties is the defendant's letter dated 17th December, 2008. Although the defendant vehemently denied in its defence having written it, Mr Ondiala admitted that the defendant authored the letter and that it was not only sent to the plaintiff but was so sent to all those persons to whom it was copied. It follows that the authorship of the letter and its publication are issues that are beyond dispute; I may have to say something about this latter issue of publication because counsel for the defendant appeared to suggest in her submission that since both the plaintiff and his guarantors to whom the alleged defamatory letter was copied to are members of a particular distinct group there was no publication as such.

The primary question left for determination is whether the letter in issue was not only defamatory but was also defamatory of the plaintiff either as alleged or at all. If the answer to this question is in the affirmative, the next question would be whether the plaintiff is entitled to damages to the extent claimed. Answers to these questions are all legal related and thus it is at this point I find appropriate with the law on defamation to the extent that is necessary to determine the questions at hand.

4. **The Law:**

a. Defamation:

Our law on defamation is found in the **Defamation Act (Cap 36)** that is itself largely a codification of the English law on this subject. According to this law every person is entitled to his good name and to the esteem in which he is held by other people; he has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or persons without lawful justification or excuse. **(See Halsbury's Laws of England, Libel and Slander (Volume 28 (reissue) paragraph 1).**

It follows that any words or imputation which may tend to lower a person or persons in the estimation of right-thinking members of society or expose a person or persons to hatred, contempt or ridicule have been held to be defamatory; it was held in **East African Standard versus Gitau (1970) E.A 678 (per Spry Ag. At page 681)** that it is the general impression that the words are likely to create in the minds of reasonable persons which must be considered rather than making a close and precise analysis of the words used**.**

According to this law, if a defamatory statement is made in writing or printing or some other permanent form, as is alleged to have been the case here, the tort of libel is committed and the law presumes damage **(see Ratcliffe v Evans [1892] 2 QB 524 at 528, CA, per Bowen LJ).** If the defamation is oral, or in some other transient form, it constitutes the tort of slander which is not actionable at common law without proof of actual damage **(Davies v Solomon (1871) LR 7 QB 112)** except where the statement is one of a particular character, for instance, words imputing a criminal offence, unchastity to a female or certain contagious diseases; or words calculated to disparage a person in any office, profession, calling, trade or business held or carried on by him at the time of the publication. This latter form of defamation is of little relevance here and I need not say anything more about it.

An action of libel (or slander) is therefore for a private legal remedy, the object of which is to vindicate the plaintiff's reputation and to make reparation for the private injury done by the wrongful publication to a third person or persons of defamatory statements concerning the plaintiff**. (See Cassell & Co Ltd v Broome [1972] AC 1027 at 1071, [1972] 1 All ER 801 at 824, HL, per Lord Hailsham of St Marylebone LC).**The defendant in such an action may prove the truth of the defamatory matter and thus

show that the plaintiff has received no injury; for although there may be damage accruing from the publication, yet, if the facts published are true, the law gives no remedy by action.(**Halsbury's Laws of England, Volume 28 paragraph 1).**

Applying these tests, I go back to the question; was the content or, to be more specific, were the words contained in the defendant's letter dated 17th December, 2008 defamatory? If they were defamatory, were they defamatory of the plaintiff?

I am of the humble view that the general impression created in the mind of any reasonable person reading the defendant's letter to the plaintiff is that the plaintiff is an impecunious character who is otherwise incapable of honouring his financial obligations whenever they are due; that he is dishonest and his financial probity is questionable; that he is not a credit worthy person; that he is bend on exposing other people to financial losses; and that he is not fit to be a member of the defendant society. This to me appears to be the underlying meaning and tenor of the defendant's letter and, in my very humble view, it is clearly defamatory for the simple reason that it tends to lower the character and the reputation of the plaintiff in the minds of persons to whom the letter was copied and who, for all intents and purposes are right thinking members of the society in which they share with the plaintiff. Two of these people testified that they thought the plaintiff was dishonest when they read the defendants letter. Whether the words were defamatory of the plaintiff should not really be an issue because the plaintiff was named as the addressee of the letter and Mr Ondiala was categorical in his evidence that this letter was intended for plaintiff.

An aspect of this tort that counsel for the defendant appeared to dispute is that of publication; as noted earlier, counsel suggested in her submissions that since the plaintiff and the guarantors who received the defamatory letters were members of the same society, there was no publication of the defamatory words. With due respect to the learned counsel, she was obviously wrong on this because publication for purposes of an action in libel is established once it is proved that the defamatory matter has been communicated to a person other than the plaintiff himself; it has even been held that communication of such a matter to the claimant's wife or husband amounts to publication. **(See Praed v Graham (1889) 24 QBD 53, CA)**. According to **Halsbury's Laws of England on Libel and Slander** (supra) at paragraph 61, there is sufficient publication to a third person if there is publication to a stranger, or to the plaintiff's wife or husband, or to the plaintiff's or defendant's employees, or indeed to any person other than the plaintiff himself.

b. **Damages:**

Having found that the plaintiff was defamed, the next question to consider is that of damages which the plaintiff is entitled to bearing in mind that he has sought for not only the general compensatory damages but he also claimed both exemplary and aggravated damages; the opportune point to start from in this venture is the law on damages in defamation.

Section 16A. (1) of the **Defamation Act** entitles a claimant in any action for libel to damages; according to this section it is incumbent upon the Court to assess the amount of damages payable as it may deem just except in some instances where libel is in respect of certain offences in which event the statute has set forth the minimum amount payable as damages. The libel in this case has nothing to do with any of the offences mentioned in this section and thus I am free from the fetters imposed by the statute in assessment of damages due to the plaintiff.

Generally speaking, in actions for defamation, damages payable are mainly compensatory in nature; they are awarded to compensate the plaintiff for, first, the injury to his reputation and second, the hurt to his feelings. Of importance to note is that these damages are 'at large' and they operate to vindicate the plaintiff to the public and to console him for the wrong done. **(See Cassell & Co Ltd v Broome [1972] AC 1027 at 1072, [1972] 1 All ER 801 at 825, HL, per Lord Hailsham of St Marylebone LC.).** Quoting with approval Windeyer, J in **Uren v John Fairfax & Sons Pty Ltd (1965-66) 117 CLR 118** at **150** the House of Lords in the **Cassell & Co Ltd case** (supra) held damages in libel and slander to be more of a solatium rather than a monetary recompense for harm measurable in monetary terms; that is,

they constitute a compensation for emotional rather than physical or financial harm. However, over and above such general damages, special damages may be awarded in respect of actual material loss proved to have been sustained as a result of the words complained of.

Moreover, the general damages may be increased to take into account the defendant's motives in uttering the words complained of, or his conduct before or during the action; these damages are usually referred to as 'aggravated damages' and are meant to compensate the plaintiff for the additional injury, going beyond that which would have flowed from the words alone, caused by the presence of the aggravating factors. **(See Rookes v Barnard [1964] AC 1129, [1964] 1 All ER 167, HL).**

Besides general and aggravated damages, the claimant may also be awarded 'exemplary damages', which are damages going beyond mere compensation but which are only awarded in special circumstances; they are awarded only where the plaintiff pleads and proves that, at the time of publication of the libel or slander, the defendant knew that the publication would be tortious, or was reckless as to whether or not it was, but still proceeded to publish the words complained of because the prospects of material advantage outweighed the prospects of material loss **(see Riches v News Group Newspapers Ltd [1986] QB 256 at 269).**

In any action for libel or slander it is incumbent upon the claimant to give full particulars in the claim of the facts and matters he relies upon to support his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.

Unlike general damages, aggravated and exemplary damages must be specifically pleaded and proved.

It was noted that in cases where the injury to the plaintiff has been aggravated by the conduct of the defendant, the plaintiff may claim aggravated damages. Such damages have been held to be part of, or included in, the sum awarded as general damage and are, therefore, at large (**See Rookes v Barnard [1964] AC 1129).** Although they need not be included in the prayer for relief, the details of the defendant's conduct must be pleaded in the plaint or statement of claim.

The plaintiff's claim for damages has to be evaluated in the context of this law that I have attempted to set forth. Counsel for the plaintiff submitted that in assessing the damages payable to the plaintiff, this court must consider that the plaintiff was a graduate and has distinguished career as a professional librarian and that he was also the defendant's members' delegate representing the Nyeri Law Courts. Counsel also submitted that this Court ought to consider that no apology was made to mitigate the damages. Considering all these factors, it was submitted on behalf of the plaintiff that an award of Kshs 8,000,000/= would be adequate; out of this sum, Kshs 5,000,000/= would be damages under the head of general damages, Kshs 1,500,000/= exemplary damages and 1,500,000/= aggravated damages. In coming to this figure, counsel cited the decisions in **Benson Ondimu Masese versus Kenya Tea Development Agency (2005) eKLR** where an award of Kshs 10,000,000/= is said to have been made to the plaintiff; **Amrital Bhagwanji Shah versus Standard Ltd & Another (2004) eKLR** in which the plaintiff was awarded Kshs 7,000,000/=; and **CAM versus Royal Media Services Ltd (2013) eKLR** where the Court of Appeal awarded the plaintiff Kshs 6,000,000/=.

As much as the plaintiff's counsel has put forward a figure of what, in his opinion, is a fair recompense for the injury to the plaintiff's damaged reputation and gone further to cite several decisions to support the plaintiff's claim, it must be borne in mind that the figure ordinarily awarded as damages in actions for libel and slander is not a figure which cannot be arrived at by any purely objective computation and for this reason damages in defamation are usually described as being "at large"; this has been so held in **Cassel & Co Ltd versus Brown** (supra) at page 1071 per Lord Hailsham LC whose speech was quoted with approval in **John versus MGN Ltd (1996) 2ALL ER35** at **page 52**. The difficulty in attempting any objective or mathematical computation of these damages arises, I suppose, from the fact that it is not possible to estimate, with any sense of certainty the monetary worth of ones' reputation or character and thus put any conventional sum on this attributes once it is claimed that they have been damaged. For the same reason considering that character and reputation are largely personal attributes, and more often than

not the circumstances under which they are claimed to have been damaged are as varied as the number of the claims, prior court awards may be informative but not necessarily a useful guide in assessment of an award in any particular case.

There are, however, certain factors that must be taken into account in assessment of the damages regardless of one's character and reputation or their station in life and irrespective of the circumstances under which they may have been defamed. These factors have been held to be the "*injury to the feelings, the anxiety and uncertainty undergone in litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant*". (**See Cassell & Co Ltd versus Broome (supra) at page 52).**

The defendant's evidence was that the impugned letter was not intentional or deliberately written and published to demean the plaintiff's character or reputation; I understood Mr Kondiala to say that the letter was sort of a standard notice that would ordinarily be written to any person who defaulted in repayment of the loan. According to him, the plaintiff was mistakenly thought to be one such defaulter all because of what the witness described as a 'system failure' that arose when the defendant acceded to the plaintiff's request to alter the mode of loan repayment. I would, in these circumstances, accept Mr Ondiala's evidence that there was no malice in sending the letter to the plaintiff or copying it to the other people some of whom were not his guarantors though they were erroneously addressed as such. The absence of malice does not, however, diffuse in any way the damage to the plaintiff's character or reputation for which the defendant remains responsible; it has to bear the consequences of its mistakes however innocent they may be particularly in a case where one has suffered injury or damage as a result of those mistakes. The furthest the absence of malice can go is to mitigate the measure of damages payable and thus such absence is a factor only relevant in the assessment of the damages payable to the claimant.

The other factor I have to consider in assessment of the damages due to the plaintiff is the extent of publication of the defamatory letter. Generally damages will increase with the circulation of the libel though not in direct proportion to it since there are certain cases where even a limited publication may be quite damaging. I do not regard the plaintiff's case to fall into this latter category; the letter was copied to twenty one people two of who testified and said that their estimation of the plaintiff was lower than they always thought him to be after they read the defamatory letter. The publication was in my view limited and there was no suggestion whatsoever that even with this limited publication, the plaintiff suffered as much injury as he would have suffered had the letter been circulated to the wider society.

It also came out during the evidence that although the defendant was duly informed and, if the evidence of Mr Ondiala is anything to go by, appreciated it had erroneously published the defamatory letter, it did not take any steps to correct the wrong impression it created to the plaintiff and more importantly, to the people the letter was copied to. The plaintiff's counsel wrote to the defendant specifically seeking for an apology but none was forthcoming and the defendant never apologised even after this suit was filed. It is not clear why the defendant did not make any apology but suffice it to say here failure to make an apology aggravates damages. In **Sutcliffe versus Pressdram Ltd (1990) 1 ALL ER 269 at 288,** Nourse L.J. said:-

> ***"The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings so as to support a claim for aggravated damages includes: a failure to make any or any sufficient apology and withdrawal…"***

Taking all these factors into consideration I would award the plaintiff the sum of Kshs 300,000/= in general and aggravated damages; I make this award being cognisant of the fact that the both general and aggravated damages can be awarded as a single sum.

I will not make any award on exemplary damages because they were neither pleaded nor proved. According to **Duncan and Neill on Defamation (2nd Edition, 1983)** which was cited with approval in **John versus MGN Ltd (supra)**:-

> ***"Exemplary damages can only be awarded if the plaintiff proves that the defendant when he***

made the publication knew that he was committing a tort or was reckless whether his action was tortious or not, and decided to publish because the prospects of the material advantage outweighed the prosepects of the material loss. What is necessary is that the tortious act must be done with guilty knowledge for the motive that the chances of economic advantage outweigh the chance of economic, or perhaps physical, penalty."

It was not proved that the defendant knew that it was committing a tort at the time it dispatched the defamatory letter or that by publishing it there prospects of its material advantage of any sort.

The plaintiff suit succeeds to the extent that he is awarded Kshs 300,000/= which award comprises both general and aggravated damages. He will also have the costs of the suit and interest both on the award and on costs calculated from the date of the judgment. Judgment is hereby entered against the defendant accordingly.

Signed, dated and delivered in open court this 22nd April, 2016

Ngaah Jairus.

JUDGE