



**Mwangola v Nation Media Group Limited & another (Civil Suit  
493 of 2006) [2024] KEHC 3956 (KLR) (Civ) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3956 (KLR)

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

**CIVIL  
CIVIL SUIT 493 OF 2006**

**CW MEOLI, J**

**APRIL 18, 2024**

**BETWEEN**

**LANYROD MWAKIMA JOEL MWANGOLA ..... PLAINTIFF**

**AND**

**NATION MEDIA GROUP LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**HON. (MAJOR) RTD MARSDEN HERMAN MADOKA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This suit filed on 12.05.2006 by Lanyrod Mwakima Joel Mwangola (hereafter the Plaintiff) against Nation Media Group Limited and Hon. (Major) Rtd Marsden Herman Madoka (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Defendants). The suit is founded on the tort of defamation, the Plaintiff seeking a declaration that the impugned publication was false and actuated by malice, in addition to general, aggravated and exemplary damages.
2. The Plaintiff averred that by its Daily Nation newspaper, Coast Edition, dated 11.01.2006 the 1<sup>st</sup> Defendant published material allegedly defamatory of the Plaintiff and premised on utterances made by the 2<sup>nd</sup> Defendant, concerning the Plaintiff's tenure as Managing Director of the Kenya Ports Authority (KPA) in the following words:

“Leave ports boss alone, MPs told.

“Mr. Madoka dismissed those opposed to Mr. Ondego at the port as petty and driven by ethnicity and hatred. Several leaders in the region, including some MPs, have launched a campaign to have the MD replaced by somebody from the province. Mr. Madoka reminded the coastal community that people from the coast such as Mr. Simeon Mkalla and Mr. Lenny Mwangola had been at the helm of the authority's management, but their



performance was poor. Mr. Ondego had ensured the coastal region benefited under the organization's social responsibility scheme and should be supported, not vilified, he said.”

3. The Plaintiff averred that in their natural and ordinary meaning the aforesaid words meant and were understood to mean that the Plaintiff was inter alia, deficient and lacking in managerial skills; and that during his tenure, no improvement had been seen in KPA or benefits received by the coastal communities in the area. It was pleaded that the aforesaid words were similarly published in a false and malicious manner, as particularized in the plaint.
4. Further, it was averred that as a result of the said publication, the Plaintiff suffered injury to his reputation as a competent public servant. The Plaintiff added that no apology has been rendered or offered by the Defendants, despite demand having been made for the same.
5. The 1<sup>st</sup> and 2<sup>nd</sup> 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 20.06.2006 the 1<sup>st</sup> Defendant whilst admitting to the publication, denied that the same was defamatory of the Plaintiff or actuated by malice, and refuting the particulars set out in the plaint. The 1<sup>st</sup> Defendant equally denied that the published words bore the alleged natural and ordinary sense asserted in the plaint. The 1<sup>st</sup> Defendant went a step further in averring that the impugned publication was made in good faith and constituted an accurate report of the situation on the ground at the time. The 1<sup>st</sup> Defendant therefore pleaded the defences of truth/justification and fair comment on a matter of public interest.
6. The 2<sup>nd</sup> Defendant whose statement of defence was filed on 14.07.2006 essentially denied having knowledge of the impugned publication and further denied uttering the words attributed to him. The 2<sup>nd</sup> Defendant averred that sometime in January 2006 during a telephone conversation with a reporter from the 1<sup>st</sup> Defendant regarding his opinion on an ongoing debate pertaining to the appointment of the Managing Director of KPA from the coastal region, he had commented as follows:

“I believe that he (Mr. Ondego) has done a good job. People should not be appointed on ethnic considerations. We should look for people who fit the job professionally. During Mr. Ondego's tenure, Kenya Ports Authority initiated outreach programs which were aimed at helping all constituencies in the Coast Province by taking a particular project in each constituency e.g. water boreholes, schools or health centres. This was not happening before Mr. Ondego took office.”
7. The 2<sup>nd</sup> Defendant further averred that at no point during the said conversation did he mention any names or provide information regarding previous Managing Directors of the KPA, and hence the words uttered by him could not be termed as defamatory or malicious.
8. 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.
9. The hearing commenced on 4.03.2015 before Aburili J, when the Plaintiff testified, but the hearing had to be adjourned as the Plaintiff's witnesses were absent. This was followed by several subsequent adjournments at the Plaintiff's behest, because of which the suit remained part heard ever since. Following a hiatus of 8 years, the court granted the Plaintiff the last adjournment on 17.04.2023 and set the hearing for 13.07.2023. Once more, the Plaintiff sought adjournment on the basis that his witness was unavailable. The court, noting that no explanation had been given for the absence of the witness, the age of the case and number of adjournments previously sought and granted to the Plaintiff, declined to grant a further adjournment, deemed as closed the Plaintiff's case, as well as the cases for



the respective Defendants, due to their non-attendance. Time was granted to the parties to file their submissions. Hence, the only evidence on record is by the Plaintiff before Aburili J on 4.03.2015.

10. The Plaintiff during the said evidence adopted his witness statement as his evidence-in-chief and thereafter produced his respective bundle of documents filed on 7.11.2013; 3.06.2009; 26.03.2014 and 27.02.2015 as P. Exhibits 1, 2 and 3. He went on to state that the impugned article was falsely and maliciously published, with the intention of disparaging his reputation in the eyes of members of the public. The Plaintiff further stated that at the time of the publication, he was the Chairman of Kenya Revenue Authority (KRA), a position he ceased to hold thereafter. It was the Plaintiff's evidence that the impugned publication was neither made in good faith nor was it a fair comment on a matter of public interest, adding that no apology was ever tendered by the 1<sup>st</sup> Defendant.
11. In cross-examination, he testified that the question of leadership of KPA has been a subject of debate among the leadership of the coastal area, with some political leaders insisting that the KPA ought to be headed by people from the coast. Admitting that the management of KPA is a matter of public interest, he stated that while he and Mr. Simeon Mkalla hailed from the coastal region, Mr. Brown Ondego did not.
12. He further testified that he was appointed Managing Director KPA on 1.05.1997 and left on 21.09.1999. That while KPA made profits in the years 1994/1995 and 1995/1996, it made losses in 1996/1997. That at the point of his exit as its Managing Director, KPA had incurred losses in the billions of shillings. The Plaintiff testified that subsequently, he joined KRA as a Board Member in 2002 and became the Chairman of the KRA Board in the years 2004-2010. Admitting further that in 2013 he was appointed Chairman of National Museums of Kenya, despite the impugned publication.
13. In further cross-examination by counsel for the 2<sup>nd</sup> Defendant, the Plaintiff stated that the impugned publication did not directly quote the words purportedly uttered by the 2<sup>nd</sup> Defendant, since no speech was published to that effect. He further gave evidence that during his tenure at KPA, he did not undertake any projects pertaining to Corporate Social Responsibility due to budgetary constraints.
14. During re-examination, the Plaintiff stated that the core business of KPA was the management of the port and maritime for the benefit of Kenyans. It was also his evidence that during his final tenure, KPA incurred losses, attributed to the 1997/1998 Elnino rains. And that the impugned publication did not amount to fair comment since the veracity of facts asserted therein ought to have been first established.
15. The Plaintiff's counsel briefly submitted that the claim for defamation had been proved by the Plaintiff's uncontroverted evidence. Citing the decisions in *SMW v ZVM* [2015] eKLR and *Miguna Miguna v The Standard Group Limited and 4 Others* [2017] eKLR concerning the ingredients of defamation. On quantum, the Plaintiff's counsel proposed the sums of Kshs. 7,000,000/- and Kshs. 2,000,000/- as general and aggravated damages respectively. Here relying on the decision in *Miguna Miguna v The Standard Group Limited and 4 Others* (*supra*) where the Court of Appeal upheld the respective awards of Kshs. 5,000,000/- and Kshs. 1,000,000/- under similar heads. Counsel reiterated the pleadings stating that no apology was tendered to the Plaintiff by the Defendants, at any point.
16. On the part of the 1<sup>st</sup> Defendant, its counsel submitted that the impugned publication was not defamatory and that it was made as a fair comment on a matter of public interest and based on true facts, counsel citing *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR. Counsel refuted the claims that the impugned publication was actuated by malice. He relied on the decision in *Wilfred Nyaundi Konosi v Standard Group Limited & another* [2022] eKLR regarding instances when malice could be inferred from a publication. Regarding quantum, counsel proposed an award of Kshs. 50,000/- in general damages should the court find in favour of the Plaintiff on liability. In that regard, he cited the holding in *James Njagi Joel v Junius Nyaga Joel* (2020) eKLR that damages for



defamation ought to be fair and reasonable. Otherwise, the court was urged to dismiss the suit with costs.

17. The 2<sup>nd</sup> Defendant did not file any submissions.
18. The court has considered the pleadings, the evidence on record and the parties' respective submissions. While it is apparent from the record that the Defendants did not call any evidence in answer to the Plaintiff's evidence, the legal principle remains that the onus is with the Plaintiff to prove his claim to the required standard, nonetheless.
19. In that regard, the applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. The Court of Appeal in *Mumbi M'Nabea v David M. Wachira* [2016] eKLR while discussing the standard of proof in civil liability claims in our jurisdiction had this to say:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary, and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not. Section 107(1) of the *Evidence Act*, Cap 80 Laws of Kenya provides as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” The above provision provides for the legal burden of proof.

However, Section 109 of the same Act provides for the evidentiary burden of proof and states as follows:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M'mairanyi & Others v. Blue Shield Insurance Company Limited* -Civil Appeal No. 101 of 2000 [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same *Act* recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

20. Further, the same court in *Karugi & Another v Kabiya & 3 others* [1987] KLR 347 noted that:

“[T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof....The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.”



21. The Plaintiff's suit was founded on defamation. Concerning the rationale behind the law of defamation, the Court of Appeal stated in *Musikari Kombo v Royal Media Services Limited* [2018] eKLR that:

“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...”

22. 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 All ER 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.”

23. In *Selina Patani & Another v Dhiranji V. Patani* [2019] eKLR the Court of Appeal stated that 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. The ingredients of defamation are settled. The Court of Appeal in *Selina Patani* (supra) held: -

“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.”

24. In order to succeed in his claim, the Plaintiff was required to establish the above ingredients on a balance of probabilities. Regarding the question whether the offensive publication was made by the 1<sup>st</sup> Defendant and with reference to the Plaintiff, there was no dispute. However, the 2<sup>nd</sup> Defendant disputed the words attributed to him in the offending article and pleaded his own version of what he had said, in his defence, in addition to denying that he made any reference therein to the Plaintiff.



25. The Plaintiff bore the burden, but did not tender evidence, to connect the 2<sup>nd</sup> Defendant with the words in the offensive article which was the subject of his suit. Thus, regarding the 2<sup>nd</sup> Defendant, ingredients (ii) and (iii) in Patani were not proved. This finding has a bearing, so far as the 2<sup>nd</sup> Defendant is concerned, on ingredients (i) and (iv), namely that the statements were false and defamatory. The fact that the Plaintiff has failed to prove that the 2<sup>nd</sup> Defendant was the person who uttered the offensive words contained in the 1<sup>st</sup> Defendant's article, renders moot the questions whether the words in issue were defamatory or false. The court will therefore proceed to consider ingredients (i) and (iv) in relation to the 1<sup>st</sup> Defendant only.
26. Regarding the question whether the impugned statements comprised malicious falsehood, the court considered the pleadings and evidence by the Plaintiff. To the effect that the impugned publication portrayed him as a poor performer and lacking in managerial skills, as well as an impediment to growth and development both in KPA and the coastal community. The Plaintiff asserted that during his tenure, he received various commendations arising out of his position as Managing Director of KPA, which were tendered as part of P. Exhibit 2. Nevertheless, he also admitted that during his tenure, KPA suffered huge financial losses due to external factors beyond the control of the management at the time.
27. The court further considered the Plaintiff's testimony that he did not undertake any major community development projects during his tenure as Managing Director of KPA. Further, that during his tenure and at the time of the publication, a public debate raged regarding the preferred provenance of the managing director of KPA.
28. That said, it appears from the Plaintiff's oral admission that the impugned publication did not quote verbatim the words purportedly uttered by the 2<sup>nd</sup> Defendant and which formed the basis for the publication and consequently, the suit. From the court's study of the impugned article (in P. Exhibit 2) and oral evidence of the Plaintiff, it is apparent that the publication coincided with and touched upon political wrangles between the Coastal Members of Parliament (MPs) and the then KPA Managing Director, Mr. Brown Ondego, whose continued tenure it would appear was in question. While reference was made to the 2<sup>nd</sup> Defendant in the impugned article, as earlier mentioned the said Defendant was not quoted verbatim. Besides, the said Defendant offered his own version of the words he had uttered that was quite different from the newspaper report.
29. That said, the court did not find in the Plaintiff's evidence material adequate to demonstrate the true caliber of his performance at the KPA during his tenure, and that what was asserted in the article concerning him was therefore false. Reading the article, considering the obtaining circumstances and the Plaintiff's evidence, the court was not satisfied that the contents of the publication necessarily met the threshold of malicious falsehood pertaining to the Plaintiff. Therefore, despite the 1<sup>st</sup> Defendant's defence of justification and fair comment not being supported by evidence, it is the court's considered view that the Plaintiff did not present credible evidence to enable the court to arrive at a conclusive finding that the contents of the impugned publication were false in substance.
30. The next question to be answered is whether the impugned publication was defamatory of the Plaintiff. 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.

31. 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* 17<sup>th</sup> Edition 1995-page 1018.”
32. 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.”
33. The Plaintiff pleaded in his plaint and testified that statements contained in the publication complained of were defamatory in the natural and ordinary meaning, by imputing that he was incompetent and lacking in the requisite managerial skills. This was restated in his oral testimony. Nonetheless, the Plaintiff admitted to having held various respectable public positions after the publication of the 1<sup>st</sup> Defendant’s article and to receiving commendations for his service. And in that regard tendering a certificate of appreciation and various letters of recommendation as part of his supplementary bundle of documents filed on 27.02.2015 (See P. Exhibit 2).
34. Here, it was the Plaintiff’s duty to adduce evidence that an ordinary reasonable person who knew him before, would upon reading the said publication, view him differently, and or that the publications, whether believed by such reader or not, had the tendency to lower his reputation in the reader’s eyes. As stated in *Hezekiel Oira v Standard Limited & Another* (*supra*) the successful claimant in a defamation cause must tender evidence not only that the publication complained of bore falsehoods, but also that the published words tended to lower his reputation, causing right thinking members of society to shun or avoid him or to treat him with contempt.
35. The only person who testified in support of the Plaintiff’s case was himself. Defamation involves imputations that tend to cause injury to the reputation of a person. Hence, a successful plaintiff must demonstrate the tendency of the publication to injure his reputation or standing as part of the ingredients of defamation, and not merely rely on his own estimation of himself and the effect of the defamatory statements to that estimation.
36. In *SMW v ZWM* (2015) eKLR, the Court of Appeal observed that:-

“

  - “ 15. Black’s Law Dictionary 8th Edition defines defamation as the act of harming the reputation of another by making a false statement to a third person. (emphasis added). A statement is defamatory of the person of whom it is



published if it tends to lower him/her in the estimation of right-thinking members of society generally or if it exposes him/her to public hatred, contempt, or ridicule or if it causes him to be shunned or avoided: see Gatley on Libel and Slander (10th edition). A plaintiff in a defamation case must prove that the words were spoken /written; that those words refer to him/her; that those words are false; that the words are defamatory or libelous and that he/she suffered injury to reputation as a result. ...

19. The trial judge had considered the testimony of witnesses with a view to assessing their credibility and at no point did any of the Appellant's witnesses at trial consider the appellant to have been defamed by the contents of the letter. The witnesses who testified at trial constitute and pass the ordinary reasonable man test as they were not only neighbours but also people known to the disputants. There was no evidence of any public ridicule, hatred or even shunning experienced by the appellant.

The appellant had only testified at the trial court that he felt shy to interact with some of his friends in tea farming. The appellant appears to have had an apprehension of defamation on himself ostensibly based on how he himself considered his standing in the society. That is not what defamation is in law. The appellant himself further testified before the trial court that nothing had changed in his dairy farming business. Moreover, despite being a tea farmer in Gatundu, he had since relocated to his Karen home at the time of these proceedings where the chances of any possible defamation of him became slimmer based on the existing solitary and liberal lifestyle adopted by urbanites. As elucidated earlier, the test to be applied is that of the reasonable ordinary man, not the appellant or the respondent..." (Emphasis added).

37. The above holding was reiterated in Patani's case (*supra*), where the same Court stated that: -

“

- “26. The other issue for our consideration is whether the Judge erred in finding it was imperative to call a third party to prove the appellants claim for defamation. In principle, defamation is actionable per se. This does not mean the ingredients of the tort must not be proved. It simply means you must prove the elements of the tort of defamation; what need not be proved is the damage suffered. If no damage is proved, a claimant may be entitled to nominal damages. In this case, the legal issue is whether the appellants proved there was publication to a third party and injury, or damage suffered to their reputation.

27. The evidence on record is the testimony by the 2nd appellant that her boss read the letter. The alleged boss was never called to testify. No other third party was called to testify as to the publication and injury to reputation. As to whether the appellant's character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the appellant's reputation and standing in society was injured. It is in this context that we agree with the learned Judge that a person's own view about his/her reputation is not material in a claim for defamation; there must be evidence from a third party to the effect that the standing and reputation of the claimant has been lowered as a result of the defamatory publication. In the absence of third-party evidence, we find no error of law on the part of the



Judge in arriving at the determination that the appellants did not prove their claim for defamation. (Emphasis added)

See also *Daniel N. Ngunia v KGGCU Limited* (2000) eKLR and *Hezekiel Oira v Standard Limited & Another* (2016) eKLR.

38. Similarly in this case, the Plaintiff did not tender evidence through another witness or witnesses, that the words in the publications complained of caused or had the tendency to cause injury to his reputation by way of public ridicule, hatred or even being shunned, or that they tended to lower his esteem in the mind of right-thinking members of society. The test to be applied is that of the reasonable ordinary man; it is not the 1<sup>st</sup> Plaintiff's view of himself that matters, as stated in *SMW v ZWM* and *Patani's case* (*supra*). Additional testimony by a third party was all the more necessary in this case where it appears that the impugned publication was not necessarily concerned with the Plaintiff's personal standing or reputation, but his performance at the KPA. In the circumstances, the court need not proceed to consider the defences of justification and fair comment raised by the 1<sup>st</sup> Defendant, which in any event were not supported through evidence.
39. In *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91, the Court of Appeal stated in this regard that:

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.” (Emphasis added).

40. In the result, having reviewed the material before it, the court finds that the Plaintiff as the party bearing the burden of proof has failed to prove all the ingredients of defamation, against the two Defendants, and to the required standard. Consequently, the Plaintiff's suit must fail and is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 18<sup>TH</sup> DAY OF APRIL 2024.**

.....  
**C. MEOLI**

**JUDGE**

In the presence of:

For the Plaintiff: Mr. Mugo

For the 1st Defendant: Mr. Mwangi

For the 2nd Defendant: N/A

C/A: Erick

