



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 216 of 2008**

**HON. JOHN MICHUKI ..... PLAINTIFF**

**VERSUS**

**NATION MEDIA GROUP LIMITED .....DEFENDANT**

**JUDGMENT**

Through a Plaint dated the 16<sup>th</sup> of May, 2009, the Plaintiff brought an action against the Defendant as a result of a Publication in the **Sunday Nation** of the 3<sup>rd</sup> June, 2008. The words complained of are:-

**“Yesterday .... Unknown people slit the throat of driver and his conductor in Maragua. The previous day an assistant chief was waylaid and shot in Othaya... in the neighbouring Maragua District only a short distance from the home of security Minister John Michuki a family was herded into the Kitchen and executed .... On the same day a badly bruised body was found in a Nairobi property owned by Mr. Michuki.”**

In paragraph 6 of the Plaint the Plaintiff stated that in their natural and ordinary meaning the above words meant and are understood to mean that :-

- (a) The Plaintiff being a Minister in charge of Internal Security is so pathetic in his job that he cannot even provide security for his own property.**
- (b) The Plaintiff is involved in criminal activities and was responsible for the badly bruised body that was allegedly found.**
- (c) The Plaintiff is not a fit person to hold a public office.**
- (d) The Plaintiff’s property and/or business should be shunned by members of the public**
- (e) The Plaintiff is a dangerous man who should be shunned by members of the public.**

The Plaintiff gave evidence and called 4 witnesses.

In his evidence the Plaintiff told the court that he is the sitting member of Parliament for Kangema, in Muranga District and currently the Minister for Environment and Natural Resources. He stated that he is a Director in a number of companies both in Nairobi and Thika some of which included Fairview Investment Co. Ltd, Kangema Farmers Ltd which owns a Coffee Farm, & a Tea Farm and the Windsor

Hotel where he is the majority shareholder. He stays in Ridgeways Estate.

The Plaintiff stated further that at the time of the publication, the subject matter, he was the Minister for Internal Security, and Provincial Administration. His duties included ensuring that there was peace in the country through authorized Institutions. He also told the court that he has an exemplary work record of maintaining law and order, reconciling people in Northern Province, Laikipia and Mai Mahiu, and of containing crime in Nairobi and Mombasa. He felt that he had done very well in the said docket. When the publication was drawn to his attention the Plaintiff asked the General Manager of Windsor Hotel P.W.2 to contact the Defendant, he also asked his lawyers to seek an apology in writing. The Defendants did not respond to the lawyer's letters.

P.W.2 Mr. **George Mathenge Mwangi** a hotelier works at the Plaintiff's Windsor Hotel as the General Manager. On reading the publication he alerted the Plaintiff, who asked him to contact the Defendant. He was also instructed to consult Kiambu Police, which he did. He stated that the OCPD of Kiambu confirmed that there was no such incident as reported. The witness as instructed contacted the Defendant and spoke to **Mr. Linius Gitahi** and informed him that the story published was false. He said that Mr. Gitahi was rude and uncooperative.

P.W.2 stated further that he found the words highly defamatory. To him the said words implied that if the Plaintiff could not secure his property, he could not be expected to secure the country. Further that the article cast aspersions as to whether the Plaintiff had the capacity to carry out his duties as Minister for Internal Security and Provincial Administration.

P.W.3 was **Chief Inspector Christopher Rotich** attached to Karuri Police Station stated that he is the Officer in Charge he confirmed that a dead body of an old man was found in Kiambaa sub-location but that the place is far from the Plaintiff's residence. He stated that the newspaper report was in correct as the Plaintiff does not own land or property in Kiambaa.

P.W.4 was Superintendent **Alex Njenga** from Kasarani Police Division. He confirmed that the Plaintiff owns property within the geographical jurisdiction of Kasarani Police Station. That on the 3<sup>rd</sup> of June, 2008 they did not receive report of a dead body within their jurisdiction.

A part from filing a statement of defence dated 1<sup>st</sup> July, 2008 and written submissions no evidence was adduced by the Defendant.

The Defendant filed a statement of defence dated the 1<sup>st</sup> of July, 2004 in the said defence it admitted having published the words complained of. The Defendant stated that the said publication was done in the public interest otherwise denied that the said publication was defamatory, and that to the extent that the publication consisted matters of fact, it was true and to the extent that it consisted matters of opinion, it was fair comment made in the public interest. The Defendant gave particulars as follows:-

- (1) It is true that the Plaintiff was the Minister for Internal Security in Kenya at the time of publication.**
- (2) It is true that a body near the Plaintiff's property in Kiambu (sic).**
- (3) It is true that unknown people slit the throat of a driver and his conductor in Maragua.**
- (4) It is true that the day before the Maragua incident an assistant chief was waylaid and shot in Othaya.**
- (5) It is true that a family was executed in Maragua District.**
- (6) It is fair comment in public interest to state that security situation at the time of publication had deteriorated to unacceptable levels.**

The Plaintiff's counsel filed submissions and a reply to the defendant's submission on the 7<sup>th</sup> of August, 2009 and the 14<sup>th</sup> September, 2009 respectively. The Defendant's counsel filed submission on the 21<sup>st</sup> of August, 2009.

The evidence before the court is what was put forward by the Plaintiff and his 4 witnesses. Section 107 & 108 of the evidence Act provides that he who asserts and pleads must support the said assertion and pleading by adducing evidence. In **Edward Mariga vs. Nathaniel David Schuler & Another C.A Case No. 23 of 1997** the Court stated:-

**“The Respondent did not give evidence and so the only explanation as to how the accident happened was the version put forward by the Appellant and his brother....”**

**....The allegation in the defence is not evidence and remains so far ever”**

The import of the above in the circumstances of this case is that the evidence of the Plaintiff and his witnesses remains uncontroverted. I agree with submission of the Plaintiff's counsel that the defence remains mere denial in the absence of evidence.

The Plaintiff stated that the Defendant published the offending words recklessly without regard as to whether same were true or not. Further that as the publication did not constitute matters of fact the defence of fair comment cannot be pleaded. That the said publication was actuated by extreme malice and spite.

**Halsbury Laws of England 4th Edition Vol. 28 Butterworth's, London 1997 at Paragraph 42** defines defamation as:-

**“... A statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt, or ridicule or if it causes him to be shunned or avoided.**

**A person's reputation is not confined to his general character and standing but extends to his trade, business or profession.”**

For the reasons stated above, I am of the considered opinion that a substantial portion of the defendant's publication in the **Sunday Nation** was injurious to the character and the person of the plaintiff taking into account the status of the plaintiff in the country, the same definitely lowered him in the estimation of the right thinking members of our society, it exposed him to ridicule and affected his reputation as the Minister then in charge of Internal Security & Provincial Administration.

Having reasoned as above, next for the Court's consideration is the question of quantum of damages. The plaintiff has claimed for:-

- (a) **General damages**
- (b) **Exemplary damages**
- (c) **Interest and,**
- (d) **Costs of the suit.**

The plaintiff's counsel in justifying for an award of Kshs.10 million relied on several authorities. He brought to the Court's attention the case of **JOHN vs. MGN LTD [1996] 2 ALL E.R. 35 at 47** where the Court stated:-

**“The successful plaintiff in a defamation action is entitled to recover as general compensatory damages, such sums as will compensate him for the wrong he has suffered. The sum must**

compensate him for the damage to his reputation, vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant; a libel published to millions has a greater potential to cause damages than a libel published to a handful of people.....It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in unfounded assertion that the publication was true, or refuses to apologize, or cross-examines the plaintiff in a wounding or insulting way."

I fully agree with the holding in the above case and will be guided accordingly. The plaintiff's counsel further in assessing quantum relied on –

1. *Daniel Musinga t/a Musinga & Co. Advocates vs. Nation Newspapers Limited [2005] eKLR* where the plaintiff was awarded **Kshs.10,000,000/=**.
2. *Johnson Evan Gicheru vs. Andrew Morton & Another [2005] eKLR*.

The defence counsel on his part submitted that the plaintiff's case be dismissed all together as the Plaintiff has failed to prove a case for defamation. He submitted further that should the Court be minded otherwise, taking into account the 'relative mildness of the defamation' an award of **Kshs.1,000,000/=** would be sufficient compensation. He relied on the following cases:-

1. *Muriuki Karue Muriuki vs. The Standard Limited HCCC No. 28 of 2003 – Nakuru* where the Court awarded **Kshs.100/=** as nominal damages.
2. *Fred Ojiambo vs. The Standard Limited HCCC No. 1996 of 1997* (unreported) where the Court awarded **Kshs.1 million**.
3. *J.P. Machira vs. The Standard Limited & Another HCCC No. 612 of 1996* where the Court awarded **Kshs.1,250,000/=**.
4. *Martha Karua vs. The Standard & Another HCCC No. 294 of 2004* where the Court awarded **Kshs.1,500,000/=**.

As the Plaintiff urged the court to award exemplary damages defendant refused to apologize despite the effort to clarify and set the record straight.

I have analyzed the above cases and note that the High Court cases are indeed persuasive. I find myself bound as I should be by the judgment of the Court of Appeal in the case of *Johnson Evan Gicheru vs. Andrew Morton & Another*. In the said case the Judges of Appeal quoted with approval the checklist of compensable factors in *Jones vs. Pollard [1997] eMLR 233, 234* which I apply in this case the checklist was 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 is published and, any repetition.**
2. **The subjective effect on the plaintiff's feeling not only from prominence itself but from the defendant's conduct thereafter both upto 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.**

Minded of the above, in arriving at a compensatory figure, guided by the sentiments of the Court of Appeal in the *Gicheru case* (supra) as I was guided elsewhere today in another defamation case the Court of Appeal stated, in regard to the sums awarded

**“.....they may be found to be manifestly excessive and should not at all be taken as persuasive or guidelines of awards to be followed by trial Courts, since the trial Judges concerned appeared to have ignored basic fundamental principles of awarding damages in libel cases.”**

Cognizant of the fact that money cannot adequately compensate the injury, and as stated in *Uren v. John Fair fax & Sons Pty Ltd. 117, CL.R. 115, 150* compensation ought to be a vindication of the plaintiff to the public and a consolation to him for a wrong done. It ought to be a solatium rather than a monetary recompense for harm measurable in money. Indeed as Shakespeare stated in his Book *Othelo*, Act 111 scene 3

**“Who steals my purse steals trash;**

**Tis something, noting;**

**Twass was mine, 'tis his, and has been**

**Slave to thousands;**

**Robs me of that which not enriches him,**

**Good name**

**And makes me poor indeed.”**

As a consequence:-

- 1. I award the sum of Kshs.5,000,000/= as general damages.**
- 2. I award the sum of Kshs.1,000,000/= as exemplary damages.**
- 3. I also award costs of the suit to the Plaintiff**

DATED and DELIVERED at Nairobi this 23<sup>rd</sup> day of October, 2009.

**ALI-ARONI**

**JUDGE**