



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO 1709 OF 1996

MACHIRAPLAINTIFF

VERSUS

MWANGI & ANOTHER.....DEFENDANT

JUDGMENT

The plaintiff who is an advocate of the High Court of Kenya filed this suit by plaint on 12-7-1996 claiming full apology from the defendant for having printed and disseminated information which the plaintiff regarded as libelous. He also prayed for general and aggravated damages for defamation together with the costs of the suit. The defendants filed a defence on 13-8-1996 denying the averments contained in the plaint. There after the plaintiff filed the application dated 16-12-1996 seeking to have this defence struck out under order 6 rule 13 (1) (b) (c) and (d) of the Civil Procedure Rules. The application was duly heard by Mbogholi Msagha J who dismissed it.

The plaintiff appealed against the order of dismissal in Civil Appeal No 179 of 1997 which was heard and judgment delivered on 4th June 1998. The Court of Appeal in allowing the appeal struck out the defence and entered interlocutory judgment for the appellant. The Court further directed that the suit be set down for the assessment of damages. Costs in the appeal and for the High Court were awarded to the appellant. The case was heard on various dates during which the plaintiff called two witnesses and the defence called one witness. The plaintiff gave evidence that on 9-11-95 while waiting outside the judges chamber he was accosted by a lady. He avoided her but she later confronted him in the library. This confrontation was witnessed by the press reporters who followed them. Later he and his assistant Mr Kiiru went to the offices of the Daily Nation and saw Mr Mulaa who was the reporter assigned to the High Court. They showed to Mr Mulaa the documents related to the purchase of Mr Machira's land by the lady, emphasizing that there was no client/advocate relationship. They asked him to report the truth in the light of these documents.

Despite the information they gave, the Daily Nation and the sister paper *Taifa Leo* had published the story in their front pages. He produced copies of the publications. His firm hurriedly called a press conference in which they explained the facts and asked the 2nd defendant, the Nation Newspaper to make a correction to their story which they did not. They eventually purported to make corrections, which were published in the inside pages of the papers. He further testified that the publication of this story affected his business as an advocate. It also affected his health and had to undergo some treatment. According to the plaintiff the second defendant has a circulation of over a million copies as it is also on the website. His own clients grew suspicious of him and did not want him to handle their money. He was shunned by his colleagues in the United Club where he is a member. He called one witness Mr Paul Kiiru who was his assistant. In his evidence Mr Kiiru corroborated Mr Machira's evidence.

The defendant called one witness Catherine Gichuru. In her evidence she said that the circulation of the Daily Nation in 1995 was 150,000 copies printed and published. While for the Sunday Nation it was 202,000 printed and published. For the *Taifa Leo*, it was 27,000 while for the Sunday *Taifa* it was 30,000 printed and published. She further explained that at no time did they ever sell a million copies. She however said that the Nation has a website since 1997.

As I had pointed out earlier in this case, judgment had been entered for the plaintiff by the Court of Appeal when the appeal was allowed. The Court after striking the defendant's defence in the suit directed that the suit be set down for formal proof. In arriving at this conclusion the Court of Appeal had considered all the aspects of the case with regard to liability so that what remains to be determined is the assessment of damages. In this regard, it is necessary to look at the law applicable and then apply the facts of the instant case to them.

A person who considers himself defamed can bring an action against the person who authorized the defamatory material or caused it to be published. He can claim damages for libel seeking damages for injury to his reputation and for the hurt to his feelings. These are compensatory damages and are termed "damages at large" See the English case *Cassel & Co Ltd v Broone and another* [1972] 1 All ER 801 where the judge observes:

"...The whole process of assessing damages where they are 'at large' is essentially a matter of impression and not addition".

The awarding of damages to the plaintiff is for the purposes of vindicating him to the public for the wrong done to him. See *John v MGN Ltd* [1996]1 All ER 35 where the English CA opined:

"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for damages to his reputation, vindicate his name, and take amount of the distress, hurt and humiliation which the defamatory prohibition has caused".

The Court will thus achieve this vindication by awarding damages in form of a monetary award. In so doing, the Court will also consider the extent to which the pain and suffering had been aggravated by the defendant's subsequent conduct. Depending on the conduct of the defendant, the Court may award aggravated damages in addition to general injury going beyond that which would have flowed from the words complained of but for the presence of the aggravating circumstances. Exemplary damages on the other hand go beyond compensation and are meant to "punish" the defendant. Aggravated damages will be ordered against a defendant who acts out of improper motive eg where he is actuated by malice; insistence on a flimsy defence of justification or failure to apologise.

The other factor which the Court will take into consideration is the manner of publication and extent of the circulation, the geographical area within which the distribution takes place and the nature of the audience. Exemplary damages are awarded where compensatory damages are not sufficient see *Duncan and Neil on Defamation* (2nd Edition 1983) where the learned author states that exemplary damages can only be awarded if the plaintiff proves that the defendant when he made the publication knew that he was committing a tort or was reckless whether his action was tortious or not and decided to publish because the prospects of material advantages outweighed the prospects of material loss. What is necessary is that tortious act must be done with guilty knowledge for the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical, penalty.

There is no set formula for the assessment of damages in libel cases. The Court will however consider the relationship of the sum to be awarded and the injuries suffered bearing in mind that the damages are not meant to enrich the plaintiff.

In the present case the plaintiff sued the defendants asking for:

1. An order that the defendants do make a full and unqualified apology.

2. General and aggravated damages for defamation.

3. Costs of this suit and interests on (b) and (c)

In support of his claim the plaintiff gave evidence which sought to prove that the publications which were defamatory were given wide coverage in the first page of The Daily Nation newspaper and its sister publication, the *Taifa Leo*. According to the plaintiff the publication of these stories was activated by malice and spite. After the appeal was allowed the defendants remained unmoved. They did not apologize or make any offer for settlement. The plaintiff in his submission after the hearing took issue with the line of cross-examination by the defence counsel which sought to examine the plaintiff as if the defendants' defence, which had been struck out by the Court of Appeal, was alive.

The defendants in their defence insisted that the plaintiff must formally prove his case. They sought therefore to show that whether the words complained of were defamatory and whether the words in their natural and ordinary meaning meant the words in the plaint. According to the defendant it was further necessary to decide whether the apology was adequate and how it affects the quantum of damages payable to the plaintiff.

The Court of Appeal by allowing the plaintiff's appeal and striking out the defence settled the question of liability. It is not therefore for this

Court to consider such issues as to whether the Court of Appeal judgment quoted words which were not complained of or whether the words complained of are indeed defamatory.

It has not been denied that the plaintiffs published the words complained of. The words were defamatory and the only question is what damages are payable applying the principles of law explained earlier. The 2nd defendants newspapers are widely read in the country. The words complained of were published in English and Swahili so that those who were not able to read English could read the story in Kiswahili in *Taifa Leo* as per judgment of Akiwumi JA. As to the publication of the defamatory matter I can do no more than quote the judgment of justice Akiwumi in the Court of Appeal at pages 2 and 3 when he says

“the publication were given the widest prominence on the first page both in the Nation Newspaper and its sister the ‘*Taifa Leo*’ so that those who were not able to read English could read the story in Kiswahili in *Taifa Leo*”. He goes on to say:

“The entire publication would show to the ordinary man in the street that the plaintiff in his professional capacity must have behaved disgracefully and even criminally against his client which had led to his recording a statement at the Central Police Station.” Having so stated, I now turn to the main issue before this Court, which is the measure of damages arising out of the publication of the story in the Daily Nation and its sister publication. As set out earlier above, the publication complained of appeared in the publication of the two newspapers on 10-11-1995 and are set out in paragraphs 4, 5 and 6 of the plaint. In paragraph 4 of the plaint, the plaintiff sets out the publication of the photograph and an accompanying caption, which went thus:

“Obviously, Ms Grace Wahu Njoroge was not happy with her lawyer, Mr J P Machira, after they walked out of the High Court yesterday and she expressed this by grabbing his collar. The quarrel was reportedly over some money. The two were later escorted to the KICC Police Post”.

In page 5 of the said publication, also set out as paragraph 5 of the plaint, the story went thus under the banner ‘Angry woman grabs lawyer’:

“An elderly woman caused a stir at the Nairobi Law Courts when she grabbed a lawyer by his shirt collar after a disagreement over money”

Paragraph 4 also went thus:

“Mr Machira made a futile move to escape by dodging the woman in the corridors as he moved from office to office”.

The sister publication, *Taifa Leo* had splashed on the front pages of its edition of the same date the same photograph but the captions were couched in the following words:

“Kama wahenga walivyonena, mbio za sakafuni huishia ukingoni na ndiyo huyu wakili wa Nairobi, Bw J P Machira aliyogundua baada ya Bi Grace Wahu Njoroge, kumushika mashati akilalamika pesa Fulani anazodai alimpa wakili huyo. Walivutia umati mkubwa wa watu kabla ya polisi kuwapeleka katika kituo cha polisi cha KICC” (As the wise men say, a field race ends at the embankment/slope/precipice. And this is how the Nairobi advocate, Mr J P Machira, found out after Ms Grace Wahu Njoroge, held him by the collar complaining to him about certain money she claims to have paid him. They attracted a huge crowd before police took them to the police post at KICC.)

The plaintiff complains that the aforesaid words and statements in their natural and ordinary meaning were defamatory to the plaintiff and meant and were understood to mean:

1. That the plaintiff was acting for Ms Grace Wahu Njoroge.
2. That the plaintiff had swindled the said Ms Grace Wahu Njoroge of her money.
3. That the plaintiff is a thief.
4. That the plaintiff is a dishonest lawyer who engages in dishonourable conduct and should not be entrusted with clients' money.
5. That the plaintiff is incompetent as an advocate.
6. That the plaintiff, being a lawyer, has no regard to professional ethics.
7. That the plaintiff is greedy and untrustworthy as concerns money matters.
8. That the plaintiff should be shunned and avoided by all right thinking members of the society.
9. That the plaintiff is mischievous towards his clients and has improper motives.
10. That the plaintiff had stolen some money from the said Mrs Grace Wahu Njoroge and that the plaintiff was always on the run until he was confronted and molested by the said Mrs Grace Wahu Njoroge on 9th November 1996.

It is therefore the plaintiff's contention that by reasons of the aforesaid, the plaintiff's reputation and integrity both personally and as an advocate has been seriously injured and he has suffered considerable distress, agony, mental torture, humiliation and embarrassment and the plaintiff has also been brought into the public scandal, odium, suspicion and contempt.

There is no defence against these allegations, the defendant's defence having been struck out by the Court of Appeal as a sham. Thus the evidence of the plaintiff and his witness stands unchallenged save as to the publication and distribution of the defendant.

It has not been controverted that the plaintiff and his associate had made the effort to provide a true factual position to the defendant involving meeting the reporter who actually filed the report. On the eve of the publications, the plaintiff appraised the said reporters about the true factual position and including documents being furnished to verify the same.

Nevertheless, as it stands now, the defendant went ahead to publish the offending words, which the plaintiff avers is defamatory. A defamatory publication is the publication of a statement about a person

that tends to lower his reputation in the opinion of right thinking members of the community or to make them shun or avoid him. Thus to the plaintiff, the statements published have had the effect of lowering his reputation personally and as an advocate, in the minds of right thinking members of the community and/or has made them shun or avoid him.

The plaintiff in his evidence set out the traumatic experience of having his photograph splashed with offending words countrywide and perhaps worldwide that his client, who in fact was not his client, had been infuriated by his conduct as an advocate as to resort to physical confrontation.

The defendants' submission is that there has been a subsequent apology to the plaintiff. The terms of the apology are set out in the Daily Nation newspaper of 18th November, 1995 more than a week later were:

“In our issue of November 19, we published a front page picture, whose caption gave an impression that

Ms Grace Wahu Njoroge was the unhappy client of lawyer J P Machira as a result of which she assaulted him. We have since confirmed that their relationship was that of vendor and buyer and there was no suit or case pending between them. We apologise for the wrong impression and any embarrassment caused by our report.” (underline mine)

Taifa Leo had its apology in their edition of 20-2-1996, headed “we apologise’ in its front page thus:

“In our issue of November 10, we published a front page picture of lawyer J P Machira struggling with Ms Grace Wahu Njoroge and reported that the lady was complaining about some money which she alleged that she had given to the lawyer. We have since been informed that the dispute between them was that of vendor and purchaser and that the lawyer did not owe Ms Wahu any money. We take this opportunity to correct the said reporting and also apologise.” (underline mine) Construing the ‘apologies’ clearly two issues come out, that is first, in particular to the Daily Nation, the apology admits that an impression was created that Ms Grace Wahu Njoroge was an unhappy client of lawyer J P Machira as a result of which she assaulted him. This is the impression that the plaintiff, in less explicit terms, submits that it lowered his reputation before the eyes of right thinking members of the society and/or made them shun/avoid him. This impression, as admitted by the defendant in its apology, was wrong.

Secondly, both apologies were made more than a week after the publication, the Daily Nation making its apology eight days later and *Taifa Leo* ten days later. They (the apologies) also both intimate a situation whereby information was subsequently received showing that the relationship as published earlier was not correct or had not been confirmed as existing at the time it was published. This subsequent information brought the “confirmation” or the “information” about the relationship; in other words that the “information” or “confirmation” received later depicted a relationship at variance to the one published earlier. However, it is incontrovertible that on the eve of publication, the plaintiff made efforts to meet the defendants and provided this “information” or

“confirmation” as the case may be, in order to set out the true factual position. The defendant had this information at the time of publication, but instead went ahead to publish the offensive words, and only later more than a week later is when they publish the apology in line with the plaintiff’s version of events.

The plaintiff also takes issue with the apology, that the offensive caption having been given conspicuous publicity in the front pages, and thus that more prominence was given to it, the apology should have also appeared in a more conspicuous position just like the caption. The apology was tucked in page 5 of the newspaper, save to the *Taifa Leo* apology which was on the first page.

The defendant in countering this asserts that pages 1-5 of the newspapers are the most widely read pages and thus whether it be (an apology) placed in the front pages or in page 5, it would have the same effect of vindicating the plaintiff, and making an appropriate apology.

In these circumstances, the publication of the caption in the front pages having created a wrong impression that the plaintiff, as an advocate of the High Court, was being followed around by dissatisfied

clients, bearing in mind that the advocate-client relationship is a fiduciary relationship cushioned by privileged communication, the overall impression created would thus amount to the plaintiff being an incompetent advocate without due regard to the client's interests.

What then are the principles to guide a Court in assessing damages in libel cases? As I had noted earlier damages are, in such cases, "at large" as put in *Carter-Ruck on Libel and Slander* (4th Edition) p 166 that:

"An action for defamation is essentially an action to compensate a person for the harm done to his reputation.

In all actions for libel and in some actions for slander the law presumes that the plaintiff has suffered harm and in these actions, usually described as actionable *per se* the actual sum to be awarded – the damages are said to be 'at large'. Although a person's reputation has no actual cash value the Court is free to form its own estimate of the harm in light of all the circumstances."

This paragraph was noted with approval in *Joshua Kulei vs Kalamka Ltd* HCCC No 375 of 1997 (unreported)

As Visram, CA (as he then was) in *Kipyator Nicholas Kiprono Biwott vs Clays Ltd and 3 others* put it; damages in libel actions are awarded to compensate the plaintiff for the following:

1. Injury to his reputation, and 2. The hurt to his feelings. But as is noted above, these are subjective terminologies which the Court is urged to form an opinion about first to assess the reputation *vis -a-vis* the injury and the feelings *vis-a-vis* the injury. But broadly stated, the nature and measure of damages to be awarded, though 'at large' as stated above, the Court of Appeal decision in *John Wambugu Njoroge vs Kenya Commercial Bank Ltd* CA No 179 of 1992 (Kisumu) is instructive on this:

"there are a number of decisions of this Court as to the nature and measure of damages. Broadly, they are to the effect that whether it be contract or whether it be tort, damages all to be compensatory, save in exceptional circumstances. They are compensatory when they restore or give back to the injured party what he had lost. In other words, the injured party so far as immediately prior to the wrongdoing which gave rise to his complaint or injury."

Being compensatory in nature, and given the difficulty in quantifying the injury suffered by a plaintiff in a defamation action, it is little wonder therefore that the measure of damages awardable in such instances are "at large".

In assessing damages where they are at large, Lord Hailsham of St Maryborne LC in *Cassel & Co Ltd vs Broome and another* (1972) All ER 801 at 825 had this to say:

"...The whole process of assessing damages where they are 'at large' is essentially a matter of impression and not addition."

However, there are no guidelines as to how the Court is to form its impression in attempting to vindicate the injury suffered by the plaintiff from the actions of the defendant. The Court, in such instances is being called upon "to put monetary value on something which can be neither evaluated in money terms nor fully compensated for by a monetary award."

See *Sutcliffe v Pressdram Ltd* [1960] I All ER 269 at 281 as per Lord Donaldson, MR.

But just as in personal injury claims where awards are made for pain and suffering, which in itself is just as unquantifiable as the reputation of an individual, the Court is free to form its own opinion about the nature of the dent punched into the plaintiff's reputation and accordingly grant an appropriate redress.

Bearing those in mind, the prayers in the instant case are for Kshs 20 million as general damages and Kshs 10 million as aggravated damages, and Kshs 2.7 million in lieu of prayer 21 of the plaint which was

an order for apology.

It is the plaintiff's submissions here that the more serious the allegations, and the wider the publication, the greater the sums necessary to vindicate the plaintiff. Further the plaintiff contends that the award has to take into account among other things, the injury to the plaintiff's reputation, the injury to the plaintiff's feelings, the gravity of the allegations, the size and influence of the accusation, the effects of the publication, the extent and nature of the plaintiff's reputation and the behaviour of those parties.

Then in view of all these factors, coupled with the fact that the defendant's newspapers have the widest circulation in this country and the plaintiff's reputation and status as a prominent advocate by this Honourable Court, the plaintiff submits that an award of Kshs 20 million would be sufficient to vindicate the plaintiff's injury.

In *Eric Edward Khaskhala vs Jeremiah Aurah and 2 others* HCCC No 1709 of 1987 (unreported) Khamoni J stated that in forming an estimate of the harm on the plaintiff, the plaintiff's profile *vis-a-vis* what has been published about him have to be taken into account. In *Kipyator Nicholas Kiprono Biwott versus Clays Ltd and others* HCCC 1067 of 1999 (unreported) Visram CA (as he then was) laid out these factors cited by the plaintiff as guiding the Court in arriving at an estimate of the damages which the plaintiff would be entitled to in a defamation action.

The defendant on the other hand submits that an apology has been made which the Court has to take into account. It is further submitted that the conduct of the defendant in the instant case does not warrant an award of aggravated damages.

At the very least, it comes out from the evidence that indeed the version of what transpired during the day were substantially covered, with parts of untruth, by the defendant's publication, which to a large extent was portrayed in a manner which created an impression, wrong as it is, that the plaintiff was an advocate on the run from his clients. The untruths were however extrapolated and published in a manner which to say the least was demeaning to the plaintiff.

The plaintiff was grabbed by the collar as portrayed in the photograph by Mrs Grace Wahu Njoroge, the dispute between them was out of a botched conveyance transaction and they were both escorted to the police station.

I would not extrapolate any more of this as the plaintiff an advocate of this Honourable Court admits this version of events.

Therefore this will have also to be taken into account, in assessing the damages. Consideration has to be also given to the duty of the defendant to inform the public, on matters of interest. Khamoni, J in *Lalit Doshi v Nation Newspapers* HCCC No 3750 of 1994 noted with approval the holding of Lord Coleridge's CJ in *Bernard and another vs Perriman* (1891- 4) All ER 965 and 968 that:

"The right of the speech is one in which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed."

Lord Denning MR added in the case of *Fraser vs Evans and others* [1969] All ER 8:

"There are some things which are of such public concern that newspapers, the press and indeed everyone is entitled to make known the truth and to make their comments in it. This is an integral part of the right of the speech and expression. It must not be whittled away."

This constitutional right to freedom of speech is sacrosanct, but as it is with all other rights it has to be exercised bearing in mind the rights and freedoms of others and the public interest. In exercise of that freedom, save that regard is to be had to the right as exercisable under s 79 (1) of the Constitution, there can be no instructions or requirements that the right be exercised in a particular manner ie what to put in

the headlines or broadcast. These are matters for the press to consider in line with their own editing functions, and the Court cannot and should not be seen to try or attempt to impose on it an editorial policy.

In the instant case, the defendant clearly portrayed before the eyes of the public that the plaintiff is an advocate on the run, on the loose from his clients and can only be cornered, if a physical assault and an investigation by the client to establish his whereabouts is undertaken. The plaintiff, an advocate of the High Court, was portrayed before the eyes of the public, which included his own family, relatives, friends and clients, as a person who was not only incapable of being entrusted with money but also who was incapable of discharging his duties as an advocate.

The plaintiff submits that malice can be inferred in the circumstances to warrant an award of aggravated damages. Malice can be inferred where the defendant in publishing the information knows that the publication is false or not caring whether it is true or false. In establishing the state of mind of the defendant, at the time of publication regard is to be had to his conduct and the information available to him see *Defamation Law, Procedure and Practice* by David Price page 143, para 14.07.

Any evidence which shows that the defendant knows the statement was false or did not care whether it be true or false will be evidence ie of malice. In the instant case, the plaintiff had supplied the defendant with the true position of the matter before the publication was made. Inevitably therefore, at the time of publication, the defendant knew or is taken to have known that the relationship between the plaintiff and Ms Grace Wahu Njoroge was not an advocate/client relationship and there was no relationship of such a nature between them.

Further, considering also the post-publication conduct of the defendant, the correction was made more than a week after the publication, which was made with the knowledge that it was false. I have no hesitation in finding the publication as being malicious. Coming now to the duty before this Court to assess the general damages, the plaintiff has cited *Eric Edward Khasakhala vs Jeremiah Aura & 2 others* HCCC 1709 of 1987 (*supra*) which an award of Kshs 3,300,000/- was made, comprising of Kshs 300,000/- as awarded for failure on the part of the defendants to publish a correction and apology.

Hon Abraham Kipsang Kiptanui vs Frances Mwaniki and 4 others HCCC No 42 of 1987 (unreported) was also cited where Kshs 3,500,000 was awarded as general damages and Kshs 15,000,000 as aggravated damages.

Joshua Kulei v Kalamka Ltd (supra) was also cited where an award of Kshs 10 million was made against "The People" newspaper arising out of a publication of defamatory material. Distinction is made by the plaintiff that these cases were decided long time ago and the Court should consider inflation factors. Further, the publication in those cases were of much less in circulation than the defendant's case, it is submitted.

In the *Abraham Kiptanui versus Frances Mwaniki and others* case (*supra*) the tenor of the publication was that Mr Kiptanui had been sacked as Comptroller of State House for leaking state secrets and having a deal in the Village Market Saga. With due respect to the plaintiff, the accusation of leaking state secrets is a grave accusation bordering on treason which is a capital offence. Section 16 (a) of the Defamation Act provides that where the libel is in respect of an offence punishable by death, the amount assessed shall not be less than one million shillings.

This same state befalls the *Eric Edward Khasakhala versus Jeremiah and others* case, *supra* where the allegation was that the plaintiff had been implicated in the murder of Horace Ongili Owiti, a fellow M P. Thus in these cases, the state specifically provides that the damages shall not be less than one million shillings, though at large.

In the *Joshua Kulei versus Kalamaka* case (*supra*) a sum of Kshs 10 million was awarded as general damages in 1997 arising out of a publication in 'The People' newspaper that the plaintiff was implicated in fraudulent activities with an assortment of persons of vexatious character.

In the *Kulei* case, O’Kubasu J considered “carefully” the plaintiff’s status in society and allegations made against the plaintiff in arriving at the quantification.

As can be noted from the *Eric Khasakhala* case (*supra*) this judgment was set aside by O’Kubasu J to give the defendant opportunity to defend itself.

In tandem with the plaintiff’s quantification of injury, reliance is placed on *Kipyator Nicholas Kiprono Biwott v Clays Ltd and others, supra* consolidated with *Kipyator Nicholas Kiprono Biwott v Dr Ian West and another* HCCCC no 1068 of 1999 (unreported) where a global sum of Kshs 30 million was made against some defendants.

In this case, Visram, CA (as he then was) noted that the awards made by the High Court in libel cases were inordinately low. Referring to *John Evan Gicheru v Andrew Morton & another* HCCCC no 214 of 1999 (unreported) where Aluoch J awarded Kshs 2.25 million for libel against the defendant, the learned commissioner of assize (as he then was) stated that this award was manifestly and inordinately low.

In the consolidated cases, the plaintiff had been implicated with complicity in the murder of the former Foreign Affairs Minister, Dr Robert Ouko by publications made by the defendants. It has to be noted that the accusation/ allegations are of a capital nature, amenable to capital punishment. Perhaps it was along those lines of capital offences, that the award made and concern about low awards was exhibited.

Considering all the factors and circumstances in this case, I find that an award of Kshs 8 million (eight million only) as compensatory damages and Kshs 2 million (two million only) as aggravated damages would be sufficient to vindicate the plaintiff in the instant case. As for the apology, which the plaintiff is now claiming a pecuniary award in lieu thereof, I would award a sum of Kshs 200,000/-, (two hundred thousand only) considering that an apology had been made and also the time factor.

The plaintiff shall have the costs of the suit and interest.

Dated and delivered at Nairobi this 7th day of September, 2001

J.K. MULWA

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JUDGE