



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

Civil Case 295 of 2004

THE HON. MARTHA KARUA PLAINTIFF

VERSUS

THE STANDARD LIMITED FIRST DEFENDANT

OCHIENG' OREYO SECOND DEFENDANT

J U D G M E N T

(1) The Hon. Martha Karua, the Plaintiff in this case, is an Advocate of the High Court of Kenya, the Member of Parliament for Gichugu Constituency and the Minister for Justice and Constitutional Affairs. She has practiced as an Advocate for many years.

(2) The Standard Ltd., the First Defendant, is the publisher and printer of the “*The Standard*”, a national daily with a wide circulation in and outside Kenya. The Second Defendant is a media consultant and a columnist for *The Standard*.

(3) The Plaintiff has sued the Defendants to recover damages for defamation arising out of an article which the Defendants printed and published in the issue of the “*East African Standard*” (as *The Standard* was then called) on Christmas Eve, the 24th December 2003. The article under the title: “**Politicians just want licence to misbehave**”, stated in material part—

“Not surprisingly, already there are some people who see the Koinange expose as a plot by Minister for Water Martha Karua to dilute her recent experience — all in the name of the conflict war between NAK and LDP — the Narc factions.”

The Second Defendant was the author of the offending article and the First Defendant printed and published it.

(4) The Plaintiff’s contention was that the article was false and the Defendants were actuated by malice in authoring, printing and publishing it. She said that in their natural and ordinary meaning, the words meant and were understood to mean that the Plaintiff was an irresponsible leader; that she had conspired with a section of the media to make up a story on the escapades of leaders with prostitutes in Koinange Street; that the Plaintiff was immoral and was involved in a plot to publish scandalous stories about other leaders; that the Plaintiff was a schemer, a conspirator and a person not fit to be a Minister, a Legislator or an Advocate of the High Court of Kenya.

(5) By way of *innuendo*, the Plaintiff averred that the Defendants knew that the Plaintiff had been a victim of car-jacking by persons unknown; a story had appeared in the print media alleging that certain

Members of Parliament had been caught “collecting” prostitutes in Koinange Street; the Plaintiff had not been involved in the Koinange Street exposé. The Plaintiff again says these words meant she was unfit to be a Minister in the Government of Kenya and that she was involved in immoral conduct when she was car-jacked. According to the Plaintiff, the article was false, malicious and calculated to disparage her professionally, politically and socially.

(6) The Plaintiff further said that as a result of the publication of the article, her reputation was seriously damaged and she suffered distress and embarrassment. She claims exemplary and general damages, an apology in text and terms approved by her, an injunction to restrain the Defendants from publishing further defamatory stories against the Plaintiff and costs of the suit.

(7) The Defendants filed a Defence on the 29th April 2004 and denied the Plaintiff’s claim. They strongly disputed the meanings attributed to the words complained of by the Plaintiff. They denied malice and also denied the claim by the Plaintiff that the publication of the article had caused her any loss or damage.

The Defendants’ main line of defence was pleaded in paragraph 8 of the Defence as follows —

“(8) The Defendants aver that in so far as the words complained of consisted of expressions of fact, they are true in substance and in fact and in so far as they consisted of expressions of opinion they were fair comment on a matter of public interest.”

In the particulars under paragraph 8 of the Defence, the Defendants stated that it was a fact:

- (a) That the Plaintiff together with one Pastor Wamugunda, was a victim of a car-jacking;**
- (b) That the incident (car-jacking) generated a lot of public interest;**
- (c) That the car-jacking involving the Plaintiff occurred immediately before the “Koinange Street exposé” was published;**
- (d) That there had been a conflict war between the Narc factions;**
- (e) That the Koinange Street exposé overshadowed the public interest in the car-jacking incident in which the Plaintiff was involved;**
- (f) It is fair comment to suppose that the Koinange Street exposé diluted the story in which the Plaintiff was car-jacked; and**
- (g) It is fair comment to suppose that the Koinange Street exposé was generated to dilute the publicity created by the Plaintiff’s car-jacking incident:**

(8) The Defendants also said the Plaintiff had taken the publication out of context and that in publishing the article complained of, they were motivated by a sense of public duty and a desire to serve the nation. (Emphasis added).

(9) At the trial, the Plaintiff gave evidence in support of her case. She first entered Parliament in 1992 and in the successive General Elections, she has been returned with increased majorities. At the present time, the Plaintiff is the Minister for Justice and Constitutional Affairs. She served as a Magistrate between 1981 and 1987 and rose to the rank of Senior Resident Magistrate. She resigned from the Judiciary in 1987 to go into private practice. She was a member of the Council of the Law Society of Kenya from 1989 to 1993. She served on the Council of the Federation of Women Lawyers Kenya (FIDA) from 1992 to May 2003, and was at one time the Chair of the League of Kenya Women Voters. Since the late 1980s, the Plaintiff has been actively involved in Women Rights Advocacy. In December 1999, she was awarded the Jurist of the Year Award by the International Commission of Jurists (Kenya Chapter).

(10) The Plaintiff said that on the night of the 5th December 2003, she was involved in a car-jacking incident in Nairobi which was highlighted in the press from the 6th December 2003. On the 24th December 2003, as she was going through the morning papers, she saw an article under the title: **“Politicians just want licence to misbehave”** in the **East African Standard**. Around that time, a great deal had been written in the press about politicians being caught in Koinange Street picking up prostitutes, so she decided to read the article. The author of the article was Ochieng’ Oreyo, the Second Defendant. It was in the course of reading the article that the Plaintiff came across the offending passage in which the writer completely out of the blue asserted that she had invented the Koinange Street prostitutes incident as a ploy to divert the attention of the press from her car-jacking incident. She was stunned by this allegation which she viewed as completely malicious, defamatory and offensive. She said there was no justification at all for this vicious attack on her person which was clearly meant to malign her name. She could not see any connection between the car-jacking incident and the allegation that politicians had been caught at night picking up prostitutes in Koinange Street.

(11) From that day on, the Plaintiff said she had spent considerable time trying to explain to family, friends and relatives who called her that there was no truth in the story and that it was a malicious fabrication by the press. Her teenage daughters were particularly distressed by the story and she had a hard time trying to convince them it was a fabrication intended to tarnish her image. On the 30th December 2003, the Plaintiff wrote to **The Standard** and the Second Defendant to complain about the article. She pointed out that the story was untrue, false and malicious and a deliberate propaganda strategy to injure her credit, reputation and to poison people’s minds against her because it was also alleged that she was plotting against her political colleagues. The Plaintiff asked for a retraction and an apology coupled with an admission of liability but none was given. The Plaintiff seeks damages for defamation because she was called a plotter against her colleagues and accused of being the person who fabricated the Koinange Street exposé to save her own face. She regarded this as a vicious attack on her character and reputation. She said she read the Koinange Street story in the newspapers just like anyone else. The Plaintiff said the Koinange Street exposé was given front-page treatment in the **East African Standard** on the 15th and 16th December 2003. That was also the case in the **“Daily Nation”**.

(12) In cross-examination by Mr. Imende, learned counsel for the Defendants, the Plaintiff said she believes in the freedom of the press and conceded that in the performance of her duties, she is subject to public scrutiny. She said she can tell the difference between a factual report and a commentary. In relation to the particulars given under paragraph 8 of the Defence, the Plaintiff said it was true that she was a victim of car-jacking but she denied the claim by the Defendants that the incident generated a lot of public interest. She thought that the media exploited it to improve their sales. She said any incident of insecurity involving a Minister was bound to attract public interest. She pointed out that the Koinange Street exposé came more than a week after her car-jacking. She said there was nothing new in the conflict between NAK and LDP - it has been there since early 2003. She said her car-jacking was a headline story in the **East African Standard** on the 7th December 2003. In answer to another question, the Plaintiff said it would not be fair comment to say that the Koinange Street story diluted the car-jacking incident. She added that there is a whole difference between an opinion honestly held and expressed and deliberate peddling of falsehoods as happened in this case.

(13) The Plaintiff gave examples of falsehoods in the publication, for instance, the claim that she was plotting against her political colleagues to downgrade her car-jacking. Otherwise, she found the article rambling and without focus. She said the **East African Standard** has a track record of maligning her name and she has sued the First Defendant over half a dozen times. Since it would appear that the First Defendant seems to have some sort of a vendetta against her, the Plaintiff said that that is a good enough reason for her to seek an injunction.

(14) The Plaintiff called Mr. Benson Sande Ndeti, a practicing Architect, as a witness. Mr. Ndeti sits on a number of Boards and has known the Plaintiff for over fifteen years. Both of them had been tenants in the Standard Building on Wabera Street, Nairobi for a long time and over the period had got to know each other. The Plaintiff had impressed him as a lady of integrity and a focused leader.

Mr. Ndeti said that when he read the article, he was appalled because the Plaintiff was painted as a schemer and untrustworthy person. His belief in the Plaintiff's integrity was considerably shaken. He had held the Plaintiff in high esteem yet here was an article portraying her in very negative terms. Mr. Ndeti had telephoned the Plaintiff two or three weeks after the article appeared to ask her if what he had read in the newspaper was true. The Plaintiff tried to assure him that it was a lie but he still felt that in the absence of a retraction from the paper, the impression created by the article will linger for a long time. Asked in cross-examination why he had not called the Plaintiff immediately after reading the article, Mr. Ndeti said he had lost contact with her when he moved out of the Standard Building and did not have her mobile telephone contact. Mr. Ndeti found it difficult to believe that a national newspaper like the *East African Standard* can publish such defamatory matters without conducting proper research to establish the truth.

(15) Mr. Elly Ochieng' Oreyo, the Second Defendant, gave evidence on his own behalf and on behalf of the First Defendant. He is employed by the First Defendant. He has some four years experience as a Journalist. He has a Diploma in Mass Communication from the University of Nairobi School of Journalism. He admitted having written the offending article. He said the article was not a factual report but a comment and analysis. He said the message he was putting across was that politicians make utterances or say things which if not challenged can give them a licence to misbehave. He felt that politicians, being leaders, should be held accountable for their utterances. He said that when the Koinange Street exposé came out, some politicians came out defending themselves claiming it was part of a faction war within the Narc Coalition. He also said that since the article was a comment and not a report, he was under no obligation to disclose his sources.

(16) In cross-examination, the Second Defendant said that although the article was unfavourable to the Plaintiff, there had been no need to seek her comment before writing and publishing it because what he stated was not his own idea but an example from other sources. He said that the article was based on facts and events of which he was aware although he himself did not believe what some people were saying that the Plaintiff was behind the Koinange Street exposé. Mr. Oreyo further testified that the article had enabled him to tell his story and interpret events. He claimed not to know whether the *East African Standard* has a wide circulation in Kenya but admitted that it has a website on the internet. He did not accept that the article was sensational or that it had injured the Plaintiff's character or reputation. Although he had not seen the Defence filed on his behalf before the trial, he endorsed it fully.

(17) On the 2nd September 2004, the Plaintiff's Advocates wrote to the Defendants' Advocates and forwarded a Statement of Agreed Issues for their signature. There was no response from the Defendants' Advocates. So the Plaintiff's Advocates were left with no option but to forward the Statement to the court which they did under cover of their letter dated the 20th December 2004 addressed to the Deputy Registrar.

(18) The issues in this case as framed by the Plaintiff's Advocates and not disputed by the Defendants' Advocates are whether —

- 1) **The article complained of was false and defamatory of the Plaintiff.**
- 2) **The Plaintiff was involved in a conspiracy with the media.**
- 3) **The Plaintiff is entitled to aggravated and exemplary damages.**
- 4) **Quantum of damages.**
- 5) **Costs.**

(19) I have read the article complained of several times in the context of the pleadings, the evidence tendered by both sides at the trial and the respective submissions made by learned counsel for the parties.

The article is entitled: **“Politicians just want licence to misbehave”**. It is by and large a denunciation of

politicians but I think I should set out a few passages that are relevant to the Plaintiff's case —

“Politicians just want licence to misbehave.

How predictable our politicians have become! They are wont to treat matters that need undivided attention with triviality and carelessness that it becomes embarrassing to believe that the same MPs will revive our sick economy.

Many people have heard of a stylistic licence which allows poets to send their message to the readers in a creative manner.

But going by the happenings in the political scene, it is not, I believe, too far fetched to think that politicians are pushing for a “political licence” to misbehave.

Politicians are a breed of people who do not fail to see politics in anything said, expressed, or done, however innocent and well-intentioned.

Not surprisingly, already there are some people who see the Koinange exposé as a plot by Minister for Water Martha Karua to dilute her recent experience – all in the name of the conflict war between NAK and LDP —the Narc factions.

Accused politicians should not use politics to defend themselves “to the bitter end”. It is hardly enough to rant and rave how one has a wife he loves, is a role model, or that a political “empire” is targeted. The issue between the offended MPs and the media is that of law.

Thus, they had better stick to facts of law and divorce the sex matter completely from politics, or, if they choose, come out of the rut politically. What is worrying is that these politicians did not wait to find out which politicians, if any, were behind the damaging plot by the press. It is time hot-heads were compelled to name their plotters.

Blanket statements must be condemned and trashed, because they can, if not checked, give MPs a licence to misbehave.” (Emphasis added).

(20) This article was written by Mr. Ochieng' Oreyo, the Second Defendant; and published by the First Defendant in the *East African Standard*. The Second Defendant who claims to be a media consultant said the article was a comment. In it, he referred to the Plaintiff by name and office. He made three serious allegations against the Plaintiff. First, the Second Defendant said that there were some people who saw the Koinange Street exposé as a plot by the Plaintiff to dilute her (recent) experience. Secondly, that the Plaintiff was involved in a scheme to undermine her political opponents. And thirdly, that there was something sinister in the fact that the Plaintiff was a victim of car-jacking.

Those are the allegations which form the basis of the Plaintiff's complaint in this suit. She says they are defamatory and malicious. At the time the Koinange Street exposé was making headlines, the Plaintiff had been involved in the car-jacking incident on the outskirts of Nairobi. Car-jacking had become a fairly common occurrence all over Kenya but the incident involving the Plaintiff would appear to have attracted quite unnecessary publicity presumably because at the time the Plaintiff was car-jacked, she was in a vehicle being driven by a well-known Catholic priest in Nairobi called Father Wamugunda. For reasons best known only to himself, the Second Defendant believed that this incident was so embarrassing to the Plaintiff that she had to find a way of getting it out from the headlines. So, according to the Second Defendant, the Plaintiff hatched a plot in the nature of the Koinange Street exposé – to dilute her car-jacking incident.

(21) So exercising what he bombastically terms “**a stylistic licence which allows poets to send their message to the readers in a creative manner,**” the Second Defendant said the Plaintiff had contrived and fabricated the Koinange Street exposé to achieve two goals, namely to divert attention from the car-jacking and to hit at her political opponents in the LDP faction of Narc. He attributed this belief to “**some**

people” but when asked in cross-examination to identify those people, he declined to do so.

(22) In his evidence, the Second Defendant accepted that the article was unfavourable to the Plaintiff but when asked why he did not therefore bother to obtain the Plaintiff’s comments before publishing it, he gave a most interesting answer. He said he was not obliged to do so because what he was stating was not his original idea but just an example from other sources. He claimed the article was merely his comment based on facts and events about which he was aware. He also said that he did not believe that the Plaintiff was behind the Koinange Street exposé but in the same breath said the allegation was not a rumour.

The Second Defendant believed that as long as his comment is based on other peoples’ views (third parties), he is under no duty to verify the truth of whatever he writes. I find this very difficult to understand coming, as it does, from a person who claims to be a trained journalist and a media consultant within a profession governed by a Code of Conduct. I am unable to accept the Second Defendant’s claim that as a journalist or a poet, he has a licence to peddle malicious and defamatory falsehoods against individuals as long as they fall in the category of comment. That is an extremely reckless and irresponsible attitude.

(23) What the Defendants said and published of and concerning the Plaintiff caused her, her children, family and friends considerable distress. Mr. Benson Sande Ndeti who gave evidence for the Plaintiff said when he read the article, he could not believe that the Plaintiff whom he had known for many years and respected as a professional and a leader could descend to such low levels. For him, nothing short of a complete retraction would restore his confidence in the Plaintiff. Accordingly, on the evidence, I find and hold that the words complained of referred to the Plaintiff and were defamatory of her subject to any valid defences the Defendants can advance.

(24) About a week after the article was published, the Plaintiff wrote to both Defendants complaining about it. She pointed out that it was false, malicious and deliberate propaganda strategy to injure her credit, reputation and poison peoples’ minds against her. She asked for a suitable apology and an admission of liability. The Defendants did not even condescend to acknowledging receipt of her letter.

The plaintiff was left with no alternative but to file suit. After being served with process, a joint Defence was filed on behalf of the two Defendants. The Defence was largely a denial of the averments contained in the Plaintiff but the substantive defence to the claim was pleaded in paragraph 8 thus:

“(8) The Defendants aver that in so far as the words complained of consisted of expressions of fact, they are true in substance and in fact and in so far as they consisted of expressions of opinion they were fair comment on a matter of public interest.”

Particulars of this defence were given in the terms to which I have already set forth earlier in this judgment.

(25) Looking at the averments in paragraph 8 of the Defence, the Defendants raised the defence of fair comment under Section 15 of the Defamation Act [Cap.36]. Among the particulars given under paragraph 8 of the defence were that:

“(a) It is a fact that the Plaintiff, together with one Pastor Wamugunda, was a victim of car-jacking;

(e) It is a fact that the “Koinange Street

exposé” overshadowed the public interest in car-jacking incident in which the Plaintiff was involved;

(f) It is fair comment suppose (sic) that the Koinange Street exposé “diluted” the story in which the Plaintiff was car-jacked.”

In dealing with this defence, I think I should point that out in the original article that was published and against which the Plaintiff had complained, there was no reference whatsoever to Father Wamugunda. This angle was introduced for the first time in the Defence.

(26) Surprisingly, the Defence also contains an averment in paragraph 15 that the Plaintiff failed to exercise her right of reply under Section 7A of the Defamation Act. With profound respect to the Advocates on record for the Defendants who filed the Defence, and unless this is a proforma or standard defence routinely rolled out in such claims, I cannot see the relevance of the averment in that paragraph in view of the fact that the Plaintiff sought an apology within a week in her letter to the Defendants dated the 30th December 2003, to which the Defendants did not respond. As earlier observed, the Defendants did not offer the Plaintiff any apology.

(27) For the defence of fair comment raised by the Defendants to succeed, it is not enough for them to plead that the matters alleged in sub-paragraphs (a) to (g) of paragraph 8 of the Defence or some of them were true. What the Defendants have to prove to be true are the two serious allegations they made in the article complained of that the Koinange Street exposé was a plot by the Plaintiff to dilute her car-jacking experience. Those are the allegations they made against the Plaintiff and which they must show were true. The Second Defendant, who was the only witness called for the Defendants, did not give any evidence to support these allegations yet the Plaintiff gave evidence and denied the allegations. I believe the Plaintiff and her witness. I therefore find and hold that the charge by the Defendants that the Plaintiff plotted the Koinange Street exposé to dilute the car-jacking incident had no substance in fact, was false and defamatory and was made recklessly and maliciously. The consequence of this is that the defence of fair comment raised by the Defendants must fail. It is not and cannot be in the public interest to publish or comment on an allegation which has been proved to be false.

(28) When the Second Defendant gave evidence, he said two things which struck me as somewhat strange. He denied having received the letter from the Plaintiff dated the 30th December 2003 which was sent to him care of the Managing Director of the First Defendant. He also said that he was not aware that a defence had been filed on his behalf on the 29th April 2004 or at all. He saw that Defence for the first time when he attended court to give evidence on the 15th March 2006. This leaves me wondering where the First Defendant found material to prepare and file the joint Defence if the author of the article complained of was not called upon to provide the necessary material.

(29) The Second Defendant accepted that he is bound by the **Code of Conduct & Practice of Journalism in Kenya**, issued by the Media Council of Kenya. He is under a duty to be fair and accurate in whatever he tells the public and he has no right to tell the public what he knows to be untrue. The Code also enjoins him to tell all sides of the story.

Paragraph 1 (a) of the Code of Conduct & Practice states —

“1(a) The fundamental objective of a journalist is to write a fair accurate and un-biased story on matters of public interest. All sides of the story should be reported. It is important to obtain comment from anyone who is mentioned in an unfavourable context.”

(30) While paying lip service to the Code of Conduct, the Second Defendant said that although the article was unfavourable to the Plaintiff, he was not obliged to obtain a comment from her before writing it because what he was writing was not his original idea. He said his comment was based on facts and events of which he was aware. (Emphasis added). I understand this to mean that the Second Defendant knew as a fact that the Plaintiff had initiated and staged the Koinange Street exposé and did so in order to dilute the publicity her car-jacking incident was generating and receiving. I also understood him to be saying that he did not need to check the story with the Plaintiff because he knew that the allegations he was making against the Plaintiff were true. But this belief is misguided because the Code of Conduct requires a journalist to obtain comments from any person who is mentioned in an unfavourable context. The Second Defendant’s failure to obtain the Plaintiff’s comment was accordingly a flagrant breach of the Code of Conduct of his profession.

(31) I have already found that the article was defamatory of the Plaintiff. She is therefore entitled to an award of damages. It cannot be gain – said that the Hon. Martha Karua is a prominent citizen. She is an Advocate who has not only served as a Senior Resident Magistrate in the Judiciary but has also practiced at the Bar for many years. She is the Member of Parliament for Gichugu Constituency now serving her third term in the House. She is presently the Minister for Justice and Constitutional Affairs. The Plaintiff has been actively involved in issues affecting women in Kenya and her contribution in that regard has been recognized and acknowledged internationally. Last but by no means least, the Plaintiff is also a mother. With this kind of track record, the Plaintiff's reputation cannot be doubted. So in assessing the damages the Plaintiff should be paid by the Defendants, these are some of the matters I have to bear in mind.

(32) The other matters I have to take into account are that the allegations which the Defendants made against the Plaintiff were completely untrue and were made recklessly without any regard to the harm they were likely to do to the Plaintiff's reputation and standing in society. I also have to take into account that the Plaintiff sought a retractions and an apology from the Defendants at the earliest possible opportunity but the Defendants ignored her. They did not even have the courtesy to acknowledge receipt of her letter of the 30th December 2003. And then there is the attitude of the Second Defendant who remained arrogant and defiant to the end. Is it any wonder that the Plaintiff believes that the First Defendant has a personal vendetta against her. The Defendants were actuated by malice.

(33) Miss Ndiragu, learned counsel for the Plaintiff, submitted that in light of the Plaintiff's standing in society and considering the Defendants' conduct and the wide circulation of the *East African Standard*, I should award the Plaintiff K.Shs.7,000,000/= as compensatory damages plus a further sum of K.Shs.3,000,000/= as aggravated damages making a total sum of K.Shs.10,000,000/= in all. Judicial authorities were cited to support this figure.

(34) On behalf of the Defendants, it was submitted that if the Defendants were found to be liable, I should then award no more than the sum of K.Shs.1,000,000/= as general damages. As regards the claim for aggravated damages, Mr. Imende submitted that these should not be awarded unless it is shown that there was malicious intent on the part of the Defendants. Learned counsel contended that since the Plaintiff was not personally known to the Second Defendant, that alone negated any malicious intent. He submitted that the publication was not sensational and pointed out that there was no intention on the part of the Defendants to obtain any financial gain. Statutory and judicial authorities were also cited to support these submissions.

(35) In the case of Johnson Evan Gicheru -v- Andrew Morton and Another (Civil Appeal No. 314 of 2000) (unreported), the Appellant had sued the Respondent to recover damages for libel. The learned trial Judge awarded the Appellant, who was the senior Judge of Appeal at the date of trial, the sum of K.shs.2,000,000/= as general damages and the sum of K.shs.250,000/= as exemplary damages. The Appellant appealed to the Court of Appeal against quantum of damages. At the time the Appeal came up for hearing, the Appellant has since been elevated to the position of Chief Justice. In seeking to maintain the level of damages awarded by the learned trial Judge, counsel for the Respondents argued that since the libel had not affected the Appellant's career prospects, he was not entitled to a greater award than he had been given by the learned trial Judge.

(36) The Court rejected that submission and increased the award to the sum of K.shs.6,000,000/= to cover both general and aggravated damages.

In the course of His Lordship's judgment, Tunoi, JA, who wrote the leading judgment with which Omolo and Githinji JJA concurred, said —

“In an action for libel the trial court in assessing damages is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time the verdict is given. It may consider what is conduct has been before action, after action, and in, court during trial.”

(37) There was evidence not denied by the Defendants that the First Defendant has a consistent record

of publishing defamatory stories against the Plaintiff. When the defamatory article in the present case was published, the Plaintiff immediately sought an apology and a retraction. The Defendants refused to apologize nor did they retract the libelous article. After the suit was filed, the Defendants introduced new matters in their Statement of Defence which had not been pleaded by the Plaintiff. For reasons unstated by the Defendants, they seemed to have had a serious problem with the fact that when the Plaintiff was car-jacked, a certain Father Wamugunda was also in the vehicle. For the *East African Standard*, the premier and oldest newspaper in Kenya and the East African region, it should not have required much effort on the part of the editors to verify that the Plaintiff had not staged the Koinange Street exposé. Accordingly, there can be no doubt that the publication was malicious.

(38) Taking all those matters into account, and weighing one thing against another, and considering the gravity of the libel, I think an award of K.shs.4,000,000/= in general damages would be an appropriate solatium for the Plaintiff.

(39) As regards aggravated damages, I have already found as a fact that the article complained of was not only defamatory but also that it was malicious. The Defendants' behaviour was unethical, unprofessional and quite disgraceful. The Second Defendant, like a priest in the temple of professional journalism as it were, is expected, indeed charged, to respect and safeguard truth by writing fair, accurate and unbiased articles. In his zeal to defame the Plaintiff, however, he drove a coach and six through the Code of Conduct & Practice of Journalism in Kenya by disregarding the fundamental requirement to obtain comments from anyone who is mentioned in an unfavourable context. In the case of the First Defendant, no attempt whatsoever was made to explain why the Plaintiff's letter of the 30th December 2003 was not even acknowledged or acted upon. In these circumstances, I think I am more than justified to award the Plaintiff aggravated damages and I consider a sum of K.Shs.500,000/= to be adequate.

(40) The Plaintiff also prayed for an apology but I decline to make an order in this regard because it would serve no useful purpose at this late hour and in any case, I have taken the Defendants' refusal to apologize into account in assessing damages.

The Plaintiff also asked for a permanent injunction to restrain the Defendants from publishing libelous articles against her. I do not believe that is the sort of order I should grant as doing so would impose a gag against the Defendants and interfere with their fundamental freedom of expression without just cause. I therefore decline the invitation to grant an injunction as in any event, the Plaintiff has a legal remedy against any defamatory allegations the Defendants may choose to publish against her.

(41) For the reasons I have given, there will be judgment for the Plaintiff against the Defendants jointly and severally for the sum of K.Shs.4,000,000/=, general damages, and a further sum of K.Shs.500,000/=, aggravated damages, making in all a total sum of K.Shs.4,500,000/= together with interest thereon at the rate of Twelve per centum (12%) per annum from the date of this judgment until payment in full. The Plaintiff will also have the costs of the suit.

Orders accordingly.

Dated and delivered at Nairobi this Fourth day of May, 2006.

P. Kihara Kariuki

Judge