



**Mulei v Standard Group Limited (Civil Suit 107 of 2017)  
[2024] KEHC 2668 (KLR) (13 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2668 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL SUIT 107 OF 2017  
JN NJAGI, J  
MARCH 13, 2024**

**BETWEEN**

**MIKE KYALO MULEI ..... PLAINTIFF**

**AND**

**THE STANDARD GROUP LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff herein brought this suit against the defendant vide a plaint dated the 17<sup>th</sup> May 2017 and amended on the 6<sup>th</sup> November 2017 seeking to recover general damages for defamation on account of a publication made by the defendant in a weekly publication known as the “Nairobiian”, that the plaintiff claims to have been defamatory to him.
2. The defendant vide a statement of defence dated the 21<sup>st</sup> July 2017 denied the claim and asserted that the publication was true, was made without malice and did not directly or indirectly defame the plaintiff. Further that the publication was made from dependable source and that the same related to a public person which gave a fair and accurate account of the facts.

**Case for the plaintiff**

3. The plaintiff is a practicing advocate in Mombasa under the firm name of MK Mulei & Co. Advocates. He gave evidence in this case and called one witness.
4. It was the evidence of the plaintiff as contained in his witness statement dated 20<sup>th</sup> April 2017 and his oral evidence in court that sometimes in June 2016 he received instructions from his client, Dr. Nelson Githinji, to handle an issue whereby a lady by name Maureen Akinyi was alleging that the plaintiff's client had sired a child with her and that his client had eschewed his parental responsibility.
5. That the plaintiff got in touch with the lady's advocates and they started correspondence, first with the view of ascertaining paternity of the child after which other legal modalities would follow. That as



- the correspondence was going on the defendant published a story on its 'The Nairobi' weekly to the effect that the plaintiff's client had offered to pay 'hush' money to the said Maureen to buy her silence and that the plaintiff was involved in the 'hush' money negotiations.
6. The plaintiff contends that the said story was defamatory in that it had mentioned his name and his firm name as the negotiator and eventual conduit of the 'hush' money payment. That the story was made with malice and that it caused him and his associates a lot of embarrassment from their colleagues, clientele and the public in general which saw them as a firm that advises its clients to engage in criminal enterprises and to eschew their legal responsibilities.
  7. It was further evidence of the plaintiff that his role in the matter was to negotiate on behalf of his client a reasonable amount for child upkeep. That the advocates for the lady floated a figure of 5 million as a proposal that could form a basis for negotiation. That the same was not hush money.
  8. It was the evidence of the plaintiff that the story talked of payment of hush money. That it ran from 30/9/2016 to 6/10/2016. That it portrayed him to have incited, allowed or authorized the defendant to publish a false story about his client. That it depicted him to have participated in a nefarious enterprise by negotiating and making illegal deals for payment of hush money. Further that it portrayed him as engaging in an unprofessional manner and contrary to the ethics governing the conduct of advocates. That the publication caused him anguish and ridicule in social joints. He asserted that he never gave his client advice to pay hush money as imputed in the publication.
  9. The plaintiff stated that he did not know the author of the story. That he wrote to the defendant to offer an apology but they ignored him.
  10. The plaintiff during his evidence produced, inter alia, a copy of the "Nairobi" newspaper cutting dated 30/9/2016 and a copy of the Demand Notice dated 2<sup>nd</sup> November 2016.
  11. The witness for the plaintiff, Dan Joshua Kasina DW2, testified that he is a practicing advocate in Mombasa. That he has known the plaintiff since the year 1992 when they were in college and has known him in his legal practice since the year 2000. That on the 3/10/2016 he was reading "The Nairobi" weekly newspaper when on pages 1 and 4 of the publication he came across a story concerning the plaintiff that implied that he had advised his client to pay "hush money in a child maintenance issue." That he called the plaintiff who informed him that the contents of the story were untrue.
  12. It was the evidence of the witness that he was surprised to read such a story concerning the plaintiff as he has known him to be a very straight forward and professional person who in his mind could not give the advice as alluded to in the publication.

### **Defendant's Case**

13. The defence called one witness in the case, David Odongo, DW1. It was the evidence of the witness that he is a journalist by profession. That in the year 2016 he was working for the defendant. That on 30/9/2016 he caused to be published information appearing on pages 1 and 4 of 'The Nairobi' weekly issue an article dubbed, "Why NYS boss offered Ksh.5 million for baby girl."
14. The witness stated that the person referred to in the article by the name of Dr. Nelson Githinji, was a public official serving as the Director General of National Youth Service (NYS). That the officer had procured the services of the plaintiff herein to represent him in negotiations seeking settlement for the maintenance of his child. That he conducted investigations in the matter and found that Dr. Githinji was supposed to pay a lumpsum of Ksh.5 million to Ms Maureen Akinyi to cover child support that was to go into the purchase of a Swahili type house.



15. The witness stated that in the course of his investigations Dr. Githinji referred him to his lawyer and he gave him the phone number for the plaintiff. That he called the plaintiff and he asked for his comment on the issue. That the plaintiff told him that if he wanted to publish the story to ensure that the contents were true.
16. The witness contended that the story was all about Dr.Githinji and Ms Akinyi. That the plaintiff was mentioned therein as Dr. Githinji's lawyer and there was no defamation of the plaintiff in the story. That he never knew the plaintiff before the publication of the article and therefore there was no malice in the publication.
17. The witness stated that there was a letter from the lawyers of Ms Akinyi that indicated that they had met Dr. Githinji's lawyers and a deal was reached for the payment of money. The witness contended that owing to his position as the Director General of NYS, Dr. Githinji's life was open to public scrutiny and the article did not in any way offend his right to privacy.
18. The witness further stated that the plaintiff wrote a letter to the defendant demanding an apology. That he declined to do so as he stood by his position that the contents of the article were true.
19. It was the contention of the witness that the defendant is tasked with the legal, social and moral responsibility to follow up published articles. That there was no bad blood between the defendant and the plaintiff as to warrant malicious publication of the article. Therefore, that the suit should be dismissed with costs.

#### **Plaintiff's Submissions**

20. The plaintiff submitted that the defendant did not tender any evidence that he was involved in any negotiations to pay hush money to Ms Akinyi. That the correspondence availed by the defence did not show any proposal of such payment from the plaintiff. Therefore, that the plaintiff had proved his case against the defendant.
21. The plaintiff submitted that his reputation was severely damaged in the eyes of his clientele, professional colleagues and also in the public eye. That the publication was widely circulated and caught the eyes of his professional colleagues and friends such as PW2. That the defendant refused to tender an apology thereby aggravating the injury. The plaintiff urged the court to award him compensation for the serious injury to his reputation in the sum of Ksh.5 million in general damages and Ksh.1,000,000/= in aggravated damages.

#### **Defendant's Submissions**

22. The defendant on the other hand submitted that the plaintiff's case has failed to meet the standard requisite of defamation as set out in the case of Phinehas Nyaga v Hon.Gitobu Imanyara (2013) eKLR in which it was held that:

The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiff's reputation in the estimation of right-minded persons, or must tend to cause him to be shunned or avoided...Secondly, the words must refer to the plaintiff. Thirdly, the words must be malicious. Malice here does not necessarily mean spite or ill-will but recklessness itself may be evidence of malice.

23. It was submitted that though the statements in this case partly referred to the plaintiff they were neither defamatory nor malicious to him. That the article was largely about Dr. Nelson Githinji, the then NYS



boss, and Ms Maureen Akinyi. That the plaintiff was only mentioned in passing and only limited to playing his duty as Dr. Githinji's lawyer.

24. The plaintiff submitted that the publication should be considered in the wider context in which it was written and not in isolation as was held in *SMW V ZWM (2015) eKLR* where it was observed that:

“The letter should also be considered in the context of which it was written and not in isolation to ascertain whether it was defamatory or not. From the record it is not in dispute that as per paragraph 1 of the said letter, the appellant had received two more letters.”

25. The defendant further submitted that in examining whether a statement is defamatory or not the court should be concerned only with the natural and ordinary meaning of the statement in dispute which is the meaning that an ordinary, reasonable person would derive from the words, without any special knowledge beyond that which is known to ordinary people generally – see *Lewis v Daily Telegraph (1964) A.C.* The defendant invited the court to find that the natural and ordinary reading of the publication did not imply that the plaintiff caused his client to make payment for any underhand deals as any payment would only have been attributed to his client.

26. It was submitted that the onus is on the plaintiff to prove the elements of defamation on a balance of probabilities. That the plaintiff did not prove the element that his reputation was lowered in the eyes of right thinking members of his community. In this respect the defendant cited the cases of *Joseph Njogu Kamunge v Charles Muriuki Gachari (2016) eKLR* and *Simeon Nyachae v Lazarus Ratemo Musa & another (2007) eKLR*. He submitted that plaintiff's witness DW2 stated in cross-examination that he still respects the plaintiff and perceives him as a man of honour and dignity. That the plaintiff cannot purport to have been spurned nor has his reputation suffered any harm. That the plaintiff did not tender any evidence of his financial position or legal practice having been negatively affected as a result of the publication.

27. The defendant submitted that the defence of justification is applicable in this case as the contents of the publication were accurate, hence absorbing the defendant from any liability for defamation. The defendant in this respect cited the case of *Machira t/a Machira & Co. Advocates v East African Standard (2001) eKLR* where it was observed that:

“...A defendant is permitted to plead justification only where it is clear that the allegations he made and are complained of are true in fact or substantially so.”

28. The defendant submitted that there was no malice in the publication wherein the defendant cited the cases of *James Njagi Joel v Junius Nyaga Joel (2020) eKLR* and *Phinehas Nyagah & Gitobu Imanyara (supra)*. It was submitted that the publication was true and proportionate to the facts. Further that there was no evidence that the publication was deliberately done to disparage the plaintiff's character.

29. It was submitted that the plaintiff had failed to prove his claim. The court was urged to dismiss the suit with costs to the defendant.

### **Analysis and Determination**

30. This being a civil matter the standard of proof is on a balance of probabilities. The degree was set out by the Court of Appeal in *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR*, as follows:

“Denning J. in *Miller Vs Minister of Pensions (1947) 2 ALL ER 372* discussing the burden of proof had this to say;



“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability is equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which a tribunal cannot decide one way or the other which evidence to accept, where sboth parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

31. It is the duty of this court to interrogate the evidence and the pleadings so as to determine whether the plaintiff has proved his case to that standard.

32. Defamation is defined in the Halsbury’s Laws of England, 4<sup>th</sup> Edition, Vol. 28 as follows:

“ A defamatory statement which tends to lower a person in the estimation of right-thinking members of the society or 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.”

33. Winfield on Tort gives the following definition;

“It is the publication of a statement which tends to lower a person in the estimation of the right-thinking members of the society generally or which tends to make them shy away or avoid that person”.

34. In *Wycliffe A. Swanya v Toyota East Africa Ltd & another* [2009] eKLR the Court of Appeal set out the elements of defamation as follows:

“For the purpose of deciding a case of defamation, the Court is called upon to consider the essentials of the tort generally and to see whether these essentials have been established or proved. It is common ground that in a suit founded on defamation the plaintiff must prove: -

“(i) That the matter of which the plaintiff complains is defamatory in character.

(ii) That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed.

(iii) That it was published maliciously.”

35. In *Miguna Miguna v Standard Group Limited & 4 others* (2017) eKLR, the same court stated the following:

“Speaking generally a defamatory statement can either be libel or slander. Words will be considered defamatory because they tend to bring the person named into hatred, contempt or ridicule or the words may tend to lower the person named in the estimation of right-thinking members of society generally. The standard of opinion is that of right-thinking persons generally. The words must be shown to have been construed or capable of being construed by the audience hearing them as defamatory and not simply abusive. The burden of proving the defamatory nature of the words is upon the plaintiff. He must demonstrate that a reasonable man would not have understood the words otherwise than being defamatory. See *Gatley on Libel and Slander* (8th edition para. 31).



The ingredients of defamation were summarized in the case of John Ward V Standard Ltd, HCCC 1062 of 2005 as follows: -

".....The ingredients of defamation are:

The statement must be defamatory.

The statement must refer to the plaintiff.

The statement must be published by the defendant.

The statement must be false."

36. A defamatory statement is thus one which tends to disparage a person in the eyes of right-thinking members of society as to expose the person to hatred, contempt or ridicule.
37. The test for determining whether or not a statement is defamatory is an objective one. The test is based on what an ordinary reasonable person reading the statement would understand the statement to mean and not the intention of the publisher – see the Court of Appeal decision in the case of Miguna Miguna v The Standard Group Ltd & 4 others [2017] eKLR. The burden of proof was on the plaintiff in this case to establish that the words complained of were defamatory to him. The court has to interrogate the evidence and determine whether the elements of defamation were met. These are: Whether the statement refers to the plaintiff; whether the statement was published; whether the statement was defamatory and whether there is any defence to the publication.

Whether the statement refers to the plaintiff

38. In a case of defamation, it must be proved that the defamatory statement refers to the Plaintiff. A plaintiff need not be named in a case of defamation if ordinary readers are able to discern whom the statement referred to. In the case of Hon. Mwangi Kiunjuri v Wangethi Mwangi & 2 others Civil Appeal No. 221 of 2012 the court while citing with approval the case of Newstead v London Express Newspaper Ltd (1940) 1KB 377, 1(1939) said that

...It is not essential that the plaintiff must be named in the defamatory statement; where the words do not expressly refer to the plaintiff they may be held to refer to him if ordinary sensible readers with knowledge of the special facts could and did understand them to refer to him.

39. There is no dispute in this case that the article in issue referred to the plaintiff. The defendant's witness DW2 stated that Dr. Githinji gave him the phone number for his lawyer. That he called the lawyer, the plaintiff, and asked him for his comment on the matter. Though the article referred to Dr. Githinji's lawyer as Martin Mulei, it is clear that the person referred to in the article was Mike Mulei, the plaintiff who was the lawyer acting for Dr. Githinji in the matter. The publication therefore referred to the plaintiff.

Whether statement was published

40. The other element of defamation is whether the statement complained of was publicized to a third party by the defendant. The Black's Law Dictionary 9<sup>th</sup> edition defines publication as –

“The act of declaring or announcing to the public.”



41. In Raphael Lukale v Elizabeth Mayabi & another [2018] eKLR, the court cited the case of Pullman v Walter Hill & Co (1891) 1 QB 524, and stated that:

Publication of a defamatory material occurs when the material is negligently or intentionally communicated in any medium to someone other than the person defamed....

42. The defendant in this case admits to have made the publication to the general public. The statement complained of was thereby published to third parties. The question then is whether the article was defamatory to the plaintiff.

Whether the statements complained of were defamatory to the plaintiff

43. The plaintiff's case is based on the following extracts from the article:

On 3/10/2016 the said newspaper by way of libel published at pages 1 and 4 of the concerning the Plaintiff the following words to wit:

(a) "Dr. Githinji referred us to Martin Mulei, his lawyer who gave a green light for publication of the story on the grounds of factuality....."dig deep and do your research then publish the story."

(b) "Dr. Githinji who served as the President of American Chamber of Commerce later offered to pay Akinyi, a one-off hush payment of Kshs. 5 million...."

(c)" Dr. Githinji reportedly agreed to pay a one-off lumpsum that would cater for the child's upkeep. To seal the deal in a letter dated July 21 2016 Lawyer Mutoso wrote to Dr. Githinji's lawyer Mulei & Company Advocates. That if the respondent herein your client would like to give a one-off lumpsum (sic) to invest for the upkeep of the minor, the sum Kshs 5 million would be sufficient. This is because....."

44. The plaintiff enumerated the following as the particulars of the defamation:

(a) They portrayed the Plaintiff as having incited, allowed or authorized the Defendant to publish a fake story against his client.

(b) They depicted the Plaintiff as a participant in the nefarious criminal enterprise of negotiating and making underhand illegal deals for the payment hush money.

(c) They portrayed the Plaintiff as a person engaged in unbecoming professional misconduct and acting in a most unprofessional manner.

(d) The plaintiff was depicted as lacking in professional and personal integrity and moral standards.

45. In his evidence in court the plaintiff testified that the article alleged that he had advised his client to pay the complainant Ksh.5 million to silence her. His witness PW2 similarly said that the article implied that the plaintiff had advised his client to pay hush money in a child support case. However, none of the particulars of defamation as contained in the amended plaint did the plaintiff allege that the article implied that he had given his client advise to pay hush money to silence the woman in a child support case. The plaintiff cannot raise the inuendo in his evidence when the same was not raised in his plaint.

46. The plaintiff alleged that the article depicted him as "a participant in the nefarious criminal enterprise of negotiating and making underhand illegal deals for the payment of hush money".



47. I have keenly read through the article. The article seems, in my view, to be in two parts. The first part appears to be an interview with the complainant, Maureen Akinyi, where she is giving her frustrations in pursuing her child support case against Dr. Githinji. In that part she alleges that Dr. Githinji had offered to pay her a monthly maintenance of Ksh.25,000/= which she declined and instead countered with a Sh.100,000/= monthly upkeep demand. The article stated that Dr. Githinji,
- “...later offered to pay Akinyi a one-off hush payment of Sh.5 million, which could have gone a long way in helping her set up a café in Nyali, Mombasa, since her background is in hospitality”.
48. The plaintiff in his witness statement stated that Dr. Githinji gave him instructions to act for him in the matter in June 2016. The article indicates that the demand letter was dated 8/6/2016. A copy of the said letter was annexed to the defendant’s documents and confirms that date. There is no evidence that the plaintiff was acting for Dr. Githinji when payment of hush money was mentioned.
49. The article continued to state the following:
- “Following the demand letter, a meeting was arranged and Akinyi’s lawyers met with Dr. Githinji’s lawyers where a deal was struck. Dr. Githinji agreed to pay a one-off lump sum that would cater for the child’s upkeep. To seal the deal, in a letter dated July 21, 2016 lawyer Mutsoso wrote to Dr. Githinji’s lawyer, Mulei & Company Advocates:
- “That if the respondent, your client herein would like to give a one-time lumpsum to invest for the upkeep of the minor, the sum of Sh.5 million would be sufficient...” not borne out from the article .....
50. A copy of the letter dated 21<sup>st</sup> July, 2016 was annexed to the defendant’s documents. In reply to that letter the plaintiff’s firm of advocates wrote back to the lawyers for the complainant and informed them that:
- “We are consulting our client and shall revert as soon as reasonably possible.”
51. It is clear from the evidence adduced before the court and the correspondence exchanged between the respective advocates for the parties that the plaintiff’s firm of advocates came into the picture after the demand letter was issued on 8/6/2016. It is clear from the contents of the article that what was on the table between the advocates for the two parties following the demand notice was negotiations over the upkeep of the minor whereby the advocates for the complainant proposed a lump sum of Ksh.5 million to which the plaintiff’s firm of advocates made a reply that they were consulting and were to revert in due course. No payment of hush money was mentioned in the correspondence from the complainant’s advocates nor did the publication mention payment of hush money during the negotiation between the advocates. The contention by the plaintiff that the article depicted him as a participant in the nefarious criminal enterprise of negotiating and making underhand illegal deals for the payment of hush money is not borne out from the article.
52. I find that the article was mainly about Ms Akinyi and Dr. Githinji. It was not stated in the article that the plaintiff was acting for Dr. Githinji when the issue of payment of hush money was made. The allegation on payment of hush money was made against Dr. Githinji and not against the plaintiff. I do not think that an ordinary reader would have associated the plaintiff with the payment of hush money when it is clearly stated in the article that the plaintiff came in to negotiate the child support claim on behalf of Dr. Githinji. The plaintiff has not proved that the article was defamatory to him.



Whether there was malice in the publication

53. A plaintiff for defamation must prove that the publication was done with malice. Malice can be inferred by failure to inquire the facts with the Plaintiff before publishing the statement. In *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR, Mativo J. (as he then was) held that:

Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice.

54. In *Phinehas Nyagah v Gitobu Imanyara* (supra) it was held that malice may be found in the publication if the language used is utterly beyond or disproportionate to the facts. In addition, that malice may be inferred from failure to inquire into the facts and from the relations between the parties. In this case there was no evidence of malice. The defendant's witness DW1 called the plaintiff and sought for his comments before publishing the story. The witness did not know the plaintiff before then. The language in the article was not disproportionate to the facts. No malice could thereby be inferred from the article. Malice was thus not proved.

### **Defence of justification**

55. In a defence of justification in defamation cases, the defendant has to prove that the facts complained of are true. In the case of *Machira t/a Machira & Co. Advocates vs. East African Standard* (2001) KLR 638, the Court stated at page 644:

“...A Defendant is permitted to plead justification only where it is clear that the allegations he made and are complained of are true in fact or substantially so. He cannot be allowed to set out a version . . . For him to rely on justification, he must accept the Plaintiff's version of the statement or a statement which is in sum identical with the Plaintiff's version.

56. The defendant in this case produced letters that indicated that there were negotiations on the upkeep of the child between the plaintiff as advocates for Dr. Githinji and the advocates for the complainant. The contents of the letters were not controverted. The defendant asserted that the article was written in good faith based on the contents of these letters. Indeed, the plaintiff did not dispute the contents of the said letters. I find that the contents of the article were true in the context that the Plaintiff was mentioned as the lawyer for Dr. Githinji in the Childs support negotiations. The defence of justification was available to the defendant.
57. In the final end, I find that the article was not defamatory to the plaintiff. The defendant is not liable in damages for defamation.

### **Quantum**

58. The law requires me to determine the amount I would have awarded the plaintiff had he succeeded in the case.
59. The general principles in award of damages for defamation were stated by the Court of Appeal in *James v Ndirangu & 3 others* (Civil Appeal 282 of 2016) [2022] KECA 82 (KLR) to be as follows:

On an appropriate award for damages, the guiding principle is that the rationale behind an award of damages in defamation actions is to restore or give back to the injured party what he lost, save in exceptional circumstances where punitive or exemplary damages may



be awarded. In its assessment, the trial court's duty was to look at the whole conduct of the respondents from the time the libel was said to be published to the time the matter was heard in court....

We are alive to the principle that an award of damages should be fairly compensatory in light of the nature of the injury to reputation and that an award must appear realistic in the circumstances. In the English Court of Appeal decision in the case of John vs. MG Ltd [1996] 1 ALL E.R. 35 the Court held that;

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

60. The factors to be considered in awarding damages for defamation were re-stated by the Court of Appeal in *Nation Media Group & Another v Hon. Chirau Ali Makwere C.A. No. 224 of 2010 (UR)*, where the court cited *Tunoi J.A in Johnson Evans Gicheru v Andrew Morton & Another [2005] eKLR* where guidelines in assessing damages were set out as stated in the case of *Jones v Pollard [1997] EMLR 233* that:

1. 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.
2. 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.
3. Matters tending to mitigate damages, such as the publication of an apology.
4. Matters tending to reduce damages.

61. The court has also to have regard to the status, standing and character of the person defamed as re-stated by the Court of Appeal in *Nation Newspapers Limited v Peter Barasa Rabando (2016) eKLR* where it was held that:

We reiterate that all persons are equal before the law but it would be a Utopian fallacy to assume that a defamatory publication calls for an equal compensation regardless of the status, standing and character of the persons defamed. We dare say that for a person who is not known beyond the local limits of his immediate family, residential and work environment calls for less damages than a person of prominence whose station, position, profession, fame and notoriety may spread beyond county and country. We therefore reiterate as correct what this Court has stated before that the status of a particular person affects the extent of the injury suffered.

62. The plaintiff in this case is an advocate of the High Court of Kenya of more than 20 years standing. I would have awarded him a sum of Ksh.2,500,000/= in general damages for defamation and Ksh.500,000/= in aggravated damages had he succeeded in his case.

63. That notwithstanding, I find that the plaintiff has not proved the elements of defamation against the defendant. His case is consequently dismissed with costs to the defendant.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2024

**J. N. NJAGI**



**JUDGE**

**In the presence of:**

**Mr. Mutemi for Plaintiff**

**Mutisya HB for Mr. Ogutu for Defendant**

**Parties - Absent**

**Court Assistant – Amina**

30 days Right of Appeal.

<i>HCCC 107 OF 2017</i>	0
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