



**Kamau v Tanui & another (Civil Case 447 of 2015)
[2024] KEHC 12638 (KLR) (Civ) (23 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12638 (KLR)

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

**CIVIL
CIVIL CASE 447 OF 2015**

AN ONGERI, J

SEPTEMBER 23, 2024

BETWEEN

MICHAEL MUBEA KAMAU PLAINTIFF

AND

KIPKOECH TANUI 1ST DEFENDANT

THE STANDARD GROUP LIMITED 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case, Michael Mubea Kamau (hereafter referred to as the plaintiff only) has sued to two defendants Kipkoech Tanui and The Standard Group Limited (hereafter referred to as the 1st and 2nd defendants respectively) vide plaint dated 23/2/2015 seeking the following remedies;
 - i. An order that the defendants do make a full and unqualified apology, make amends and withdrawal of the said complained of Articles and such apology, amends and withdrawal to be given the widest possible prominence and circulation, similar to the complained of articles/publications, the text and substance thereof to be approved by the plaintiff.
 - ii. General, aggravated and exemplary damages for defamation and libel, the quantum thereof to be determined by this honorable court.
 - iii. Costs of this suit.
 - iv. Interest on (ii) above court rates.
 - v. Such other and/or further relief as this honourable court might deem fit and just to



2. The plaintiff avers that the 1st Defendant is the Group Managing Editor (Print) of The Standard Newspaper, which is a National Newspaper with a very large and influential circulation within and beyond the jurisdiction of this Honourable Court.
3. The 2nd Defendant is the Proprietor and Publisher of the said Newspaper, i.e. The Standard.
4. On various dates, between 21st April, 2015 and 25th April, 2015, the Defendants in their said Newspaper falsely, maliciously, contemptuously and disparagingly printed and published and/or caused to be printed and published of and concerning the Plaintiff the following statements:

- a) On Tuesday 21st April, 2015 "EACC kicks Mubea out of office, again"

"The Ethics and Anti-Corruption Commission has once again suspended Deputy Chief Executive Officer Michael Mubea for 90 days over the sale and transfer of integrity Centre Building.

The commission met yesterday and made the decision accusing Mr. Mubea of, among others, insubordination.

Mubea was not in the office at the time the commission agreed to suspend him through a two-page letter by EACC Chairman Mumo Matemu.

He also accused Mubea of hiding five files whose cases had been reverted to the commission. The details of the said files are yet to be known.

Secret List

The commission is also understood to be planning to discipline CEO Halakhe Waqo over allegations of insubordination.

The decision is said to have been postponed because he is away on a medical leave.

The CEO had successfully rescinded a decision by the commission to suspend Mubea last month on grounds it was unprocedural.

The conflict between the commission and the secretariat intensified later after Waqo handed over a secret list to the President without the knowledge of the commissioners.

Matemu had earlier written to the National Land Commission Chairman Muhamad Swazuri, seeking assistance in the probe into the sale of the building.

"We are looking into any possible acts of corruption that may have taken place," said Matemu in the letter dated April 13."

- b) On Saturday 25th April, 2015 "list of shame, war on corruption"

"Matemu, Keino dossier on ouster and battle to exorcise Anglo Leasing ghost"

Suspended EACC commissioners Mumo Matemu and Irene Keino have blamed their woes on architects of the Anglo Leasing scandal and their protectors in the Jubilee administration.....

In their dossier, the commissioners paint EACC Deputy CEO Michael Mubea, suspended on Monday this week for the second time within two months, as the link between the corrupt powerful businessmen and brokers on one hand and the sleuths at the commission.

They admit that they got a call from the President's advisor of constitutional affairs Abdikadir Mohammed to take Mubea back; when they refused, they were hauled to Harambee House, the office of the President and told to make sure he returns to office.



Matemu and Keino said Mubea pushed for out-of-court talks with the Anglo Leasing suspects, but the commission ensured they were presented in court. Mubea asked the investigators in EACC to "close" the probe into the Integrity Centre at a time when the commissioners were keen to unmask malfeasance. But in his defence, Mubea denied seeking to frustrate the commission.

The Deputy CEO added that he never "engaged in any negotiations for the settlement of Anglo-leasing cases without knowledge and consent of the Commission and could not do so unless there was a firm offer from suspects"

He insisted that "All correspondence is done on behalf of the Commission." Infact, he notes that he shared "a letter on a proposal for out of court settlement on the Anglo Leasing cases with the Commission which advised him to negotiate with suspects and see what comes out of the negotiations."

Mubea denied ordering closure of the file in the investigation relating to change of ownership in the Integrity Centre.

Denied access

"Though he marked on a letter to the Director of Investigation in this matter that the same be closed, he did not mean that it indeed be closed and that this was just a recommendation from which he expected a response. The response never forth came."

It's not just Mubea, his boss the CEO, Halakhe Waqo, also had a tiff with the commissioners. He said he had "no regrets" for denying commissioners access to key files.

This was because the Commissioners on several occasions called for files especially the ones on Anglo Leasing cases with ulterior motives." Waqo noted.

In the dossier to the tribunal, Waqo noted that "Keino was among commissioners opposed to the Anglo Leasing and Geothermal Development Corporation investigations and told him to go slow on the same. How could he allow her access to investigations files having made her intentions clearly known on some of the files?"

When the tribunal sits all these issues will be unveiled and interrogated and the final decision on the fate of the commissioners made."

5. The Plaintiff further avers that the aforesaid complained of statements published in The Standard Newspaper aforesaid were not only false, malicious, and defamatory to the Plaintiff, but the same were also untrue, contemptuous, disparaging and ill motivated to the Plaintiff, and the Defendants in so publishing the same were actuated by extreme malice, contempt, spite and the same were calculated to injure, discredit, intimidate, defame and destroy the Plaintiff both in his personal and professional image, as an Advocate of the High Court of Kenya and also as Deputy Chief Executive, Technical Services, of The Ethics and Anti-corruption Commission.

Particulars Of The Defendants' Falsehood, Malice, Libel, Contempt, Ill Motive And Spite

The Defendants acted with falsehood, malice, libel, contempt, ill motive and spite in printing and publishing the aforesaid Article inter alia in that:-

- i. The Defendants never bothered whatsoever to find out the truth of the matter before making the said publications.
- ii. The Defendants never bothered to contact the Plaintiff before making the said publications.



- iii. The Defendants never bothered whatsoever to publish and/or write the truth of the matter.
- iv. The Defendants knew and/or ought to have known and/or to have found out the truth of the matter but they never bothered to do so.
- v. Even after the Plaintiff's protest, the Defendants never bothered to contact the Plaintiff to find out the truth.
- vi. The said statements, in their entirety, were deliberately and well calculated to inflict the greatest possible harm, damage, injury, embarrassment, ridicule, contempt and hatred on the Plaintiff both in his own personal capacity and also in his own professional image, reputation, status and standing in the eyes of the Plaintiff's clients, professional colleagues, Judicial Officers, General Public, and even Courts of law where the Plaintiff has been appearing as a Counsel, and the Plaintiff continues to be so injured to date.
- vi. The aforesaid complained of statements were so malicious and extreme that the same were meant not only to discredit the Plaintiff, both in his own personal and professional capacity, but also to ruin the Plaintiff in his profession as an Advocate, and as a Senior Employee of the said The Ethics and Anti-corruption Commission.
- viii. The Defendants were motivated not only by extreme malice but by other ulterior motives, so as to destroy and ruin the Plaintiff in his Senior position in the said The Ethics and Anti-corruption Commission.
- ix. The Defendants were not motivated by truth and/or balance reporting but were motivated by extreme malice and other ulterior motives all calculated to injure the Plaintiff both in his personal and professional capacity and to have the Plaintiff hounded from his said Employment as Deputy Chief Executive Officer.
- X. All the facts of the matter and evidence which would have assisted the Defendants in publishing the truth were available and the Defendants knew how and where to get the truth and/or to contact the Plaintiff, at least to hear his side of the story, but they chose not to, for their own personal malice and ulterior motives.
- xi. It is common sense, and the Defendants knew only too well that their aforesaid publication would ruin and destroy the Plaintiff in his professional career as an Advocate and as Deputy Chief Executive, Technical Services, with the The Ethics and Anti-corruption Commission, but they chose to achieve that malicious and mischievous goal without a second thought.
- xii. The Defendants knew and or ought to have known that the Plaintiff had never been suspended at any one time as alleged and that at the material time he was still working in his position as Deputy Chief Executive, Technical Services, to date.
- xii. The Defendants knew and or ought to have known that the Plaintiff was never "kicked out", as alleged, and that he has always continued to work in his position with EACC as the Deputy Chief Executive, Technical Services to date.
- xiv. The Defendants knew and or ought to have known that the Plaintiff was never involved in the alleged sale and transfer of Integrity Centre.
- xv. The Defendants knew and or ought to have known that the Plaintiff had never been accused and/or kicked out on allegation of subordination, or for any other cause whatsoever.



- xvi. The Defendants knew and or ought to have known that no meeting of the Commission ever took place to discuss the Plaintiff as alleged by the Defendants.
- xvii. The Defendants knew and or ought to have known that there was no any "2 page letter" written to the Plaintiff to suspend and/or kick him out of Office, as alleged.
- xviii. The Defendants knew and or ought to have known that there was no any accusation against the Plaintiff regarding the hidden files, and/or any other accusation whatsoever.
- xix. The Defendants knew and or ought to have known that there was no any matter/discussion and/or case before Human Resource regarding the Plaintiff.
- xx. The Defendants knew and or ought to have known that on the day that the Defendants alleged that the Plaintiff was not in the Office, he was still in the Office throughout save that in the afternoon the Plaintiff went to attend an Official Meeting, something common in the Plaintiff's Employment and Position.
- xxi. The Defendants knew and or ought to have known that the Plaintiff has never been a link official between corrupt powerful business men and brokers on the one hand and sleuths investigators on the other hand, as the Defendants alleged, and that there has never been such accusations against the Plaintiff.
- xxii. The Defendants knew and or ought to have known that the Plaintiff was not privy to any "telephone calls" allegedly to solicit his being taken back, as the Plaintiff has always been in his Office throughout to date, and that he has never been suspended and/or in any way removed from his Office/Position.
- xxiii. The Defendants knew and or ought to have known that the Plaintiffs alleged interdiction was lifted the same day and therefore the Plaintiff has been working in his Office throughout.
- xxiv. The Defendants knew and or ought to have known that the Plaintiff was not related in any way with Integrity Centre and therefore there was no any probe against the Plaintiff as alleged.
- xxv. The Defendants knew and or ought to have known that the Plaintiff could not and did not close any probe as there was none.
- xxvi. The aforesaid two (2) publications were given unnecessary prominence and circulation so as to ensure that the Plaintiff was given the widest possible negative, malicious, defamatory and adverse publicity in the Country and World at large.
- xxvii. The Defendants knew and/or ought to have known that the matters in the stories published were not of general public interest and hence there was no need to publish the same to the whole world, merely to peddle falsehood and malice against the Plaintiff.
- xxviii. The Defendants knew and/or ought to have known that by publishing the said false and malicious statements, the same would cause extreme and grave suffering, damage, embarrassment, ridicule, hatred, pain and agony to the Plaintiff and his family, friends and relatives.
- xvii. The Defendants published the aforesaid complained of statements/ publications maliciously, spitefully and recklessly for financial profit/gain purposes for their aforesaid The Standard Newspaper, to the detriment of the Plaintiff, and in total disregard of the Plaintiff's position as an Advocate of the High Court and also as a Senior Employee of the said The Ethics and Anti-corruption Commission.



6. In their natural and ordinary meaning, the aforesaid complained of statements and publications were not only malicious but the same were defamatory to the Plaintiff and were meant and were understood by the reading public to mean inter alia:-
 - a) That the Plaintiff is an absolutely dishonest Advocate.
 - b) That the Plaintiff is generally a thief and a man and an Advocate without any morals and ethics.
 - c) That the Plaintiff is a dishonest, extremely fraudulent and unreliable Advocate who does not deserve his position as Deputy Chief Executive.
 - d) That the Plaintiff is an incompetent Advocate.
 - e) That the Plaintiff is an untrustworthy Advocate who is out to cheat members of Public.
 - f) That the Plaintiff generally engages himself in fraudulent dealings.
 - g) That the Plaintiff should be shunned and avoided by right thinking members of the society.
 - h) That the Plaintiff is a criminal and an Advocate who has no regard for rule of law.
 - i) That though a prominent Lawyer, the Plaintiff should not be relied on by his clients and the public at large, or even by his employer.
 - j) All along, the Defendants knew and/or ought to have known that their said publications were illegal, unlawful, malicious, defamatory and were purely meant inter alia to incite the Members of Public (including the Plaintiff's Clients) against the Plaintiff, to incite the Government and the top Officials against the Plaintiff, and to ultimately force the Plaintiff out of his Office and Legal Practice.
7. By reasons aforesaid the Plaintiff's reputation, integrity, personality and credibility both personally and as a prominent Advocate and as a Deputy Chief Executive of EACC has been seriously and irreparably injured and he has suffered considerable distress, damage, humiliation, agony, mental torture, and extreme embarrassment and he has also been brought to the public ridicule, hatred, contempt, suspicion, odium and the Plaintiff claims aggravated, exemplary, and general damages against the Defendants.
8. Further by reasons aforesaid, the Plaintiff's credit, reputation and status as a prominent Advocate of long standing has not only been irreparably injured, but his legal practice adversely affected and for which the Defendants are held liable for damages to be determined by this Honourable Court.
9. The Plaintiff further avers that the Defendants' publication of the complained of statements in their aforesaid Standard Newspaper, were actuated by extreme malice, contempt, spite and hatred towards the Plaintiff, as pleaded hereabove, and were calculated to give the Plaintiff extremely unfair adverse publicity whereas the true factual position and all the necessary documents to enable the Defendants to report accurately and fairly were available in case the Defendants wanted any truth.
10. The Plaintiff will rely on the following facts to support his claim for general, aggravated and exemplary damages.
 - a. The Defendants reporters never bothered to find out the truth of the matter, which they ought to have done, before making their aforesaid complained of defamatory and malicious statements about the Plaintiff.



- b. The Defendants reporters never bothered to contact the Plaintiff to find out his side of the story, if there was any story,
 - c) The false and malicious statements complained of were published in a sensational manner and given the widest possible prominence, circulation and publicity to the detriment of the Plaintiff.
 - d) Even after the Plaintiff wrote a demand and protest letter to the Defendants, dated 28th April, 2015 and which was delivered personally to the Defendants on 30th April, 2015, demanding for apology and corrections, the Defendants nevertheless and maliciously proceeded to publish another malicious, spiteful and contemptuous statement about the Plaintiff headed "list of shame, war on corruption" on 25th April, 2015.
 - e) To date the Defendants have never bothered to respond to or reply to the Plaintiff's aforesaid letter of protest dated 28th April, 2015 despite several other reminders thereof.
 - f) To date the Defendants have never bothered to apologise and/or carry out any corrections as demanded by the Plaintiff's Advocate's letter of 28th April, 2015.
 - g) The Defendants have not been remorseful to date, and they continue to cling to their malicious and defamatory publications.
 - h) The Defendants in publishing their aforesaid complained of malicious and defamatory Statements/Stories were motivated by financial profits for their said Newspapers known as The Standard, to the extreme detriment of the Plaintiff.
 - i) The Defendants were deliberately extremely reckless, malicious and irresponsible in publishing and/or causing to be published the aforesaid defamatory, false and malicious statements and publications concerning the Plaintiff, while they knew only too well and/or ought to have known only too well that the same would subject the Plaintiff to grave suffering, embarrassment, mental torture, anguish, damage and loss of self esteem, as the reading members of society and Legal Fraternity would shun the Plaintiff, and treat him with suspicion, as an Advocate and the Deputy Chief Executive of the said The Ethics and Anti-corruption Commission.
11. Despite several demands and Notice of intention to sue having been given, the Defendants have not only deliberately, stubbornly and maliciously refused and/or neglected to carry out corrections and offer an apology, but have also refused to settle this matter in any manner whatsoever (not to mention the fact that the defendants have even refused to acknowledge the plaintiff's several demand letters) and thus necessitating the filing of this suit.
12. The defendants filed a statement of defence dated 15/2/2016 denying the plaintiff's claim.
13. The defendants averred as follows in their defence dated 15/2/2016.
14. If and in so far as the said words in their natural and ordinary meaning bore or were understood to bear the meanings set out below, they were true in substance and in fact
- i. The plaintiff was under investigation by the Ethics and Anti-Corruption Commission.
 - ii. The plaintiff was accused of gross misconduct by the Ethics and Anti-Corruption Commission.
 - iii. The plaintiff was suspended from his duties for thirty days pending an investigation on himself.



15. The case proceeded by viva voce evidence.
16. The plaintiff testified as PW1. He adopted his witness statement dated 20/12/2016 as his evidence in chief.
17. The plaintiff stated in his written statement that he is an Advocate of the High Court of Kenya, having been admitted to the roll of Advocates in 2003.
18. After his admission as an Advocate of the High Court of Kenya, he practiced law in various places for a period of about 14 years.
19. He joined the Ethics and Anti-Corruption Commission (hereinafter referred to as "the Commission") at a higher level of the Deputy Chief Executive Officer, Technical Services sometimes from the month of January 2013.
20. In his said position as the Deputy Chief Executive Officer, he report to the Chief Executive Officer of the Commission, one Mr. Halakhe Waqo.
21. Since joining the Commission in the year 2013, he worked well with my colleagues and Commissioners, save some normal internal problems here and there, but which were always resolved one way or the other. Thus, was interdicted unprocedurally, but the interdiction was immediately lifted, so he has never been out of his Office as alleged by the Defendants, even for a day.
22. Since joining the Commission aforesaid, he has neither been interdicted nor has he ever missed his duties and Office at any one time, save with the permission of his boss.
23. Sometimes on 21st April, 2015 the Defendant published an emotive scoop and sensational headline "EACC kicks Mubea out of Office, again", about and concerning the plaintiff.
24. The said article proceeded to state that "the Ethics and Anti-Corruption Commission has once again suspended deputy Chief Executive Officer Michael Mubea for 90 days over the sale and transfer of Integrity Centre Building.....".
25. The said article further proceeded to accuse the plaintiff of all manner of things and evils as enumerated in his Complaint, paragraph 4 thereof. In these circumstances.
26. The said article informed the whole of Kenyan public and the world at large (through Internet) that the plaintiff had been kicked out of Office, again, for 90 days over the sale of Integrity Centre Building, among other alleged misconducts.
27. The plaintiff stated that other than what is contained in paragraph 6 of his Statement here above, he has never been "kicked out of Office", as the Defendants maliciously alleged in their publication.
28. The plaintiff stated emphatically that the contents and the substance of the said Defendants' article/ publication were not only false, malicious and defamatory to him, but the same were also untrue, contemptuous, disparaging and ill motivated and deliberately meant to tarnish his image, to destroy his career as an Advocate and to destroy his position in the said Commission.
29. The Defendants further alleged (in their said publication) that there was a Commission Meeting on 20th April, 2015, in which he was allegedly accused among others of insubordination and hiding Files, but which was all untrue, false and defamatory of him.
30. The plaintiff said that that there was no such a meeting, none took place, and there was no such allegation and accusations against him



31. On 25th April 2015, four days after the publication of the first article, the Defendants published yet a second article in the same newspaper this time perpetuating more lies that the plaintiff had been suspended allegedly because I was the link between corrupt businessmen and brokers on one hand and investigators at the Commission thus allegedly interfering with the outcome of cases that were being investigated by the Commission.
32. All these allegations were false and published with the sole intention of maligning and injuring the plaintiff's reputation as an Advocate of the High Court of Kenya and as a senior Officer at the Commission.
33. It is noteworthy that the Defendants again did not at any one moment contact him to hear his side of the story nor did they bother to establish the truth before their defamatory publications.
34. During the material times, he was in the Office and available to respond to any inquiries in the subject matter but the Defendants failed, refused and or neglected to seek his comments before the false and libelous publications.
35. On many occasions the Defendants have contacted the plaintiff for comments on newsworthy items emanating from the Commission and therefore if they so wished they would have easily contacted him.
36. The plaintiff said that the malicious and defamatory article was all false and solely intended to incite the public against him and to portray him as a man who lacks integrity, one who works with corrupt cartels and unworthy to hold a public office.
37. The false and malicious publication caused him serious pain, mental torture embarrassment, and ridicule before my family, church members, colleagues, clients, professional colleagues, Judicial Officers, international partners and members of public.
38. The plaintiff said he is a staunch Christian and a member of Parklands Baptist Church where he has held various leadership positions, over the years, including being the Moderator of the Church. Therefore, as a result of the Defendants' malicious and defamatory publications against him, his reputation, status, career and personality were seriously shaken and devastated.
39. Quite a number of members of his Church did approach him to find out what was happening and he had very difficult time explaining his position. Some of those members also visited him in his house, to try and comfort him, and it was the most painful and humiliating experience to undergo.
40. Similarly, the plaintiff said he has a family, wife and children and they were all concerned and asking him various questions about what they had read and seen in the Defendants' Newspaper.
41. The plaintiff's youngest daughter who is 11 years old had very difficult time in her school as her classmates, schoolmates and teachers continued to ask various questions as to what was happening to her father. This experience continues to haunt the plaintiff to date.
42. On 28th April 2015, the plaintiff instructed his Lawyers to issue a demand to the Defendants to correct the malicious and defamatory article and tender an apology, but they refused and neglected to oblige.
43. Besides the fact that the Defendants refused to apologize and carry out any correction, they also refused to acknowledge his Advocates' Demand Letter and a Reminder thereof, to date. This further demonstrates extreme malice and spite towards the plaintiff.
44. As a result of the Defendants' actions, the plaintiff's standing within his profession, and the public, has been seriously dented. The Defendants' actions were driven by ill intention and ill motive, calculated to cause injury, ridicule, embarrassment and contempt the plaintiff.



45. Besides the Defendants' stubborn refusal to apologize and carry out any correction, the Defendants have continued to perpetuate the libel and defamation against the plaintiff in their own Defence where they have pleaded truth, whereas they know only too well that what they had published was falsehood and without any basis.
46. Similarly, had the Defendants contacted him before the publication, or even after the publication, he would have given them the whole truth of the matter and he is almost certain that they would have carried out the necessary apology and correction
47. The plaintiff said that since he joined the Commission in January 2013, he has at all times discharged his duties with utmost integrity and he has never been in or worked with any association with cartels as alleged or at all.
48. As this Suit stands, the Defendants are not apologetic and they continue to cling to their malicious and defamatory publication and the plaintiff is therefore seeking the indulgency of this Honourable Court for this suit to be heard and determined so that he can be vindicated and be awarded reasonable damages as prayed in the Plaint.
49. The plaintiff called one witness (PW2), Halake D. Wako who also adopted his written statement dated 2/7/2017 as his evidence in chief.
50. PW2 stated in the said statement at the material time, he was the Secretary and Chief Executive Officer at the Ethics and Anti-Corruption commission (herein after referred to as "the Commission").
51. That he knows Michael Mubea, the Plaintiff herein. He joined the Commission in 2013 as a Deputy Chief Executive Officer-Technical Services; he deputizes him at the Commission.
52. Since joining the Commission, the Plaintiff has worked well with the Secretariat and the Commissioners in the course of his work save for a few internal issues that arose in the year 2015, but the same were addressed and dealt with.
53. Sometimes in March 2015, the Plaintiff was interdicted without following due process, but the interdiction was lifted immediately.
54. From the time Mr. Mubea joined the Commission he has worked diligently on the work assigned to him and has never missed attending to his duties and office at any one time, save with PW2's permission.
55. PW2 was therefore surprised to read in the Standard Newspaper on several dates, 21st April 2015 and 25th April 2015, that the plaintiff had been 'suspended again', a fact that was not only false but malicious as the articles went on to speculate and publish various reasons they claimed that the Commission had used to suspend the plaintiff.
56. PW2 said that at no time was the plaintiff suspended leave alone suspended twice and on the callous reasons spelt out in those two articles.
57. PW2 said the plaintiff had worked as his deputy for 4 years and he had known him as a person of integrity and who conducts his work with zeal and as a result has posted outstanding results in the cases that he has handled.
58. At no time did the defendants contact PW2 or any officer from the Commission to verify the accuracy of the malicious allegations prior to publication.
59. This court took over this case at defence hearing stage. The defendants called on witness Geoffrey Mosoku who testified as DW1.



60. DW1 adopted his witness statement dated 11/7/2017 as his evidence in chief.
61. DW1 stated as follows in the said statement;
62. I am employed by the 2nd Defendant as a journalist and therefore fully conversant with the matters in issue in this suit.
63. That the matter arose due to articles published in The Standard Newspaper on 21st April 2015 and 25th April 2015 under the titles "EACC kicks Mubea out of office, again "and" List of shame, war on corruption- Matemu, Keino dossier on ouster and battle to exorcise Anglo Leasing ghost" respectively.
64. The articles as published were true in substance and in fact and were not in any way actuated by malice nor intended to defame the Plaintiff.
65. The Plaintiff was being investigated for gross misconduct by the Ethics and Anti-Corruption Commission.
66. That indeed in an EACC internal memo dated 9th March 2015 from the Chairperson, Mumo Matemu to the CEO, Halakhe D. Waqo, it was stated that the Commission resolved to interdict the Deputy Chief Executive Officer Mr. Michael Mubea, the Plaintiff herein. (See item No. I on the Defendants' List of Documents).
67. The articles as published were fair comments on matters in the public domain concerning corruption within the EACC.
68. That it was in the public interest the 2nd Defendant published the said articles as it has a responsibility as a national media house to publish information to the general public.
69. In cross examination, DW1 said that he is the one who published the impugned article.
70. DW1 said the words of the headlines were put by the editor. He said the 1st defendant was the editor.
71. DW1 said he was given the information from EACC by someone he would not disclose.
72. DW1 said he talked to the plaintiff and asked him if he had received letter of suspension.
73. DW1 said he got the information about the sale of the sale and transfer of Integrity Centre from proceedings of a parliamentary committee.
74. DW1 said he was doing a background story about the sale of Integrity Centre to Degus Ltd.
75. He said the plaintiff was a partner in the firm of Aden, Makokha and Wetangula advocates which was handling the sale of Integrity Cente.
76. The parties filed written submissions as follows;
The Plaintiff's Submissions
 - i. The plaintiff submitted in writing that this suit arose out of a libelious, defamatory and extremely ,malicious publication published by the defendants against the plaintiff on 21/4/2015 under the banner "EACC Kicks Out Mubea out of Office Again".
 - ii. The story was published at page 8 of The Standard newspaper where the defendants publishes national news.



- iii. Further that on 25/4/2015 the defendants maliciously proceeded to publish another malicious, spiteful and contemptuous statement about the plaintiff headed “List of shame, war on corruption”.
- iv. The plaintiff submitted that he endured embarrassment in public among his peers, family and social circles as a result of the publications.
- v. Further, that the words complained of in the published articles were defamatory of the plaintiff’s character and reputation.
- vi. The plaintiff also submitted that to appreciate the enormity of the defendant’s malice, falsehood and libel against the plaintiff, it is important to note that contrary to the defendant’s defence, the plaintiff has never at any one time and at all the material time been under investigation by the Ethics and Anti-corruption Commission.
- vii. Further the plaintiff submitted that he has never been accused of gross misconduct by the Ethics and Anti-corruption Commission.
- viii. The plaintiff also submitted that he has never been suspended from his duties for thirty days and/or for any other period whatsoever, pending investigations.
- ix. That at any rate, the defendants never adduced any evidence to prove these malicious and defamatory allegations.
- x. The plaintiff submitted that PW2 Mr Halakhe Waqo, the then CEO of EACC testified and confirmed that the plaintiff was never suspended or under investigations.
- xi. Further that the defendants did not seek the plaintiff’s comments before the publications and this is contrary to the code of conduct for the practice of journalism in Kenya, 2nd schedule of The Media Council of Kenya Act 2013 which the defendants are subject to.
- xii. The plaintiff submitted that the publications were calculated to disparage, discredit and injure the plaintiff’s credit, reputation and bring him to public ridicule, spite and contempt in his personal capacity and his professional standing as an advocate of the High Court of Kenya, and to cast aspersions on his integrity and suitability and sustainability for his position as a senior officer of EACC.
- xiii. The plaintiff stated on quantum that the defendants have not tendered any apology or deleted the defamatory publications from the internet. He asked the court to award him a total of Kshs 36,000,000/ (Thirty six million) made up as follows:
 - (a) General damages Kshs 25,000,000/
 - (b) Aggravated damages 6,000,000/
 - (c) Damages in lieu of apology 5,000,000/
 Total 36,000,000/

The Defendants Submissions

- i. The defendants on their part submitted that as a matter of law and fact, there can be no inference of malice on the part of the defendants from the wording of the articles as there is absolutely no evidence on record that the publication was actuated by malice or done deliberately to disparage the plaintiff. The defendant said that it was important for the public to be aware of the happenings at EACC.



- ii. That malice is a subjective element that has to be established as a fact by admissible evidence.
 - iii. Further that section 16 A(1) of the Defamation Act, Cap 36 laws of Kenya provides valuable guidance in defamation proceedings as follows:
 - iv. The defendants urged the court to dismiss the plaintiff's case with costs.
 - v. Nevertheless the defendants proposed general damages of Kshs 1,000,000/ and stated that there are no factors in this case to justify exemplary and aggravated damages since the same are discretionary.
 - vi. On assessment of damages, the defendants relied on the following cases:
 - i. KTDA v Benson O. Masese, (2008)KRL 149 where on award of Kshs 10,000,000/ was reduced to Kshs 1,500,000/
 - ii. The Standard Ltd v Alnasir Visram CA No 89 of 2017 where an award of Kshs 18,000,000/ was reduced to Kshs 12,000,000/ and exemplary damages of Kshs 8,000,000/ reduced to Kshs 3,000,000/
77. It is the duty of the plaintiff to prove his case to the required standard in civil cases which is on a balance of probabilities.
78. The issues for determination in this case are as follows;
- i. Whether the plaintiff has proved his case to the required standard.
 - ii. Whether the defendants have a valid defence against the plaintiff's case.
 - iii. Whether the plaintiff is entitled to the remedies he is seeking against the defendants.
 - iv. Who pays the costs of this costs?
79. On the issue as to whether the plaintiff has proved the tort of defamation, the following are the elements of defamation;
- i. That the statement was defamatory.
 - ii. That the statement referred to the plaintiff.
 - iii. That the statement was published by the defendants and
 - iv. That the statement was false.
80. In the case of George Benedict Maina Kariuki v Nairobi Star Publication Ltd & another [2016] eKLR, the court stated as follows on the definition of the word defamation;
- “.....well intended ambitions of eminent Judges and legal scholars of profound erudition to define the term have resulted in many a formula for describing or defining it without rendering any wholly satisfactory definition or description and for that reason, a sample of a few of such definitions as set out hereunder shall suffice.
- In the English Case of Scott v Sampson (1882) QBD 491 at page 503, Dave J defined the word 'defamation' as "A false statement about a man to his discredit”



The leading English monograph of Gately on the subject of defamation defines it as thus: -

“Any imputation which may tend to lower the Plaintiff in the estimation of right thinking members of the society generally.”

The well known work of Winfield gives the following definition of defamation.

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

In the Black’s law Dictionary 5th Edition (1979) it is defined as: -

“Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community - Defamation is that which tends to injure reputation to diminish the esteem, respect, good will or confidence in which the Plaintiff is held, or to excite adverse, derogatory or unpleasant feelings for opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloguy... the unprivileged publication of false statements which naturally and proximately result in injury to another.... A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”

81. The defendants did not deny that they published the impugned article. The defendants said that it was important for the public to be aware of the happenings at EACC.
82. The Defendants further said that the words in their natural and ordinary meaning bore or were true in substance and in fact and they meant that;
 - i. The plaintiff was under investigation by the Ethics and Anti-Corruption Commission.
 - ii. The plaintiff was accused of gross misconduct by the Ethics and Anti-Corruption Commission.
 - iii. The plaintiff was suspended from his duties for thirty days pending an investigation on himself.
83. I find there is no evidence that the words are true and further, I find that the language used smacks malice.
84. In the case of *Phineas Nyagah v Gitobu Imanyara* (2013) eKLR, the court stated as follows on the issue of malice;

“Malice here does not necessarily mean spite or ill will but recklessness itself may be evidence of malice. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice but the law does not weigh in a hair balance and it does not follow merely because the words are excessive, there is therefore malice. Malice may also be inferred from the relations between the parties before or after publication or in the conduct of the defendant in the course of the proceedings. Malice can be found in the publication itself if the language used is utterly beyond the facts.”



85. On the issue as to whether the defendants have a valid defence against the plaintiff's suit, I find that the answer is in the negative.
86. The plaintiff was not suspended by EACC and the publication contained falsehoods meant to tarnish the plaintiff's reputation.
87. On the issue as to whether the plaintiff is entitled to the remedies he is seeking the answer is in the affirmative.
88. I grant the plaintiff general damages of Kshs 5 million for the tort of libel.
89. Aggravated and exemplary damages are not payable. The same are paid under certain circumstances.
90. in the case of *John v MGN Ltd* (1996) 2 ALL E.R. 35, the Court of Appeal held as follows;

“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 taken account of the distress, hurt and humiliation which the defamatory publication caused.....

Exemplary damages on the other hand goes beyond compensation and are meant to “punish” the Defendant. Aggravated damages will be ordered against a Defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize”.

91. Judgment be and is hereby entered in favour of the plaintiff against the defendant in the sum of Kshs 5,000,000 plus costs of the suit and interest at court rates from the date of this judgment.
92. The defendants are directed to write an apology to the plaintiff within 30 days of this date and in default to pay the plaintiff a further Kshs 500,000.

Orders accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

