



**Muthaura v Nation Media Group Limited & another (Civil Case
244 of 2015) [2025] KEHC 2386 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2386 (KLR)

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

**CIVIL
CIVIL CASE 244 OF 2015**

JN MULWA, J

MARCH 6, 2025

BETWEEN

FRANCIS MUTHAURA PLAINTIFF

AND

NATION MEDIA GROUP LIMITED 1ST DEFENDANT

MAINA KIAI 2ND DEFENDANT

JUDGMENT

1. The present suit was filed on 9th July, 2015 by Francis Muthaura (hereafter the Plaintiff) against Nation Media Group Limited and Maina Kiai (hereafter the 1st and 2nd Defendants) and is founded on the tort of defamation. Therein, the Plaintiff seeks reliefs in the nature of general, exemplary or aggravated damages; a declaration that the Plaintiff is entitled to a retraction of the defamatory words and a suitable apology from the Defendants; an order directing the 1st Defendant to pull down the electronic copy of the impugned article from its website; an injunctive order restraining the Defendants whether by themselves or through their agents/servants, from further publishing any related defamatory material concerning the Plaintiff; and costs of the suit.
2. In the plaint, the Plaintiff avers that over the years, he has held various respectable positions in the public service, including but not limited to ambassadorial positions as well as serving as Secretary General of the East African Community, Permanent Secretary of various Ministries and the Chairman of the Lamu Port Southern Sudan Ethiopia Transport (LAPSSET) Corridor Project.
3. The Plaintiff further avers that during his tenure in the various positions, he received and was conferred with various medals and honors, such as Elder of the Golden Heart (EGH) and Moran of the Burning Spear (MBS). That during his tenure in the public service, the Kenyan government underwent significant reforms and transformation, in the manner set out in the plaint.



4. It is the averment by the Plaintiff that by way of its Saturday Nation newspaper dated 28th February, 2015 the 1st Defendant published the following defamatory article authored by the 2nd Defendant:

“‘Rubbergate’ Scandal Brings to the Fore Endemic Corruption in Kenya”

The issue of impunity in Kenya has once again been highlighted by the “rubbergate” scandal where a US company has been fined for bribing key officials to get contracts. It follows on the heels of the “chickengate” scandal where key officials of the election management and examination bodies allegedly took bribes to channel contracts to a British company.

In both instances, foreign courts unraveled the endemic corruption that exists in Kenya and this only because it involved their companies. But for these foreign efforts we would never have known this.

We can only imagine how much we have lost to domestic companies-and to companies that do not have laws similar to the US and UK-that bribe, safe in the knowledge that they have impunity.

But corruption can only end when decision makers do not solicit or accept bribes. It is great to go after the bribe-givers but the real perpetrator is the decision maker who solicits and accepts bribes.

This impunity is the challenge of our time. It pervades every part of our society. It is the reason for the existential challenges that we face with terrorism, insecurity and tribalism.

...

For instance, the prosecutor asserts that the problems started in September 2007, when a group led by Francis Muthaura decided that President Mwai Kibaki would retain power, “tupende, tusipende.” And when we remember that it was around then that the Electoral Commission of Kenya became the Electoral Commission of Kibaki, this begins to make sense. And things become clearer when we remember the attempt to use Administration Police as agents for Kibaki in known anti-Kibaki zones.

...

BEEN KILLED

Other key points stand out. first, all the key Mungiki people reportedly involved in the planning and execution of the violence that Mr Kenyatta allegedly facilitated have been killed or disappeared since April 2008. Charles Ndung’u Wagacha, who was said to be in constant communication with Muthaura, was “...killed by police in April 2008.” Maina Diambo, a key Mungiki official was “arrested in June 2008 and subsequently disappeared.” Other senior Mungiki officials Naftali Irungu, aka Marcus, Anthony Mwenje (aka Noriega), Njoroge Gichere, Timothy Mburu Gatira, Njuguna Gitau Njuguna and George Wagacha, were all killed or disappeared.

Unsavoury as these Mungiki leaders may have been, there has never been investigations or accountability for their killings and disappearances.

Second, it is noteworthy that a lot of the intermediaries are in senior state roles. Muthaura is the chairman of Lappset way beyond retirement age. Francis Kimemia, who attempted to become the new Muthaura, is Secretary to the Cabinet.”



5. That the aforesaid article was further published on the 1st Defendant's website namely www.nation.co.ke.
6. It is averred that the abovementioned article contained various malicious falsehoods and innuendos of corruption and impropriety against the Plaintiff. It is further averred that the inclusion of the Plaintiff's photo alongside the said article essentially conveyed a message that he was actively and directly linked to the adverse activities set out therein. That in addition, the Defendants by way of the impugned article, implied that the Plaintiff is guilty of the crimes against humanity with which he was charged before the International Criminal Court (ICC) notwithstanding the fact that the said charges were subsequently withdrawn for want of evidence.
7. The Plaintiff pleads that in their natural and ordinary meaning the said words meant and were understood to mean that the Plaintiff is inter alia, a person of dubious character, a criminal and a thief. That moreover, the published words may be interpreted to mean that the Plaintiff did not possess the requisite professional qualifications for his various positions held, including his leadership position at LAPSET.
8. The Plaintiff equally pleads that the said publication was actuated by malice on the part of the Defendants, the particulars of which are set out under paragraph 34 of the plaint. He further pleads that as a result thereof, the Plaintiff has suffered grave injury to his reputation both in a personal and professional capacity.
9. The 1st and 2nd Defendants entered appearance and filed their statements of defence separately, denying the key averments in the plaint and liability. By way of its statement of defence filed on 29th May, 2018 the 1st Defendant whilst admitting to publishing the article referenced in the plaint, denies that the same was defamatory of the Plaintiff or actuated by malice, by refuting the particulars set out in the plaint. The 1st Defendant equally denies that the published words could be denoted in the natural and ordinary sense set out in the plaint. The 1st Defendant avers that the publication was merely an expression of opinion and constituted a fair comment on a matter of public interest; namely the judicial proceedings involving the Plaintiff coupled with the state of corruption in the country at the time and the conduct of senior state officials. The 1st Defendant also avers that the impugned publication was made on a privileged occasion.
10. On his part, the 2nd Defendant whose statement of defence was filed on 15th October, 2015 essentially echoes the denials and averments made by the 1st Defendant, specifically that the impugned article was made within the context of the judicial proceedings which had been undertaken against the Plaintiff and that the same was based on an honest opinion of the 2nd Defendant's assessment of the governance issues at play during that time. The 2nd Defendant further avers that the words published are truthful and correct.
11. In his reply to the respective statements of defence, the Plaintiff joined issue with the Defendants and reiterated the contents of his plaint. The foregoing was the state of pleadings prior to hearing of the suit.
12. During the trial, the Plaintiff testified as PW1. He proceeded to adopt his signed witness statement dated 8th July, 2015 as his evidence-in-chief and thereafter produced his bundle of documents dated 25th February, 2019 as P. Exhibits 1-6. He then restated the contents of his pleadings that the impugned article touched on scandalous allegations of corruption in the country and that his photo was placed at the centre of the said article, thereby implying that he was actively involved in the cited scandals. The Plaintiff denied ever making any of the statements attributed to him in the impugned article, and further stated that none of the Defendants reached out to him for verification and comment, prior



- to publishing the said article. He testified that the impugned article further implied that the criminal proceedings before the ICC were still subsisting at the time, yet the same had been withdrawn for lack of evidence. That as a result of the said publication, his reputation as a civil servant was negatively impacted.
13. In cross-examination, he stated that during his tenure in Government, initiatives were taken to eradicate corruption; that it was not in dispute that corruption has subsisted in the country for years now. He further stated that while he was charged with crimes against humanity before the ICC, the case against him did not proceed to full trial. The Plaintiff stated that while the prosecutor in the criminal case made certain remarks and allegations of bribery against him, the same were mere allegations and remain unproven. Upon questioning, the Plaintiff gave evidence that Kenyans had the right to be informed of the nature of charges brought against him before the ICC, but maintained that he had no connection with the bribery allegations. He equally gave evidence that during his tenure as Chairman at LAPSET, the retirement age then was 55 years which age he had exceeded, at the time.
 14. The Plaintiff proceeded to give evidence that the impugned article essentially made him out to be the orchestrator of the corruption referenced therein. He stated that at the time the rubbergate and chickengate scandals ensued, he was the Head of Civil Service. That notwithstanding, he had previously received various awards and commendations for his performance. That by placing his photo amidst the impugned article and mentioning his name therein, the Defendants defamed him. That he was never given an opportunity to respond to the contents of the impugned article preceding its publication.
 15. During re-examination, it was the evidence by the Plaintiff that following the publication, his life, career and family were all negatively impacted. It was equally his evidence that at the time of publication of the impugned article in 2015, he was not the Head of Civil Service, by virtue of his retirement back in November, 2012. He restated his earlier testimony that during his tenure as Head of the Civil Service, he undertook various reforms for which he received recognition. The Plaintiff further denied any involvement on his part, in the rubbergate and chickengate scandals, adding that his name has never been linked to any corrupt dealings. He reiterated his earlier testimony that he had officially retired from Civil Service in the year 2002 but that he was issued with a contractual job lasting 10 years, thereafter. In closing, he stated that the impugned article was intended to tarnish his reputation and that the same did not feature the contents of his defence which was tendered before the ICC.
 16. Prof. Marangu Marete was summoned as PW2. He drew the court's attention to his academic and professional qualifications set out in his witness statement dated 25th February, 2019 which statement he proceeded to adopt as part of his evidence-in-chief. The witness stated that he has known the Plaintiff for over 20 years and that the said Plaintiff, who is a Meru elder of the Njuri Ncheke clan, is of good character and is highly respected in the community. The witness stated that he came to learn of the impugned article upon being contacted by a fellow elder. That upon reading it, he gathered that the Plaintiff's reputation had diminished. That he therefore contacted the Plaintiff. That the contents thereof were disappointing and a stark contrast to his knowledge of the Plaintiff's character. That the Plaintiff confirmed to the elders that the impugned publication was incorrect.
 17. During cross-examination, the witness testified that he worked with the Plaintiff in Government at all material times, though in separate sectors. He testified that as an elder of the Njuri Ncheke clan, he was familiar with the criminal proceedings which had been instituted against the Plaintiff at the ICC. That nevertheless, the allegations made against him during the course of those proceedings were false and the charges thereto were consequently dropped. That the impugned article imputed that the Plaintiff was inter alia, associated with criminal activities and was meeting with senior Mungiki officials and organizing for release of members of the Mungiki sect.



18. It is the testimony by PW2 that the Plaintiff held the position of Patron of the Njuri Ncheke clan and that even after the abovementioned events and the resulting publication, he did not lose such position. That nevertheless, the witness did not believe the allegations made by the ICC prosecutor to be true, neither did the contents of the impugned publication negatively impact his relationship with the Plaintiff. That furthermore, the Plaintiff's societal and professional reputation was not affected. That at the time of the impugned publication, the Plaintiff was a public figure and that public figures are generally open to scrutiny from the public. That the impugned publication was made in the opinions section of the Newspaper.
19. In re-examination, the witness largely restated his earlier evidence in cross-examination.
20. By way of his testimony as PW3, Gerrishon Kaburu Ndubai adopted his signed witness statement dated 22nd June, 2018 as part of his evidence-in-chief before proceeding to testify that he has known the Plaintiff since their youth. The witness described the Plaintiff as an honest and compassionate person. He testified that upon reading the impugned article, he was filled with shock since the article not only made mention of the abovementioned scandals and corruption in the country, but included a photograph of the Plaintiff thereby associating him with the impunities. He stated that at the time of the publication, the criminal charges against the Plaintiff had been withdrawn and yet no clarification on the status of the said charges was set out therein.
21. In cross-examination, the witness stated that the impugned article makes reference to the brief relied upon by the ICC Prosecutor and that he was aware that the Plaintiff had been charged alongside the former President, Uhuru Kenyatta, at the ICC. That going by the Prosecutor's brief, the Plaintiff was purportedly assisting the Mungiki in pushing for the release of its members, without charge.
22. The witness further stated that at the time, the Plaintiff was the Head of Public Service and hence it was in the public interest for the nature and progress of the criminal charges to be disclosed. That following the publication of the impugned article, the Plaintiff's reputation was brought to question even among the Njuri Ncheke clan members. That even then, the relationship between the witness and the Plaintiff was not negatively impacted, since the former knew the latter to be innocent of the alleged impunities. That nevertheless, the said article damaged the Plaintiff's reputation in the eyes of the readers by portraying him as a criminal and a murderer.
23. In further cross-examination, the witness echoed the evidence by his counterpart PW2, that the Plaintiff was at all material times the Patron of the Njuri Ncheke clan; that the impugned article was published in the opinion section of the newspaper; and that his view of the Plaintiff did not change even upon reading the said article. This was restated in re-examination, thus marking the close of the Plaintiff's case.
24. The 2nd Defendant testified as DW1. His evidence-in-chief consisted of the adoption of his executed witness statement dated 26th March, 2019 and the production of his bundle of documents as Defence Exhibits. He further testified that the impugned article arose from a ruling delivered in the United States (US) and the ICC Prosecutor's brief regarding the criminal proceedings instituted against the Plaintiff, amongst others. He testified that the said article in no way negatively affected the Plaintiff's reputation, since it is apparent that even thereafter, the Plaintiff continued to hold various public positions in the country.
25. The 2nd Defendant stated that the Plaintiff was cited in the impugned article by virtue of his position as Head of the Public Service at the time and not in any personal capacity.



26. During cross-examination, the 2nd Defendant stated inter alia, that he is a lawyer by profession, with a long-standing career both nationally and internationally. That at the material time, he engaged the Plaintiff as Head of the Public Service, whilst investigating the 2007-2008 post-election violence. That the impugned article consisted of his opinion regarding the impunity in Kenya at the time. He added that he attended the criminal proceedings before the ICC but that the said attendances did not feature in the said article. That prior to making the publication, the ICC Prosecutor's brief was made available in Kenya, and hence the publication was made in the public interest. The 2nd Defendant stated that prior to making the said publication, he did not contact the Plaintiff, adding that the publication in question merely constituted an opinion in any event. He added that at the time of the publication, the criminal charged against the Plaintiff had been withdrawn. That nevertheless, the publication was exclusively founded on the judicial proceedings before the ICC thereby making it privileged. That moreover, it was in the public interest for the happenings in the country and in the ICC proceedings to be disclosed. That in his view, upon retirement, a person should not be actively engaged in any public positions. That the Plaintiff has not shown that he suffered any real loss or damage following the impugned article.
27. In cross-examination, the 2nd Defendant testified that the impugned article appeared on the opinion section of the 1st Defendant's newspaper. He further testified that at the time of the said article, the Plaintiff had surpassed the retirement age. This marked the close of the 2nd Defendant's case.
28. On its part, the 1st Defendant did not call any witnesses and opted to rely on the testimony by the 2nd Defendant.
29. At the close of the trial, the parties filed and exchanged lengthy written submissions.
30. The court has therefore considered the pleadings, the evidence on record and the parties' respective submissions plus the authorities cited therein. Regarding the rationale behind the law of defamation which is the nature of the present claim, the Court of Appeal had this to say in *Musikari Kombo v Royal Media Services Limited* [2018] eKLR:

“The law of defamation is concerned with the protection of a person's reputation. Patrick O'Callaghan in the Common Law Series: The Law of Tort at paragraph 25.1 expressed himself in the following manner:

“The law of defamation, or, more accurately, the law of libel and slander, is concerned with the protection of reputation: 'As a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporal sanction ...' Defamation protects a person's reputation that is the estimation in which he is held by others; it does not protect a person's opinion of himself nor his character. 'The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit' and it affords redress against those who speak such defamatory falsehoods...”

31. Actions founded on the tort of defamation surface the tension between private interest and public interest. Article 33(1) of *the Constitution* guarantees every person's right to freedom of expression including the freedom to seek, receive or impart information or ideas but sub-Article (3) states that “In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others”. Article 34 guarantees the freedom of the media while Articles 25 and 31 protect the inherent dignity of every person and the right to privacy. These rights are reinforced by the provisions of the



Defamation Act. Contemplating these competing rights Lord Denning MR stated in *Fraser v Evans & Others* [1969]1 ALLER 8;-

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

32. In *Selina Patani & Another v Dhiranji V. Patani* [2019] eKLR the law of defamation is concerned with the protection of a person’s reputation, that is, the estimation in which such persons are held by others. In that case, the Court of Appeal stated that: -

“In rehashing, we note the ingredients of defamation were summarized in the case of *John Ward v Standard Ltd*. HCC 1062 of 2005 as follows:

- i. The statement must be defamatory.
- ii. The statement must refer to the plaintiff.
- iii. The statement must be published by the defendant.
- iv. The statement must be false.”

33. To succeed in his claim for defamation therefore, the Plaintiff was required to establish the above ingredients on a balance of probabilities. The 1st and 2nd Defendants on their part admitted to making the impugned publication and further admitted to making reference to the Plaintiff therein. That being the case, the key matters for determination are whether the publication was defamatory and false.

34. On whether the words referring to the Plaintiff were false, the court considered the pleadings and testimony by the Plaintiff that the impugned publication contained falsehoods and misrepresentations of the facts and more particularly, the criminal proceedings which took place before the ICC, which proceedings had already been terminated by way of a withdrawal. That furthermore, the Defendants had purported to link the Plaintiff to the rubbergate and chickengate scandals in the absence of any material to indicate that he was ever accused or found guilty by association, to any of the said scandals. The court further considered the averments by the 2nd Defendant and supported by the 1st Defendant, that the impugned publication was substantially founded on a brief released by the ICC Prosecutor in the course of the criminal proceedings in question and that the said publication contained true facts.

35. From the court’s study of the impugned article, it is clear that the same spoke of the abovementioned scandals alongside matters touching on corruption, impunity and bribery in the country; as well as the 2007-2008 post-election violence. The said article makes particular reference to the Plaintiff, in part purporting to quote statements made by himself and actions purportedly taken by him, at all material times.

36. Be that as it may, upon its further perusal of the record, the court did not come across any credible material on the part of the Defendants to support their assertions that the impugned publication was substantially true, regardless of whether or not the same derived from a brief supposedly issued by the then ICC Prosecutor, Fatou Bensouda. Furthermore, the Defendants did not tender any material to indicate that prior to making the impugned publication, they contacted or attempted to contact the Plaintiff to receive his comments and feedback regarding the allegations made therein.



37. In view of all the foregoing circumstances and evidence tendered, the court is persuaded that the alleged publication concerning the Plaintiff is patently false. *Gatley on Libel and Slander* 6th Edn. states that; -
- “A man commits the tort of defamation when he publishes to a third person words (or matter) containing an untrue imputation against the reputation of another”.
38. The next question to be answered is: was the Defendants’ publication defamatory? A defamatory statement is defined in *Halsbury’s Laws of England* 4th Edition Vol. 28 paragraph 10 as:
- “...a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business”.
- See also the Court of Appeal definition of a defamatory statement in *SMW v ZWM* (2015) eKLR.
39. The Court stated in *Elizabeth Wanjiku Muchira v Standard Ltd* [2011] eKLR that whether a statement is defamatory or not is not so much dependent on the intentions of the defendant but on the “probabilities of the case and upon the natural tendency of the publication having regard to the surrounding circumstances. If the words published have a defamatory tendency it will suffice even though the imputation is not believed by the person to whom they are published. “-*Clerks & Lindsell on Tort* 17th Edition 1995-page 1018.”
40. In *Musikari Kombo* (supra) the Court of Appeal stated that:
- “The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive. In *Halsbury’s Laws of England* 4th Edition Vol. 28 at page 23 the authors opined:
- “In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense.”
41. The Plaintiff pleaded in his plaint and testified that the published article defamatory in the natural and ordinary meaning would infer that he was inter alia, corrupt and dishonest. He further pleaded and testified that the decision by the Defendants to include his photograph alongside the impugned article further implied that he was actively and directly involved in the referenced scandals and impunity. His testimony was supported by that of PW2 and PW3. This position was naturally countered by the Defendants, through reliance on the testimony by the 2nd Defendant.
42. From the court’s examination of the record, it is apparent that both PW2 and PW3 by way of their respective testimonies, stated that despite being shocked by the impugned article, they were confident that the Plaintiff was innocent of the allegations made against him therein. Suffice it to say that, the court observed that both witnesses testified that the impugned article caused the Plaintiff to be subjected to questioning even in his circle of elders and that any ordinary person not known to the Plaintiff would naturally believe the contents therein to be true concerning him.



43. Upon considering the serious nature and context in which the impugned publication was made coupled with the sole inclusion of the Plaintiff's photograph alongside the said publication, the court is of the view that the Plaintiff has reasonably demonstrated that any right thinking member of society would naturally infer the publication to mean that he was an active participant or associate in the acts of impunity and corruption described in the article. It is apparent that the Plaintiff was targeted merely due to his position in the Civil Service at the time, thus causing the impugned publication to not only be defamatory, but biased and malicious against him.
44. Consequently, the court finds that the statements published, as stated in Elizabeth Muchira's (supra), had a defamatory tendency, whether believed by the people to whom they were published.
45. Having satisfied itself that the Plaintiff has established that the impugned article was defamatory of him, the court must also address the question on whether the publication is covered by fair comment and qualified privilege? In answer thereof, the court does not think so. First, the statements referring to the Plaintiff were passed off as factual. The defence of fair comment is unsustainable because the basic facts upon which such comment could have been based were apparently retracted by the ICC Prosecutor and there is no credible material to indicate that the said facts were conclusively true in any event. Resultantly, comment based on falsehood cannot qualify as fair comment. See *Nation Media Group Ltd. v Alfred N. Mutua* (2017) eKLR. As regards, the defence of qualified privilege which was pleaded in the statement of defence under section 6 of the *Defamation Act*, it was held in *Adam v Ward* (1917) AC 309 that:
- “A privileged occasion is, in reference to qualified privilege an occasion where the person who makes the communication has an interest or duty, legal, social or to make it to the persons to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential.”
46. It is not in doubt that the matters surrounding the state of corruption and impunity in the country were of great public interest and the Defendants therefore had a duty to inform the public. However, as stated in *Dorcas Florence Kombo v Royal Media Services* [2014] eKLR the defence of qualified privilege can be negated by evidence of reckless conduct. In the present instance, the Defendants did not call any evidence to controvert the assertions and evidence tendered by and on behalf of the Plaintiff, or to correct the contents of the impugned article as relates to the Plaintiff, or to incorporate the Plaintiff's side of the story; especially following the withdrawal of the criminal charges made against him before the ICC on 11th March, 2013 as seen in P. Exhibit 5 and D2 Exhibit 2; and the apparent retraction of the ICC Prosecutor's brief upon which the impugned article rode.
47. The Code of Conduct for the Practice of Journalism provides thus:
- “Accuracy and fairness
1. A person subject to this Act shall write a fair, accurate and an unbiased story on matters of public interest.
 2. All sides of the story shall be reported, wherever possible.
 3. Comments shall be sought from anyone who is mentioned in an unfavourable context and evidence of such attempts to seek the comments shall be kept”.



48. In *Uhuru Muigai Kenyatta V Baraza Leonard* [2011] eKLR the Supreme Court stated:

“While taking the defence of justification, or qualified privilege in a defamation case, the defendant was required by law to establish the true facts and the plaintiff has no burden to prove the defence raised by the defendant. Once verified, the justification or qualified privilege does not inure the defendant and in any event, the onus that the same is true rests on the defendants to make it a fair publication.”

49. Upon reviewing all the material on record, the court is of the view that the 1st and 2nd Defendants acted in a reckless and malicious manner in failing to verify and/or appropriately correct the information published concerning the Plaintiff and in failing to retract the impugned publication or tender an apology to the Plaintiff at the very least. The court finds that the Plaintiff has proved his case on a balance of probabilities and therefore finds the 1st and 2nd Defendants jointly and severally liable for defamation.

50. In regards to general damages, the court has considered the parties’ submissions. The purpose of awarding general damages in a libel action is to compensate the plaintiff for the damage done to his reputation and the court has wide discretion, depending on the peculiar circumstances of the case before it. See *CAM v Royal Media Services* (2013) eKLR. The Court of Appeal in *Evans Gicheru v Andrew Morton & Another* (2005) eKLR adopted factors to guide assessment of damages for defamation from *Jones v. Pollard* [1997] EMLR 233, as follows:

- “(i) The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition,
- (ii) The subjective effect on the plaintiff’s feelings not only from the prominence itself but from the defendant’s conduct thereafter both up to and including the trial itself,
- (iii) Matters tending to mitigate damages, such as the publication of an apology,
- (iv) Matters tending to reduce damages, and
- (v) Vindication of the plaintiff’s reputation past and future.”

51. No doubt the libel in this case was fairly grave and touched on the Plaintiff’s personal integrity, honour, and professional reputation. The publication also potentially had a wide circulation. There is nothing to indicate that the 1st and 2nd Defendants made an attempt at retracting the publication or tendering an apology to the Plaintiff, even after the misrepresentation of facts was brought to their attention by way of a demand letter.

52. That said, upon considering the award of Kshs. 20,000,000/- proposed in the Plaintiff’s submissions against the sum of Kshs. 500,000/- proposed by the 1st Defendant and in the absence of any proposal by the 2nd Defendant, the court notes that a majority of the authorities cited by the Plaintiff entailed persons of slightly higher standing in society and hence entailed much higher awards on general damages; while some of those cited in the 1st Defendant’s submissions constitute lower awards. In the court’s view, an award of Kshs. 5,000,000/- would constitute reasonable compensation under this head taking into account the Plaintiff’s personal and professional standing in society and being persuaded by the case of *Abdi Abdullahi v Fazal Butt & another* [2022] eKLR involving a Plaintiff who was a director and who was awarded a sum of Kshs. 3,000,000/-, as well as the above-cited case of *Musikari*



Kombo v Royal Media Services Limited (supra) where the Court of Appeal upheld an award of Kshs. 5,000,000/- under that head.

53. Concerning aggravated damages, it is apparent that no formal apology was made by the Defendants in a bid to mitigate the damage already occasioned particularly to the reputation of the Plaintiff, noting that the impugned publication had a wide circulation. The court is therefore satisfied that the Plaintiff is entitled to an award of aggravated damages and finds a sum of Kshs.1,500,000/- to be fair upon considering the awards made in Musikari Kombo v Royal Media Services Limited (supra).
54. In respect of exemplary damages, such award of damages is deemed to apply in instances where there has been some arbitrary or calculated conduct by the defendant(s) or where the actions by the defendant(s) are calculated to grant some benefit. Upon considering the evidence on record vis-à-vis the nature of damages sought herein, the court is not persuaded that the Plaintiff has demonstrated the manner in which he would be entitled to such award. The court therefore declines to make any award under this head.
55. On the prayer for an injunction, upon considering the foregoing circumstances, the court will allow the same. The court is equally satisfied that the Plaintiff is entitled to an apology and a retraction of the impugned publication, as prayed.
56. In the end therefore, judgment is hereby entered in favour of the Plaintiff and against the 1st and 2nd Defendants jointly and severally, in the following manner:
 - a. General damages Kshs. 6,000,000/-
 - b. Aggravated damages Kshs. 1,500,000/-
 - c. Exemplary damages NIL
 - d. A declaration be and is hereby issued that the Plaintiff is entitled to a retraction of the defamatory words and a suitable apology from the Defendants.
 - e. An order be and is hereby issued directing the 1st Defendant to pull down the electronic copy of the impugned article from its website.
 - f. An order for injunction be and is hereby issued restraining the defendants by themselves or by their agents, servants and employees or otherwise, from further printing, circulating, distributing or otherwise publishing any such related defamatory material concerning the Plaintiff.
 - g. The Plaintiff shall have costs of the suit and interest on the total award of Ksh.7,500,000/ at court rates from the date of judgment until payment in full.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025

.....
JANET MULWA.
JUDGE

