



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

**CIVIL CASE 918 OF 2003**

**JULIUS ORENGE t/a ROA OTIENO & COMPANY ADVOCATES.....PLAINTIFF**

**VERSUS**

**THE STANDARD LIMITED.....1<sup>ST</sup> DEFENDANT**

**ALPHONCE MUNG'AHU.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The Plaintiff in this case, Julius Orenge, an advocate of the High Court of Kenya has brought this suit against the Standard Limited, publishers of the East African Standard Newspaper, claiming damages in libel as follows:

- a) Damages for defamation
- b) Aggravated, exemplary and punitive damages
- c) Costs and interest.

The facts of the case, as stated in the Plaintiff's amended plaint of 16<sup>th</sup> February 2004 are that on the 14<sup>th</sup> day of August 2003 the Defendants caused to be and published an article concerning the Plaintiff in the following words.

**“A Nairobi Advocate was yesterday arraigned before a Kibera Court charged with forgery. Lawyer Julius Orenge denied the charge before Principal Magistrate Catherine Mwangi. The Court heard that on March 3, in Nairobi, Orenge with intent to defraud, forged a letter of instructions to R.O.A. Otieno & Company Advocates from George Ochieng Mboya to sue Devki Steel Mills Limited for compensation. The police suspect the accused to be a member of a cartel including lawyers and bogus doctors, who have been colluding to defraud the Steel Mills Company of millions of shillings through fake medical insurance claims. The accused was released on Shs.70,000/= surety pending hearing of the case on September 16.”**

The Plaintiff contends that the said publication was done maliciously and without justification in that he was never charged on the 13<sup>th</sup> August 2003 as alleged. He contends also that the words published were intended to be and were actually read by the public wherein the subject newspaper is a leading daily with an extensive audience in the East African region and the world at large. The Plaintiff contends further that the said words, in their natural and ordinary meaning meant and were understood by right thinking members of the society and the world at large, inter alia, that

- i) The Plaintiff is a fraudulent advocate who colludes with other lawyers and bogus doctors for unjust enrichment**
- ii) The Plaintiff has a propensity for filing and prosecuting fraudulent claims.**
- iii) The Plaintiff has no regard for the provisions of the Advocates Act, Cap 16 in respect of professional etiquette.**
- iv) The Plaintiff has no regard nor respect for generally accepted norms of professional etiquette.**
- v) In the premises the Plaintiff is not a fit and proper person to be an advocate of this Honourable Court.**
- vi) The Plaintiff is a person of doubtful moral standards and probity.**
- vii) The Plaintiff is a criminal.**
- viii) The Plaintiff belongs to a cartel of criminals.**

In the alternative the Plaintiff avers in his plaint that the published words meant and were meant to be understood by way of innuendo that

- i) the Plaintiff is a fraudulent advocate not above colluding with lawyers and bogus doctors to perpetrate fraud against the Steel Mill Company.**
- ii) the Plaintiff has a propensity for filing and prosecuting fraudulent claims.**
- iii) the Plaintiff has no respect for the provisions of the Advocates Act Cap 16 in respect to professional conduct**
- iv) the Plaintiff has no regard or respect for generally accepted norms of professional etiquette**
- v) in the premises the Plaintiff is not a fit and proper person to be an advocate of this Honourable Court.**
- vi) the Plaintiff is a person of doubtful moral standards and probity**
- vii) the Plaintiff is a criminal**
- viii) the Plaintiff belongs to a cartel of fraudsters.**

The Plaintiff is of the strongest conviction that the said publication of the said words was actuated by malice, malevolence and spite. In particular the Plaintiff asserts that the words appearing in paragraph 4 of the publication were false as the statement made therein was not part of the criminal proceedings against the Plaintiff.

Defences to the action were filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 5<sup>th</sup> February 2004 and a Defence to the Plaintiff's Amended Defence was filed on 23<sup>rd</sup> February 2004. However the three defences were struck out on 01.07.04 when a consent was recorded in the Plaintiff's application for striking out dated 8.3.04. The striking of the defences settled the issue of liability in that the Plaintiff remained unchallenged. The matter was thereafter set down for formal proof which was heard before me on 6<sup>th</sup> December and 27<sup>th</sup> January 2005. The Defendants were represented by Counsel who took the opportunity to cross examine the Plaintiff and thereafter did file written submissions on behalf of the Defendants. The Defendant was also allowed to call one witness to mitigate on damages who instead of mitigating as allowed attempted to produce documents and testify on the same but was refused by the Court to do so the Court holding that

the witness could only testify on facts which the Court would normally consider in determining the quantum which would normally relate and must be restricted to the Defendants conduct and demeanour in handling the libel complained of.

To prove his case the Plaintiff testified and produced two documents in support of his claim, the newspaper in which the offensive article was published and the Plaintiff's advocate's demand letter dated 14<sup>th</sup> August 2003 demanding an admission of liability and an apology by the Defendants and giving notice of intention to file suit in default thereof. The said documents were marked as Exhibit Numbers "Ex. P1" and "Ex. P.2" respectively. He also called one witness also an advocate and his partner who confirmed the Plaintiff's evidence that owing to the story the Plaintiff's credibility and standing as an advocate and indeed that of their firm was so tarnished that various of their corporate clients stopped giving them work. The two witnesses named the Insurance Company of East Africa and the Kenya Reinsurance Corporation among the clients the firm lost. The facts of the case were thus confirmed by oral testimony notwithstanding that liability had already been admitted. PW.2 testified to the Plaintiff's honesty and trustworthiness and confirmed that indeed the instructions purported by the article to have been a forgery were not so as the same had actually been received in the normal course of business and were valid instructions.

Liability on the part of the Defendants having been ascertained, the Plaintiff is in law entitled to damages. The Court has studied the authorities submitted herein by either side wherein the Plaintiff claims a total of Shs.6,000,000/= made up as follows:

- 1) **Shs.5,000,000/= - general damages**
- 2) **Shs.1,000,000/= - in respect of aggravated, exemplary and punitive damages.**

The Defendant on the other side has submitted that the Plaintiff should only be awarded Shs.500,000/= as general damages and nothing in respect of exemplary, punitive and aggravated damages on the ground that malice has not been proved.

In support of his claim for Shs.6,000,000/= the Plaintiff has based reliance on my own award of Shs.5,000,000/= in Yahya Said Yahya -vs- The Kenya Times Media Trust & 2 Others H.C.C.C. No. 1678 of 2000 and the award of Shs.20,000,000/= in Biwott -vs- Mbuggus & Another (No.2) 2002 1 KLR 231. The Court believes that the Plaintiff has taken cognisance of this Court's stand on the award of damages in Kenya today as stated in pages 11 and 12 of the judgment in the Yahya Said Yahya case the circumstances of which are distinguishable from this case applying the principles outlined in the Plaintiffs submissions on the Biwott case.

It was held in SUTCLIFFE -vs- PRESSDRAM LTD [1990] All E.R. 269 that "in cases of libel the law calls for compensation to be assessed by reference not only to the pain and suffering caused to the Plaintiff by the publication of the libel but also to the extent to which this pain and suffering is aggravated or reduced by the defendants' subsequent conduct. It requires account to be taken of the Plaintiff's need to receive an award which will vindicate his or her reputation in the eyes of the public."

The view of this Court is that damages awarded must make sense to the general public and not cause outrage. An award must not be given which is divorced from reality considering the wrong done and its effect on the claimant.

That the Plaintiff filed two related suits in the lower Court based on the same facts and similar reading of the defamatory publication shows that even to the Plaintiff the gravity of the libel herein does not match the degree of the same in the cases cited in support. I do not agree with Counsel for the Plaintiff that the lower Courts authorities of Julius Orange -vs- The People Ltd and Another CMCC (Milimani) 11865 of 2003 and Julius Orange -vs- Nation Media Group & Another CMCC (Milimani) 11863 of 2003 on which the Defendants rely, were sneaked in through submissions as this Court had clearly stated that whilst they could not be produced at the formal proof as mitigating evidence they could be used in submissions. In the said suits the Plaintiff was awarded Shs.1,000,000/= and Shs.400,000/= respectively. They are the

basis upon which, together with the authorities of Jared Omonde Kisera –vs- Ken Omondi, Wachira Waruru & The Standard Limited H.C.C.C. No. 160 of 2001 and of Fred Ojiambo –vs- The Standard Limited and 2 Others H.C.C.C. No. 1996 of 1997, the Defendants ask for a lower figure of Shs.500,000/=.

Although the lower Court's judgment are not at all binding upon me, they have a bearing in this Court in the manner previously stated herein.

It is obvious from the facts and evidence herein that the Plaintiff's reputation was injured both in his personal and professional capacity. Evidence adduced has demonstrated actual loss in terms of business and standing as an advocate of this Court and in the practice of law generally. Such damage, particularly when the imputation is one of a criminal nature is most difficult to compensate as seen in the *Yahya* judgment and the authorities cited therein. Taking all facts into consideration and in light of my findings herein I find that an award of Kshs.2,000,000/= would be appropriate as compensation for general damages. It cannot be said that malice is not proven when judgment was entered by consent on liability. The Defendants shall be taken to have admitted all the facts in the plaint when they consented to the striking out of their defence. As the Defendants have never shown any intention of apologizing and having made no attempt to mitigate the damage when accorded the opportunity to do so in Court, choosing only to attempt to equate the present suit with the suits filed in the subordinate Court, I find that an award of aggravated, punitive and exemplary damages ought to be made. For this I award Shs.500,000/=.

Consequently I find that this suit succeeds and enter judgment for the Plaintiff against The Standard Ltd and Alphonse Mang'ahu jointly and severally for:

- a) **General Damages..... Shs.2,000,000**
- b) **Aggravated, punitive and exemplary damages..... Shs.500,000**
- c) **Costs of the suit**
- d) **Interest on (a) (b) and (c) at Court rates from the date of judgment until payment in full.**

Dated, Signed and Delivered at Nairobi this 17<sup>th</sup> day of June 2005

**M.G. Mugo**

**Judge**

**In the presence of:**

***Mogeni for Plaintiff***

***Ms Kilonzo h/b for Majaja for Defendants***