REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 2143 OF 1999

KIPYATOR NICHOLAS KIPRONO BIWOTT.....PLAINTIFF

VERSUS

GEORGE MBUGGUS .....DEFENDANT

KALAMKA LTD.....DEFENDANT

JUDGMENT

By a plaint filed in court on 10th November, 1999, Hon. Kipyator Nicholas Kiprono Biwott (hereinafter "the plaintiff") currently the Minister of Trade and Industry in the Government of Kenya and a member of Parliament for Keiyo South constituency, sued George Mbuggus and Kalamka Ltd, jointly and severally seeking.

(a) "general damages",

(b) "damages on the footing of aggravated or exemplary damages",

(c) "an injunction restraining the defendants and each of them by themselves their agents or servants from further printing, circulating distributing, seeking or otherwise publishing any such libels of and concerning the plaintiff",

(d) "costs",

(e) "Interest on (a) and (b) above".

The plaintiff's cause of action appears in paragraphs 5,6,7 and 8 of the plaint where he complained *inter alia*, that on

"10th of March, 1999 the defendant printed and published or caused to be published the following words which are defamatory of the plaintiff on the front page of the issue of the People Newspaper headed,

"The untold story on Moi-Nyachae",

First forward to Moi era: Nyachae has been promoted by Moi and he is now Chief Secretary. The government is contemplating putting up a mega hydro-power plant by damming the Turkwel River. A French construction firm is keenly interested in getting the multi-billion Turkwel Gorge project and is willing to bend backwards to lay its hands on the lucrative project.

But there is a small snag. Some officials in the Office of the President, including Nyachae, feel that a professional feasibility study must be done before the government can commit itself on a project of such magnitude. Senior officials at Treasury led by the then permanent secretary Harry Mule and the European Economic Community (as it was then called) suggest that a feasibility study is paramount before the Government can make any commitments on the Turkwel Gorge project. They get backing on the need for a feasibility study from the Chief Secretary, Nyachae.

Nicholas Biwott, then a Minister in the Office of the President, is not amused by the "unnecessary" delay of his pet project just because of "some useless feasibility studies". Consequently, he (Biwott) hope into a place together with Prof. George Saitoti (then holding the Finance portfolio) and off they go to parts to get things moving on the "crucial" project.

Throwing all protocol to the dogs, Biwott and Saitoti meet in a hotel room with the French construction firm chasing the Turkwel Gorge project and, in a flash, the contract is signed. Why waste precious time on "useless feasibility studies when you can quickly get things moving the good old fashioned way? Why indeed!

When Biwott and Saitoti came back to Nairobi, the EEC, senior officers at the Treasury and the Chief Secretary are on their case. The two are put to task on why they rushed to commit the government to such an expensive project without waiting to get the results of the feasibility study. A bitter argument ensues between Biwott and Nyachae. This is not the first time that the two are arguing.

Moi, apparently concerned that the quarrel between two of his lieutenants may get out of hand, summons the pair to State House where he placates them and they seem to bury their hatchets.

But things start happening in a strange way. A few days later, Biwott is transferred to Ministry of Energy (to take charge of the Turkwel Gorge Project without interference from Nyachae?)

On his part, Nyachae starts seeing a change of attitude from his boss. Subtly, the Chief Secretary is being sidelined. In the meantime, James Mathenge has been replaced as the Permanent Secretary in charge of internal security by Hezekiah Oyugi who appears to be getting backing from Moi and Biwott to establish a parallel power base and gradually erode the influence of the office of the Chief Secretary".

In paragraph 6 of the plaint the plaintiff complained about the "ordinary and or innuendo meaning of the said article or publication which is that"

(a) "the plaintiff colluded with a French construction firm which was keenly willing to bend backwards to lay its hands on the said project in order to corruptly award it the contract",

(b) "the plaintiff in breach of his oath of office as a Minister in the Kenya Government threw to the dogs or ignored all protocol and corruptly got the said contract signed in a hotel room in France",

(c) "the plaintiff dishonestly or fraudulently committed the government on the said project without waiting to get the results of the feasibility study",

(d) "the plaintiff committed the offences of corruption both in his private capacity and or in his office as a Minister in the Government of Kenya".

He complained further that,

"By reason of the publication of the said words, the plaintiff has been seriously injured in his character, credit and reputation and has been brought into public scandal, odium and contempt".

The particulars relied on by the plaintiff in support of a claim for aggravated and or exemplary damages, appears in paragraph 8 of the plaint.

In their defence filed on 30th December, 1999, the defendants denied the plaintiff's claims, but stated as follows in paragraph 4 thereof,

> "without prejudice to the foregoing and in the alternative, the defendants admit that they published the article the subject matter of the complaint in paragraph 5 of the plaint and that the same refers to the plaintiff. The defendants however deny that the said article containing the said words, was falsely, maliciously or negligently published as alleged and particularized or at all. The defendants aver that the said words were true and fair comment on a matter of public interest".

Paragraph 6 of the defence reads,

> "Further and in the alternative the defendant's deny that the said words bore or were capable of bearing any of the meanings alleged in paragraph 6 of the plaint and the implication alluded to therein shall put the plaintiff to strict proof".

The defence goes on upto pragraph 11, but in paragraph 8 thereof,

> "the defendants deny the contents of paragraph 9 of the plaint and aver that on April 16, 1999 they published in full the plaintiff's reply to the article published on March, 10, 1999 and consequently this suit is an abuse of the court process".

On 11th July, 2000, the plaintiff moved the court by a Chamber Summons application grounded on Order VI Rule 13(i)(b) of the Civil Procedure Rules seeking orders that:

(i) "paragraphs 3,4,5,6 and 10 of the statement of defence herein, be struck out",

(ii) "that judgment be entered in favour of the plaintiff against the defendant",

(iii) "costs of the application be provided".

I heard the application in full and delivered a Ruling on 3rd day of August 2000, whereby I struck out paragraphs 3, 4, 5, 6 and 10 of the defence. I also entered judgment for the plaintiff against the defendant on liability, and also awarded the plaintiff the costs of the application dated 11th July, 2000.

The defendants moved to the Court of Appeal in an effort to set aside my orders of 3rd August, 2000, but they were not successful, as the Court of Appeal confirmed the said orders.

The case was finally brought back to me for assessment of damages on 21st February, 2002.

I recorded the evidence of the plaintiff, Hon. Kipyator Nicholas Biwott, the Minister for Trade and Industry in the Government of Kenya, and also the Member of Parliament for Keiyo South Constituency.

He confirmed that he is familiar with the facts of this case, and the allegations against him which appeared in the *People Newspaper* of March 10th, 1999 at page 2. He read out the text and subsequently produced it as Ex.1 in court.

Testifying further, the plaintiff said,

> "The gravity of the allegations is that I am corrupt and I do not follow procedures such as going through feasibility studies, and I have breached my oath of office as a Minister".

On the extent of the circulation of the article the plaintiff said,

> "Initially when the article was published the circulation was to Kenya and also outside Kenya to those who read it but after I had filed the case, the circulation had a bigger effect regionally and also internationally. It was circulated through the internet".

Asked about the effect of the article on him, the plaintiff said,

> "The effect of the circulation is to damage my reputation and integrity".

Hon. Biwott told court that he is a Minister in the Kenya Government, a Member of Parliament and also a Minister in the East Africa Community and Comesa area. He attends European Union meetings as the current Chairman of the Trade Minister of the ACP Trade Group. He also attends the WTO meetings of the WTO based in Geneva.

As a Minister, he interacts with all the ministers in Africa dealing with Trade and other issues. He has a reputation both locally and internationally.

Questioned by his lawyer about his level of interaction he said,

> "I interact with Heads of State in the East African Community, Comesa and NEPAT – i.e New Africa Partnership Development Iniciative".

He recalled that on 10th March, 1999 when the article was published in the *People Newspaper*, he submitted the correct facts through his lawyer, and asked the paper to publish a correction in as prominent a place as they had published the story, but they did not. Instead they published the facts he submitted on page 14 as opposed to the front page.

He produced as Ex.2 a letter written by his lawyer to the editor of the *People Newspaper* containing the facts of the matter.

Those facts were published on page 14 of the *People Newspaper*. A copy of the text appearing on page 14 was produced as an exhibit.

The plaintiff's lawyer wrote to the *People Newspaper* once more on 13th May, 1999, "demanding an unqualified apology and retraction of allegations for publication in an equally conspicuous position in your newspaper". This letter was produced by the plaintiff as Ex.4.

The *People Newspaper* did not comply and did not publish the article as requested, and on 18th October, 1999, the plaintiff instructed his lawyer to write to the *People Newspaper* again, which the lawyer did. The plaintiff read the letter in court and produced it as Ex.5.

He said that this time the *People Newspaper* responded by justifying what they had written earlier on, but there was no apology published.

The plaintiff said that he was left with no option but to file a suit.

The defendants filed a defence and still insisted that their original story was right – this is shown in paragraph 4 of the defence.

The plaintiff lamented that no apology has been published, yet from the time the story was published, he decided to give the *People Newspaper* the correct facts and he hoped that they would publish it on the first page of their newspaper and give it prominence but they did not comply plus the subsequent requests.

The plaintiff concluded his evidence by saying,

> "I want the court to award me general damages, aggravated damages and a permanent injunction

to stop the People Newspaper from damaging my name maliciously. I also ask for costs of this suit and interest on general damages and aggravated damages".

The plaintiff was questioned by the defendant's counsel on the evidence he gave particularly the effect the article complained of had on him. His response was

> "At the time the article was published, I was a Minister of East African Co-operation, and to date I remain a Minister, but you cannot abstract my reputation and my being. There will always be a tag that I am the Minister who has all those stories..".

The plaintiff said that he read that story on the internet and his friends too, told him they had read it, but Mr. Gathaiya's contention was that the *People Newspaper* has no website. This was no defence because judgment had already been entered for the plaintiff on liability.

At the conclusion of the plaintiff's evidence, the two advocates made detailed oral submissions as the court record shows.

Mr. Oyatsi for the plaintiff, asked the court to consider 6 points in awarding compensatory damages.

First, "the gravity of the allegations or the libel complained of"

Secondly, "the size and influence of the particular circulation in which the libel was contained", and

Thirdly, "the effect of the publication on the plaintiff's reputation and integrity".

Fourthly,"the extent and nature of the plaintiff's reputation",

Fifthly, "the behaviour of the defendant", and

Finally, "the behaviour of the plaintiff himself".

Mr. Oyatsi referred the court to the English case of *Sutcliffee Presdrum Ltd*, [1990] 1 All E.R. 259, whose principles have been considered locally in the case of HCCC No. 1068 of 1997, *Kipyator Nicholas Kiprono Biwott Vs Clays Ltd and Others* (Consolidated with) HCCC No. 1068 of 1999 (*Kipyator Nicholas Kiprono Biwott Vs Dr. Ian Westt & Another).*

He also referred to another local authority, i.e HCCC No. 1709 of 1996 *John P. Machira Vs Wangethi Mwangi and Another,* where damages were awarded to an advocate for libel.

The issues Mr. Oyatsi wanted the court to consider in awarding <u>aggravated damages</u> are:-

1. "Whether the defendants have offered any apology in respect of the libel",
2. "The conduct of the defendant on the suit, and in particular, the plea of defence of justification",
3. "The defendant's persistence in defending the libel even after they had received the plaintiff's version of the facts".

Submitting on the gravity of allegations against the plaintiff, Mr. Oyatsi said that the allegations suggest that the plaintiff notwithstanding his oath of office as a Minister in the Kenya Government and in breach of rules of protocol, caused the Government to enter into a contract irregularly for his own financial gain and for the gain of the contractor, yet the evidence on record shows that the correct procedure was strictly followed in that a feasibility study was done by the Government as early as 1976, before the plaintiff joined the Government as a Minister. This was followed by four more feasibility studies carried out by international consultants including the World Bank and the EEc, and it was on the basis of all this that the Cabinet authorized the commission of the project and all matters concerning choice of contractors funding of the project and the contract to be signed were decided on by the cabinet.

Mr. Oyatsi complained that it is against this background, and without verifying facts from the plaintiff, that the *People Newspaper* chose to publish on the front page of their Newspaper the serious allegations about the plaintiff, without bothering to consider the harm the allegations would have on the plaintiff's character.

He submitted further that under Section 3 of Cap 65 (Prevention of Corruption Act), "it is a felony for any person to engage himself in a corrupt activity as defined therein".

Section 5 of the same Act, provides for the increase of maximum penalty in certain cases such as the ones involving contracts with the Government.

The point Mr. Oyatsi was making here was that the publication alleged that the plaintiff had engaged himself on a corrupt activity and therefore not fit to hold a public office. He submitted that this was a serious libel against the plaintiff which calls for a high award of damages.

In answer to this, Mr. Gathaiya for the defendants submitted that no evidence was adduced to show that the words were understood by right thinking members of society, in the manner alleged by the plaintiff. That there was no evidence adduced to suggest that the plaintiff had committed any offence punishable under the Corruption Act as required by that law, so the plaintiff cannot make any claim for damages under section 16 of the Defamation Act. That the publication did not contain any words capable of disclosing an offence punishable by any sentence of imprisonment. The rejoinder to this by Mr Oyatsi was twofold-

First this submission was taken from paragraph 5 of the defence which was struck out at an interlocutory stage, so it is no longer part of the defence. Secondly, Mr. Oyatsi relied on an extract from *Gatley on Libel & Slander* at para 311 which reads,

> "where the plaintiff relies on the natural and ordinary meaning of the words complained of, no evidence is admissible of their meaning or the sense in which they are understood".

On the size and influence of the circulation Mr. Oyatsi referred to the plaintiff's evidence which remained unchallenged, and Mr. Gathaiya too just repeated the plaintiff's evidence stressing the point that the defendant newspaper has no website to enable the circulation to be read worldwide.

On the effect of the publication on the plaintiff's reputation, Mr. Oyatsi referred to the plaintiff's evidence and from it submitted that though the plaintiff continues to perform his functions as a Minister, the dent or stigma on his character still remains until vindicated by an award of damages in this case, but Mr. Gathaiya was of a different view on this point. According to him, no evidence was adduced to show that the plaintiff had been shunned or that he had acquired any stigma, as his evidence was that he still remained a minister and continued to carry out his duties as before. Here again, the submission by Mr Gathaiya was based on para 6 of the defence which had been struck out by this court in the Ruling of 2.8.2000. Besides, contents of para 311 of *Gatley on Libel and Slander* was applicable because the contents of para 6 of the plaint shows that the plaintiff was relying on the natural and ordinary meaning and or innuendo meaning of the said article.

The extent and nature of one's reputation was said to differ from person to person, but in the case of the plaintiff, he told court in his evidence exactly who he is. He is not just a Member of Parliament and a Cabinet Minister in the Kenya Government but he also belongs to various regional and international bodies and commissions and in that capacity, he interacts with fellow Ministers in Kenya, Africa and indeed many countries of the world.

To this Mr. Gathaiya submitted that the plaintiff's reputation has not been lowered because he is still continuing to interact with his colleagues as before and meets Heads of states and other ministers locally and internationally. This submission must be looked at against the fact that judgment was entered for the plaintiff on liability.

On the behaviour of the defendant, Mr. Oyatsi submitted that this has been most unapologetic right from 1999, when the offending article was published, to date when the case is proceeding for hearing with the conduct of the plaintiff's counsel at the trial leaving much to be desired, as it can aggravate damages. Mr. Oyatsi lamented that this is something that could have been avoided by the defendants tendering an apology, after they were supplied with the correct version of facts, but they chose not to do so. He examined the plaintiff's behaviour as against the defendants, and submitted that the plaintiff took the 1st opportunity to supply the correct facts, as soon as the offending article was published. The plaintiff did this in accordance with the law, i.e Sec. 7 A (i) of Cap 36. The plaintiff then asked for apology from the defendants, though the defendant is required by law to publish only what is true not falsehoods.

To this Mr. Gathaiya submitted that the plaintiff's right of reply was published by the *People Newspaper* only a day after he had submitted it. The plaintiff confirmed in his evidence that there was no further publication by the defendant of the article. This according to the defendant's counsel should minimize damages.

Having gone through the principles applicable in awarding compensatory damages and exemplary or aggravated damages, Mr. Oyatsi once more referred to Section 16(a) of the Defamation Act and submitted that though the offending article did not relate to a capital offence punishable by death, however, the offence disclosed by the article was that of corruption under Cap.65 of Laws of Kenya, and it carries a maximum sentence of more than 5 years imprisonment, in addition to one losing the right to public office or participating in an election, and having regard to section 16 of Cap. 36, the minimum damages that this court can award is Kshs.400,000/ = as compensatory damages, however, bearing in mind submissions made to the court, Mr. Oyatsi asked for a much higher award than that prescribed, taking into consideration the previous awards made by this court and other courts in similar claims. For example, in HCCC 1067/99 (already referred) an award of Kshs.15 million was made as compensatory damages for libel where the plaintiff had been accused of a capital offence.

He conceded that the allegation in that case was more serious than in this case and had received a wider publicity, but he referred to a later case, the decision of *John Machira Vs Wangethi Mwangi and Nation Newspaper* which followed the decision in HCCC No. 1067/99, where a sum of Kshs.8 million was awarded to a plaintiff, as compensatory damages.

This was a case where the plaintiff, Machira, an advocate of the High Court of Kenya, was accused of stealing client's money an offence which according to Chapter 27, Laws of Kenya carries a sentence of 5 years imprisonment at the most, and does not carry the penalty of prohibiting one from holding a public office.

Distinguishing *Machira*'s case further from the facts of this case, Mr. Oyatsi submitted that Machira's reputation was at the very most limited to Kenya, unlike the plaintiff whose reputation spans beyond the boundaries of Kenya, and further still, in *Machira*'s case, the Nation Newspapers had published an apology. This is unlike the present case where the *People Newspaper* has refused to publish an apology. Finally, in *Machira*'s case, the defence of justification was not pleaded whereas in the case at hand, it was pleaded but struck out by the court at an interlocutory stage.

Taking all these factors into consideration Mr. Oyatsi asked for an award of Kshs.12.5 million on behalf of his client as compensatory damages.

He further prayed for an award of exemplary damages, basing it on the authority of *Associated Leisure Ltd & Others vs Associated Newspaper Ltd* [1970] 2 A.E.R 755 where in the judgment of Denning MR, at pg 757 he considered and adopted the decision of Devlin J in *Roth vs Odhams Press Ltd* (unreported) to the effect that

> "A defendant should never place a plea of justification on the record unless he has clear and sufficient evidence to the truth of the imputation, for failure to establish this defence at the trial may probably be taken in aggravation of damages".

Mr. Oyatsi submitted that in the present case, the defendant did put forth a plea of justification which was struck out at an interlocutory stage, and further still the defendants have refused to tender apology, for libel which according to the law injures a person's feelings and the compensation which the court awards is primarily for the injured feelings, in the same manner in which the court awards damages for pain and suffering. This principle comes from *Sutcliffee's* case.

Mr. Oyatsi asked for an award of Kshs.15 million as exemplary damages for the plaintiff, thus making a grand total of Kshs.27.5 million.

So how does the court go about assessing damages in a case such as this one where the principles of law applicable have been outlined and submitted on at length by both advocates?

I think the answer lies in those submissions to begin with, the pleadings on record and a careful look and consideration of previous awards made by the courts in more or less similar cases where suits have been filed by people claiming damages for injured feelings, on account of libel.

In the 1st place, I find that the article published by the *People Newspaper* on 10th March, 1999 under the banner headline "The untold story of Moi- Nyachae", was defamatory of the plaintiff. Its plain, natural and ordinary or innuendo meaning is as appears in para 6 of the plaint, i.e that the plaintiff colluded with a French firm which was willing to bend backwards on the project and award it the contract, that in doing this, the plaintiff breached his oath of office as a Minister in the Government of Kenya and ignored all protocol as he had the contract signed in a hotel room in Paris, and further, that he

> "Dishonestly and or fraudulently committed the government on the said project without waiting to get the results of feasibility study"

and finally, that he

> "committed offences of corruption both in his private capacity and or in his official position as a Minister of the Government of Kenya".

The law gives the plaintiff the right of reply which he exercised by sending to the defendants the correct version of the story which was printed on page 14 contrary to the law, (Section 7A(3) of the Defamation Act) which says,

> "The correction shall be printed free of charge and be <u>given similar prominence as the item complained of and shall appear at a similar place in the newspaper".</u> (the above underlining is mine)

The plaintiff's demanded for apology and a retraction of allegations published on 10th March, 1999 was never made to date.

Having found that the publication in question was defamatory of the plaintiff which means that he is entitled to an award of damages for libel, I now want to examine how the courts have proceeded in awarding damages.

Mr. Oyatsi quoted several English case as the record shows but relied very much on 2 local decisions i.e HCCC 1067/99, a decision of Visram, C.A (as he then was) given on 20th December, 2000 and *John Machira vs Wangethi Mwangi and Nation Newspapers Ltd* a decision of Mulwa, J of 7th September, 2001.

These are decisions of this court, i.e. High Court. They are not binding on my court, but are of great persuasive value as they show the latest trend in awards of damages for libel.

The decision in HCCC NO. 1067/99 by Visram C.A completely revolutionized the awards of damages for libel in the High Court. It was followed by *Machira's* case.

Again in HCCC No. 1067/99, several decisions of the High Court were referred to. These included my decision in HCCC No. 214 of 1999 *John Evan Gicheru vs Andrew Morton & Another* given on 28th September, 2000.

It is important at this stage to quote a portion of that judgment at pg 12. I said the following,

> "The plaintiff's counsel asked for damages not less than Kshs.5 million, whereas the defendant's counsel asked the court to award damages of Kshs.1.5 million".

The judgment continues,

> "The prayer for damages as I see it was left to the court's discretion as no obvious principle to be followed in calculating damages was given by either of the 2 lawyers".

It was on this basis that I proceeded to award a total sum of Kshs.2.25 million as damages for libel.

I will not say anymore on this case as it is subject of appeal to the Court of Appeal.

Coming back to the case at hand, it is on record that the principles applicable in awarding both compensatory and exemplary damages were submitted on at great length by both advocates. For that reason I would find no reason to depart from the recent decisions which seem to be having an upward trend. I am persuaded by them and I will follow them in assessing damages so as to maintain some sort of uniformity.

Both advocates addressed me on section 16A(1) of the Defamation Act which I reproduce below,

> "In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem fit".

The proviso to the section reads,

> "Provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years, the amount assessed shall not be less than four hundred thousand shillings".

In this case, the libel was in respect of an allegation of corruption, which is a felony under Cap. 65, Laws of Kenya and carries an imprisonment term of not less than 5 years and upon conviction the offender shall,

> "unless the court otherwise orders, be liable to be adjudged to the forever incapable of being elected or appointed to any public office and to be incapable for seven years from the date of the conviction of being registered as an elector, or of voting at an election, of members of any public body in Kenya, and if at the date of the conviction he has been elected as a member of any public body his seat shall be vacated from that date ……."

A charge of corruption is therefore a serious charge, which does not come within the proviso to section 16 A(1) of the Defamation Act, already quoted.

The charge is even more serious when the person said or understood to be corrupt is one already holding an elective office as a Member of Parliament, and a Cabinet Minister, as Hon. Bitwott is. I have to consider the award of compensatory damages in light of this as well as his own evidence on oath and submissions.

I would wish to point out here that the facts and circumstances of this case are peculiar to this case. They were not the same facts which arose in HCCC No. 1067 of 1999 or in *Machira's* case, but the principles

are the same, and it is those principles that I am following because they are relevant and applicable in this case. I am also adopting the various cases quoted in HCCC No. 1067/99 and *Machira's* case for the same reason.

Doing the best I can in the circumstances, I have decided to award the plaintiff a sum of Kshs.10 million as compensatory damages for libel.

I still have to deal with exemplary damages which I find are payable to the plaintiff for the reasons already discuss in the judgment.

It is on record that the defendant did not offer any apology, and did not retract the libel even after publishing the plaintiff's right of reply. Besides that, when the plaintiff filed the suit, the defendants maintained in their defence at para 4 that the

> "the words were true and fair comment on a matter of public interest",

and in para 5 they, denied the meaning the plaintiff ascribed to the article they published.

I find this act of the defendants to have been malicious and only intended to injure the plaintiff's integrity and reputation. They had the correct version of facts which they even published yet they still insist in the defence that the words they published were "true and fair comment on a matter of public interest".

Does it mean that the defendants did not believe the plaintiff's version of facts? I do not know the answer to this question, only the defendants know.

Anyway, paragraphs 3,4,5,6 and 10 of the defence were struck out, before the suit was heard.

I have already commented on the conduct of the advocate for the defendants who proceeded during the hearing of the suit, as if he did not recognize the judgment, already entered for the plaintiff against the defendants on liability.

Be that as it may, and bearing in mind all the points I have considered I have decided to award a further sum of Kshs.10 million as exemplary damages. This makes a total sum of Kshs.20 million for both compensatory and exemplary damages. This sum is awarded plus costs and interests.

Further, as the defence against injunction on para 10 of the defence was struck out I proceed to grant an injunction order as prayed by the plaintiff in para 10 (c) of the plaint dated 10th November, 1999.

Finally, I would like to say in conclusion that in the last 2 years or so, beginning with the decision in HCCC No.1067/99, (December 2000), the High Court has adopted a stern approach to libel by both print and electronic media, authors and publishers of books and magazine. It has to be understood that the purpose is not to stifle them, but to encourage mature and responsible journalism. The courts are no longer willing to sit back and watch people's names, reputation and character being tarnished by falsehoods. We expect the press to investigate the information and or allegations they get about people or organizations and only print it if they have proof that it is true. In that way, media houses will be able to successfully defend the suits filed against them.

One other thing that is important today is thorough knowledge of the provisions of the Defamation Act Cap. 36 Laws of Kenya. A lot of cases can be settled out of court, or not reach the courts at all if editors of newspapers, authors, publishers or other persons concerned got the proper advise and acted accordingly. I think this is the way forward, looking at the upward trend of awards for libel by the courts.

The awards and orders are as I have made in this judgment.

Dated and delivered at Nairobi this 22nd day of March, 2002

J.A Aluoch

JUDGE