REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1250 OF 2004

GEORGE ODINGA ORARO.....PLAINTIFF

VERSUS

ERIC GOR SUNGUH.....DEFENDANT

JUDGMENT

The Plaintiff is a senior member of the Bar of Republic of Kenya and is a senior partner in the firm of M/s Oraro & Co. Advocates. As per the Plaint, it is also contended and detailed in his evidence, that the Plaintiff had represented the late Dr. Robert J. Ouko EGH, MP (referred to as the Deceased) in several legal transactions and proceedings for about 10 years upto his death in February, 1990. Several investigations have been conducted by the Government of Republic of Kenya to unearth the mystery surrounding the disappearance and murder of the Deceased including the commission by Hon. Chief Justice E. N. Gicheru (now retired). In the said inquiry, the Plaintiff represented the widow and family of the Deceased.

The Parliament, after the said commission was disbanded, appointed a Parliamentary Select Committee (referred to as 'the Committee') to inquire into the said cause. The Defendant was at all relevant times, the Chairman of the Committee. The inquiry and proceedings of the Committee were open to the public and did receive wide coverage.

It is averred by the Plaintiff that during the course of hearing, the Committee received false and malicious evidence wherein the Plaintiff was named as one of the persons who removed the deceased from his home at night when the deceased disappeared. The Committee chaired by the Defendant refused his oral and written requests to defend those allegations which he descried in his press conference held on 1st March 2004. He further reiterated his grievances to the Speaker through a letter of 3rd March, 2004 from his Advocate.

As per paragraph 7 of the plaint, the Defendant, thereafter on 6th March, 2004 uttered following defamatory words of the Plaintiff at the parking of the Parliament and not during the formal sittings of the Committee, namely –

"I can assure you that we are getting to the bottom of this matter and hence the hullabaloo we are hearing outside there. That is why there is a lot of hustle because they know we are going to find the truth and the truth we shall find. I do not want to say anything more, but I have the evidence – eyewitness. There is a concerted effort by people within and outside Parliament, particularly those that have been mentioned to put some spanner in the works so that this thing cannot go on and I can assure you that we are not going to stop. We will go on and nobody is going to dictate to us in which manner we are going to call witnesses. I can assure them they will be accorded the chance, the opportunity to say what they have to say and we will cruser (sic) them."

The Plaintiff claims that the above defamatory words were aired on the same day as part of Prime Time News on KTN Television. The Plaintiff being aggrieved demanded an apology and an admission of liability from the Defendant vide his counsel's letter dated 10th November 2004 and as no response came forth, filed this suit on 17th November 2004. He claims injunction restraining the Defendant from uttering or publishing any further or similar defamatory material of and concerning the Plaintiff, general damages for libel and slander together with exemplary and aggravated damages for malicious libel together with costs.

The defence raises following Defence; namely –

Whether the alleged words, if at all they were uttered, are absolutely privileged being uttered within the precincts of the National Assembly. That the suit is feigned claim and an abuse of the court process. That there is no proximity in time between the press statement of the Plaintiff and the impugned statement. That the impugned statement was a generalized statement and there were other persons also mentioned adversely therein.

I may pause here and note that in his evidence, the Defendant has conceded that the press conference was held outside the Parliament and the occasion was not the formal sitting of the Committee and that the words were uttered on a Saturday.
I shall quote the following passage from the Defendant's cross-examination –

"… I saw the video and I confirm I was one who was on that video clip. It was not during Committee proceedings. It was Saturday thus I was dressed informally. I talked to the press as I was coming out of the National Assembly in its car parking. I was thus in an open place. I am referred to paragraph 7 of the Plaint – the caption produced. I confirm that apart from the second last word, the caption capture what I addressed."

The Defendantfurther contended that the plaint in its paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 15 has made reference to the Committee and what it did or did not do. The substantial complaints made in the Plaint are thus what has been stated or done during the Committee proceedings.

Moreover, in his evidence the Plaintiff has severally referred to the Committee and his grievances are against non-action or refusal of his request by the Committee to be allowed to cross-examine the witnesses who had adversely named him.

In short, it was emphasized that the Plaintiff has interchangeably mentioned Committee and the Defendant.

It was finally submitted that the words uttered by the Defendant were privileged having been uttered at the car-park of the National Assembly.

Sections 4 and 12 of the National Assembly (Power and Privileges) Act, (Cap 6) were cited to show that whatever the Defendant did was as a member and Chairman of the Committee and thus is privileged.

Several authorities were cited, in many of which the Plaintiff has represented the Parliament viz;

(1) Peter O. Ngoge –vs- Hon. Francis Ole Kaparo & 4 Others HC Misc. Application No. 22 of 2004 2007 e KLR.

(2) Hon. Raila Odinga –vs- Hon. Francis Ole Kaparo & another (HCC No. 394 of 1993) unreported.

(3) Hon. Kiraitu Murungi & 6 others –vs- Hon. Musalia Mudavadi & another (HCCC No. 1542 of 1997) unreported.

I may deal with the emphasis laid by Mr. Amuga on the observations made in English case of ***Church of Scientology of California –vs- Johnson Smith (1972) 1 ALL ER 378*** – namely :-

"What is said or done in Parliament in the course of proceedings they cannot be examined outside Parliament for the purpose of supporting cause of action whether or not the action itself arose out of something done outside Parliament."

I may not have much difficulty in accepting the above observation as a true picture on the principle of privilege of the Parliament because still the emphasis is on what is done or said in the Parliament. In this case what is said and done is outside the Parliament and not in any formal sitting or proceedings of the Committee. The facts of this case are totally distinguishable to those in the cited cases. The Defendant as mentioned hereinbefore agreed that he was in the car-park, was in informal attire, statement was not made during Committee proceedings and that the statement was not pre-prepared.

It may be opportune to quote sections 4 and 12 of the National Assembly (Powers and Privileges Act) (Cap 6)

"***4. No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a Committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise."***

"12. No proceedings or decisions of the Assembly or the Committee of Privileges acting in accordance with this Act shall be questioned in any court."

The principle and the statutory provision of absolute privilege have to be given a strict interpretation and the Statement made in the car-park of the building of the National Assembly cannot be covered under either of the aforesaid two provisions.
Mr. Amuga cited also the definition of *"precincts of the Assembly"* which stipulates:-

"precincts of the Assembly" includes the Chamber, every part of the building in which the Chamber is statute, the officers of the Assembly, the galleries and places provided for the use or accommodation of members, strangers, members of the public and representatives of the press, and any forecourt, yard, garden, enclosure or open space appurtenant thereto and used or provided for the purposes of the Assembly:

Provided that any part of the buildings, forecourt, yard, garden, enclosures or open space may, by an order signed by the Speaker and published in the Gazette, be excluded from the foregoing definition, either generally or for specific purposes, and either temporarily or permanently."

However, in my considered view the said definition does not help the case of Defendant because of the provisions Sections 4 and 12 of the Act. In my opinion, the said interpretation can be of help to a Member of Parliament against whom a process of the court issued by Court of Kenya is to be served or executed (See Section 6 of the Act).

I do agree that the proceedings of the Committee were privileged absolutely but not the utterance of the Defendant outside the Parliament. Giving the meaning to the absolute privilege as suggested by Mr. Amuga shall be absolutely unwarranted and inappropriate. What Defendant did, in my considered view, was to spill his sentiments outside the parliament.

It was contended by the Plaintiff and not really opposed by the Defendant that after the issue of privilege is not available to the Defendant, the defence that the suit is a feigned and fraudulent claim prohibited by law or an abuse of the court process cannot thus survive.

I do agree entirely and hold accordingly.

The contents of paragraph 8 of the Defence that the Plaintiff was accorded opportunity to give evidence before the Committee may not also take away the sting of the statement and in any event cannot be used in justification thereof.

Considering the pleadings, evidence and submissions, the issues to be determined are:-

(1) Were the words complained, of such a generalized nature that they could not be construed to have referred to the Plaintiff as there were other persons adversely mentioned in the Committee?

(2) Were the words complained defamatory of the Plaintiff and spoken with malicious intent?

I have spelt out the above issues which the court shall have to determine as, in my view, the fact that Committee gave opportunity to the Plaintiff after the impugned publication cannot be relevant except may be in mitigation of damages. (see ***Cohen –vs- Daily Telegraph Ltd. 1968 2 ALL ER 407***). Lord Denning M. R. observed at page 408 –

"***No ordinary human person can look into the future and comment on facts which have not yet happened!!***

I do further note that the defence was filed on 10th June, 2005, a lapse of more than one year after the suit was filed, and that the Plaintiff appeared before the Committee in the month of December, 2004, after the suit was filed on 18th November, 2004.

Before I dwell on the determination of the issues framed by the court, it may be opportune to mention some facts leading to this case in brief.

The Plaintiff was adversely mentioned and called upon to give statement during investigation into the death of Dr. Ouko when he was named by the brother of the late Dr. Ouko, namely Barrak Mbajah. I have already stated that the Plaintiff represented the widow and family of late Dr. Ouko before the Judicial Commission popularly known as 'Gicheru Commission'. The Plaintiff successfully sued the said Mr. Mbajah over the statement and obtained an injunctory order against him after it was declared that the allegations made by him were false.

The Committee, however, received the same statement of Mr. Mbajah in its proceedings. The Plaintiff

through his Advocate wrote a letter dated 27th February, 2004 requesting the Committee to allow him to appear and clear the issue. The fact of the injunctory order was also disclosed. No response was received, instead Committee called another witness who also adversely mentioned the Plaintiff on 27th February, 2004.

The Plaintiff thereafter on 1st March, 2004 called a press conference (pages 27 to 29 of the bundle of documents) complaining of breach of his right and reiterating the necessity of permission to appear before the Committee and stressing that refusal to do so *was gross violation of the Parliamentary process*. When there was no response from the Committee, the Plaintiff through his lawyer wrote a letter dated 3rd March, 2004 addressed to the Speaker of National Assembly reiterating his grievances and seeking intervention of the Speaker.

The Defendant thereafter responded to the Plaintiff's concerns vide his letter of 4th March, 2004 as a Chairman of the Committee. The letter stated inter alia ***"In the ordinary ordering of values, the life of the human being is ranked higher than reputation of individuals. For this reason, the Committee is not a platform for individuals to sanitise their reputations."*** It further stated that ***"your clients will be accorded the opportunity to testify before the Committee but the decision as to who, when, where and what order witnesses will appear is that of the Committee and the Committee alone."***

I may note that the letter made reference to both persons, the Plaintiff and one Mr. Paul Ojondi (page 33 of the Plaintiff's bundle of documents).
This letter is the only letter on record which was copied to members of Committee, Speaker and also the Clerk of the National Assembly.

In response to the said letter, M/s Kaplan & Stratton Advocates wrote a letter dated 6th March, 2004, now on behalf of the Plaintiff only. The letter complained that the said letter of 4th March, 2004 ***"instead of alleviating the Plaintiff's anxieties, it has exacerbated them".*** It also singled out some sentences by citing the same, like ***"The Committee is not a platform for individuals to sanitise their reputation"*** and ***"the decision as to who when, where, and what order witnesses will appear is that of the Committee and Committee alone"*** (pages 35 and 36 of the Plaintiff's bundle of documents).

At this stage, I may also refer to some correspondence from the Defendant.

The Defendant addressed a letter dated 5th March, 2004 to the Clerk of the National Assembly. It is a complaint letter from the Defendant, signed by the Chairman of the Committee (the Defendant) raising concern as to delay in providing physical facilities to the Committee, the Speaker issuing guidelines to Committee on its procedure so as to disable its effectiveness, the choice of the counsel, the letters written directly to the Speaker by some individuals, reporting of the witnesses to the Clerk before presenting themselves to the Committee etc. In short, the letter discloses the frustrations of the Defendant as a Chairman. In the said letter the Defendant also repeated the sentences like ***"while the Committee does not intend to malign the reputation of any individuals, the Committee takes the view that in the ordinary ordering of values, the life of a human being is pegged higher than the reputations of individuals. Accordingly, our Committee is not a forum for sanitizing of reputations of individuals at the expenses of establishing the truth."*** (page 36 of the bundle of documents from the Defendant).

The letter also stated inter alia that:-

"Your letter and/or reply is part of a pattern to derail the Committee's work and the irresistible inference, as we have said before is the determination to protect certain individuals who fear that fingers may be pointed in their direction if the Committee is effective in its work."

The impugned press statement almost reiterated the words which are decried by the Defendant firstly in the letter responding to the Plaintiff's letter dated 27th February, 2004 and secondly, his letter of 5th

March, 2004 to the Clerk of National Assembly.

It must be noted that the contents of the correspondence referred to hereinbefore by the Defendant were not in the public knowledge, but they came within public domain after the publication of the press statement by the Defendant on 6th March, 2004 nor did even the Plaintiff knew of the letter by the Defendant to the Speaker,

With the abovementioned background, the issues on hand now shall be dealt with by the court.

The first issue is in short, whether the words uttered by the Defendant referred to the Plaintiff.

According to the Plaintiff the ordinary persons, who were privy to his press conference made in public, understood that the Defendant's statements without doubt referred to the Plaintiff. The words emphasized are:-

"I can assure you that we are getting to the bottom of this matter and <u>hence the hullabaloo we are hearing outside there</u> ……. There is a concerted effort by people within and outside the parliament, <u>particularly those who have been mentioned</u> to put some spanner ……."

The Defendant also in his evidence, both in examination-in-chief and cross-examination, conceded that *"the witness who appeared before the Committee mentioned many names including the Plaintiff"* and in cross-examination, it was admitted that by the time he was uttering the words ***'outside the Parliament'***, *"… the Plaintiff was mentioned amongst other people."*

It was submitted that the evidence of the Defendant to the effect that he was outpouring his frustrations faced from "*persons within and outside the parliament",* must be examined against the evidence led by the Plaintiff together with his two witnesses.

First of all, the Defendant in his cross-examination admitted that *"… the Plaintiff was not a member of parliament. So he is amongst those people outside the parliament…"* In the same manner, the Plaintiff testified that the words *"the people from outside"* meant those who were mentioned and involved in making noises outside there, *"outside there"* meant those who were talking away from the parliament. The Plaintiff added that it is amply on record that he had not only addressed the Defendant through a letter from his advocate but, in the Press statement made in public, he has addressed the issue of him not given the opportunity to examine the witnesses adversely mentioning him.

PW3 also stated that ***"… the statement also talked of people within and outside parliament and those outside parliament could mean the Plaintiff …"***

It was submitted that the Defendant's evidence that he was addressing other persons beside the Plaintiff is of no relevance herein.

It was further emphasized that the Defendant's words *"hence the hullabaloo we are hearing outside"* is a direct reference to the Plaintiff's press statement issued on 1st March, 2004.

The Plaintiff in his evidence further testified –

"… I had no doubt that this word was referring to me for the following reason. It started by talking about people making hullabaloo outside there and went on to state that those who were mentioned and out of the 6 people only 3 are in the country. He then went on to say that nobody is going to dictate the manner in which they were going to call witnesses. That is a matter on which not only I addressed him through a letter from my advocate but also addressed it publicly."

PW2 testified in similar manner by stating -

"***… when the Plaintiff had addressed a press conference the Defendant also after a few days addressed press conference and said he had eye witnesses to call as to how Dr. Ouko was killed. Hullabaloo meant empty talk we are hearing. I formed the impression that the Defendant was referring to the Plaintiff who had given a press conference two or three days earlier."***

It was reiterated that indisputedly the Plaintiff had raised serious anxiety with regard to the manner in which the Committee proceedings were carried without giving him chance to rebut the malicious and unsubstantiated allegations which were made by witnesses and against one of them he had obtained judgment on similar defamatory material, and that he has communicated his concerns thereon vide his letters of 27th February, 2004 and 3rd March, 2004. The Plaintiff stressed that the Defendant's use of words "hence the hullabaloo we are hearing outside there" defies the Defendant's contention that he was unaware of the Plaintiff's press conference of 1st March, 2004.

The Plaintiff categorized that the evidence from the Defendant that there were other persons adversely mentioned does not stand water as the Plaintiff is only concerned that those defamatory words also referred to him.

The Defendant on the other hand contended that the words uttered did not refer to the Plaintiff because –

(1) He did not know of the press conference called by the Plaintiff on 1st March, 2004 and if so, he could not be referring to that press conference in his press statement.

(2) There was no proximity between the press statement by the Plaintiff of 1st March, 2004 and his press statement called on 6th March, 2004. The Plaintiff also agreed that there was no immediate reaction to his press statement.

(3) He has placed on record that around the same time, the Defendant had been exchanging correspondence with the Clerk and the Speaker of National Assembly over his frustrations in work of Committee. He also stated that his frustrations shall be made public in his letter dated 5th March, 2004 addressed to the Clerk.

(4) That there are others who also had complained in similar manner the Plaintiff has done, and that they were also adversely mentioned in the proceedings.

(5) The words complained of were of such a generalized nature that they could not possibly be construed to refer to the Plaintiff.

(6) The witnesses called by the Plaintiff are his friends. The 1st witness (PW2) is godmother to one of the Plaintiff's children and the second witness is a partner of the law firm which represented the Plaintiff in the past.

(7) None of the witnesses stated that he/she believed that the Plaintiff is not a person of integrity.

Mr. Amuga relied on the case of ***Knupffer –vs- London Express Newspaper Ltd. (1944) AC 16*** to show that the words making allegations of a defamatory character about a body of persons cannot be actionable by an individual member who was not named.

Contrary to what is contended by Mr. Amuga, the ***Knupffer's case*** found that:-

"***It is an essential element of the cause of action for defamation that the words complained off should be published of the Plaintiff where he is not named the test of this is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him. If a defamatory statement made of a class or group can reasonably be understood to refer to every member of it, each one has a cause of action."***

I may also state one trite principle of law of defamation that the words may be defamatory even if they are not believed, if the natural and simple meaning thereof are derogatory to the claimant and are understood as such by right thinking member of society.

The following passage from the Judgment of Goddard L. J. in the case of ***Hough –vs- London Express Newspaper Ltd. (1940) 2 KB 575*** was adopted with approval by our Court of Appeal for East Africa in the case of ***J. N. Bendzel –vs- Kartar Singh (1953) Vol. XX page 53***; namely –

"If the words are used which impute discredible conduct to my friend, he has been defamed to me, although I do not believe the imputation and may even know that it is untrue."

Thus in my considered view, the issues raised in grounds (6) and (7) above mentioned do not enure the Defendant.

Moreover, the Plaintiff himself has given all the reasons for his understanding that the statement by the Defendant referred to him and has called two witnesses showing that they also understood the same as referring to the Plaintiff. Their evidence to that effect is not controverted.

Though the Defendant has produced evidence to the effect that he has expressed his frustrations to the Clerk and Speaker of National Assembly vide his letter of 5th March, 2004 and the said letter, containing the same grounds, is the reason or the basis of his statement now impugned.

I may pause here and mention that the Defendant had responded to the Plaintiff's complaints by his letter of 4th March, 2004. That was in response to the Plaintiff's letter of 27th February, 2004 which urged that he should be given chance to cross-examine the witnesses who had adversely mentioned his name wrongly and maliciously. The Plaintiff then called a press statement repeating his grievances. He receives the response contents whereof cannot be termed as courteous. The Plaintiff had made his frustrations open to the Defendant in three ways, namely, his letter to the Defendant, his press conference and letter to the Speaker copied to the Defendant. It cannot be denied that with the press conference his sentiments were made public.

On the other hand, the frustrations which are testified by the Defendant have neither been referred to the Plaintiff in his cross-examination nor have been pleaded. In short, the Plaintiff till the Defendant's testimony was totally unaware of those happenings.

I shall at this juncture quote the following statement from ***Gately on Libel and Slander*** (11th Edition) paragraph 3.22 on page 116

"Relied on by Defendant. Where it is the Defendant who relies on extrinsic facts to show that words defamatory in their natural and ordinary meaning did not convey to those to whom they were published a defamatory meaning, he must show that all the persons to whom the words were published knew the facts, since otherwise the claimant will have been defamed to those persons who did not know the facts. And moreover, where the Defendant, who had imputed theft and robbery to the claimant,

urged that he only intended to express exasperation as to the result of a previous dispute, and not to impute a crime, it was held that it was for the Defendant to show that the special circumstances were within the knowledge of the persons to whom the words were published, and as there was no proof that all such persons knew the circumstances, the Defendant failed.

In view of the above mentioned, the issues raised in ground nos. (1), (2), (3), (4) and (5) cannot be justified as per law.

I would add to the above observations, the statements made on paragraph 38 on page 19 of Halsbury's Laws of England 3rd Edition Vol. 24, namely:-

"The Defendant cannot be heard to say on this issue that he did not intend in his own mind to refer to the Plaintiff contrary to the true meaning of his own words as interpreted by relevant surrounding circumstances. Liability for libel does not depend on the intention of the defamer but on the fact of defamation."

Moreover, at page 18 of the said Vol. of Halbsury's Laws of England, it is observed –

"……..it is not essential that the Plaintiff should be named in the statement. Where a libel does not expressly refer to the Plaintiff, some extrinsic evidence must be given to connect it with the Plaintiff, for example, evidence may be given that the Plaintiff was publicly jeered at in consequence of the libel. It is not essential that the words should be defamatory of the Plaintiff in their primary sense; the words may be actionable if published to persons acquainted with the circumstances, even though the existence of those circumstances is unknown to those responsible for the publication."

The Plaintiff's case falls squarely under the above observations.

The defendant in furtherance of his submissions stated that the Plaintiff has not shown that he has suffered any damages and that the words were not defamatory. It was emphasized that the Plaintiff did not file this suit because of the impugned statement. If it was so, it was stressed, why did he wait till November, 2004 to file this suit? He filed this suit, according to the Defendant when the Committee called back Mr. Makhwana to testify and called the Criminal Investigation Department to investigate alleged bribery of the said witness. I may note that Mr. Makhwana by an affidavit retracted his earlier evidence before the Committee in which he made adverse remarks against the Plaintiff. When he was called back, Mr. Makhwana testified that he was given bribe to swear the said affidavit.

I may state that an action of libel is actionable per se and the law by the publication of defamatory statement presumes the damages. As regards the time of filing of this suit is concerned, the same is filed within the limitation of time stipulated in the Laws of Limitation Act Cap 22.

The court cannot oust a person from the seat of litigation simply because he did not take legal action immediately. I may also note that the Plaintiff filed a Constitutional reference which was pending and thereafter he was called to give his version before the Committee. The averments by the Defendant that the process was cordial, in my considered view, are not relevant.

My aforesaid observations seem to have been summed up by the following passage from Halbury's Laws of England Vol. 28 3rd Edition page 43:-

"…….An action of libel or of slander does not lie unless there has been publication of a statement, of and concerning the Plaintiff, that is false and defamatory of him …….. Since the law presumes that every man is of good repute until the contrary is proved, it is for the defendant to plead and prove affirmatively that the defamatory words are true or substantially true. If the words complained of consist of defamatory statements of fact and of comment or opinion, the defendant must prove that the defamatory statements of fact are true or substantially true that the defamatory comment or opinion is

honest and accurate…"

In this case, what the Plaintiff was trying was to exercise his rights of being heard when his name had been adversely mentioned in the matter which was of grave and serious nature. The Nation was watching with bated breath to see the unfolding of the events leading to the death of a prominent and popular leader.

I may not reiterate the impugned statement from the Defendant, but from the facts of this case, which I may also not repeat, the statement fitted the plaintiff perfectly. The statement did impute defamatory connotations against the Plaintiff suggesting that he could be one of the persons involved in the serious event which shamed the Nation.

The Defendant has not tried to prove that the contents thereof were true and fair in respect of the Plaintiff. With all efforts at my disposal, I cannot find otherwise and do hereby find that the Defendant did utter defamatory statement of the Plaintiff which put to him to contempt and disrespect. The contents of the statement were embarrassing to the social and professional reputation of the Plaintiff.

It now remains for me to determine the quantum of damages.

The factors to be considered while arriving at the quantum of damages are defined without being exhaustive. However, the damages to be assessed in the case of libel are at large. The court has to take the circumstances of the case as a whole. The court also has power to award aggravated damages if the facts of the case shows the malicious attributes in the statement. The conduct of the parties before, during and after the proceedings shall have to be taken into account. I do note that the defendant has refused to tender on apology even during the proceedings of this case. However, considering the facts before this court, I cannot say that the defendant was really actuated with malice as per law when he uttered the statement and I do find so. However, it cannot be denied that it was reckless which could impute malice.

In the premises aforesaid, in my considered opinion, the damages of Kshs.3,000,000/= (Shillings three million) shall be appropriate and I do award the same.

I shall further direct that the Defendant offers a suitable apology to the Plaintiff.

The Defendant shall pay costs of this suit.

Dated, signed and **delivered** at Nairobi this 14th day of **July, 2011**

K. H. RAWAL

JUDGE

14.07.2011