



**Yongo v Nation Media Group Limited (Civil Case 92 of 2018)
[2023] KEHC 2965 (KLR) (Civ) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2965 (KLR)

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

**CIVIL
CIVIL CASE 92 OF 2018**

DO CHEPKWONY, J

MARCH 24, 2023

BETWEEN

BRYAN YONGO PLAINTIFF

AND

NATION MEDIA GROUP LIMITED DEFENDANT

JUDGMENT

1. By a Plaint dated May 8, 2018, the Plaintiff herein, Bryan Yongo (hereinafter referred to as “the Plaintiff”) has filed a defamation claim against Nation Media Group Limited (hereinafter referred to as “the Defendant”) for an article published in one of the Defendant’s more popular and successful publication, the Sunday Standard (“the Paper”) published on May 6, 2018 with a caption titled “Whistle blowers or con artists who target the rich”.
2. In the plaint, the plaintiff seeks for:
 - a) An order of permanent injunction restraining the Defendant whether by itself, its agents, and/or servants from publishing defamatory material against the Plaintiff.
 - b) Compensatory damages.
 - c) Aggravated damages and or exemplary damages.
 - d) An apology and retraction of the said story, published in the Sunday Nation with the same prominence as the article complained of.
 - e) Any other relief this Honourable Court deems fit.



- f) Costs of this suit.
3. The Plaintiff pleaded that he has at all material times been a businessman specializing in various business ventures, either in person, or through a series of business vehicles and corporation such as Neptune Credit Management Limited, a Company which specializes in debt collection management and resolution for a number of high value individual and corporate clients.
 4. On the other hand, the Plaintiff describes the Defendant as one of the leading media houses in East African region, which owns and operates Television Stations, Radio Stations and several Newspapers as well as having a massive online and social media presence.
 5. According to the Plaintiff, the “Sunday Standard”(the Paper) is the Defendant’s most popular and successful publication arising from the fact that it is published on a weekend and carries much more content than the daily editions.
 6. The Plaintiff pleaded that the alleged defamation and injurious allegations against him, along with other personalities, were carried out on May 6, 2018 on full page article in a story printed by the Defendant’s publication as follows;-

Mr Yongo’s household goods. The case regarding the ownership of the house is pending determination in court.

A habitual litigant, Mr Yongo has previously lodged winding up suits against the fallen Invesco Ins. Demanding 14 M in debt collection fees. He obtained orders and disposed of the firm’s assets in a public auction to recover the debt. He literally bought the insurance firm to its knees. He also filed a winding up case against Equity Bank contending that his firm Neptune Credit was owed 10.2M by the bank as commission for collecting a debt. He alleged the bank had reneged on payment. The case was thrown out.

Subsequently, Mr Yongo and his company were fined 500,000 each or serve 30 days in jail for contempt of court by HC Judge Muga Apondi. He Judge said Mr Yongo and his company filed the winding up suit despite a court order stopping them from doing so.

The controversial businessman has been involved in a fierce battle with city lawyer Ahmednasir Abdullahi, another friend turned foe.

He has unsuccessfully filed a litany of suits and appeared before a parliamentary committee as he sought to prove that Mr Abdullahi should be struck off the roll of advocates for allegedly acquiring his pupillage certificate fraudulently.

Mr Yongo was a clerk with the law firm of Mr Peter Simani where Mr Ahmednasir was a pupil before he started his own practice. Another battlefield involving Mr Juma, Mr Yongo and Mr Abdullahi later surfaced over a contract for Erad Supplies to deliver 40,000 tons of maize to the National Cereals and Produce Board. Mr Juma sued the state corporation seeking 500M for alleged breach of contract.

Mr Juma claimed he had incurred heavy losses in profits and storage costs. The case was later referred to an arbitrator, Mr Evan Thiga Gaturu who ruled in favour of Mr Juma’s company in July 2000 and awarded Erad \$3,106,000 (266.9M). Mr Yongo who later alleged fraud in the contract between Erad and NCPD claimed he was contracted by the company as a debt collector and expected to be paid at least 25M upon successful completion of the job.

On the other hand, Mr Abdulahi offered Mr Juma legal services to recover the money from NCPB. Mr Juma who had amplified his activities on social media before his death, filed



various cases against DP William Ruto for alleged grabbing of public land. In one of the suits, Mr Juma urged the court to order Mr Ruto to return more than 730M. To the Kenya Pipeline Company after a fraud case against the DP was dismissed by the court.

7. In his Plaintiff, the Plaintiff went on to aver that taken in their true and ordinary meaning, the words in this article were intended to portray him as;
 - a) A person who cannot be trusted on matters to do with business dealings, and/or whose business dealings are always bound to end up in controversy and dispute.
 - b) A person whose modus operandi is similar to that of Mr Dehay, who is always running away from the law.
 - c) That the Plaintiff is a dishonest broker in business, and therefore cannot be trusted.
 - d) That the Plaintiff's source of sources of income are not lawful, despite admitting in the article that the Plaintiff has filed numerous lawsuits, based on merit, in pursuance of contracts legitimately entered into.
 - e) That the Plaintiff is an unscrupulous and cunning person, and any dealings with him should be shunned for fear of future and arranged legal ambush.
 - f) That the Plaintiff is not a bona fide businessman, but someone who peddles influence for gain, despite the article having acknowledged that the Plaintiff and Neptune Credit Management Limited have entered into various contracts with various known and reputable entities.
 - g) That the Plaintiff is not entitled to enjoy his standard of living, given the fact that the same is allegedly supported by suspect transactions, even though the article states that the question of his residence in Kitisuru is subject to litigation.
 - h) The article is also a flagrant breach of the sub-judice rule, since it discusses matters pending in court and purports to give a definitive opinion on the same.
 - i) That the Plaintiff is exploiting the legal process unjustly for personal gain.
8. That this is despite the Plaintiff conducting himself with dignity and probity, operating a viable and profitable business enterprise and having pursued any business dispute and disagreements through the courts and legal systems.
9. The Plaintiff asserts that the article purported to expose his lifestyle and standard of living while outlining several disputes he had had while ignoring the fact that the dealings were perfectly within the law and have been conducted in the public arena, such as the High Court where he has succeeded in most of the claims. He added that it was inappropriate and defamatory for the Defendant to describe him in the article as a habitual litigant considering that his businesses and professional operations are grounded in the law and hence have recourse to litigation in courts in Kenya. Above all, the Plaintiff insists that the article displayed him as a corrupt, untrustworthy, greedy, boisterous person not to be trusted to the engaged in legitimate business and or social transactions thus was undertaken without due case.



10. It is the Plaintiff's case that he deals with octane clients who value integrity and discretion so that the sensational allegations about his lifestyle and linking him to alleged fugitive criminals are an attempt to harm his business and reputation irretrievably.
11. It is on the basis of the damage caused by the Defendant on his reputation that the Plaintiff prays for orders outlined at Paragraph 2 herein.
12. In its statement of defence dated September 21, 2018, the Defendant admitted having published the alleged defamatory article but denied in toto that the same was injurious to the Plaintiff's reputation and character. It is asserted by the Defendant that the publication has referred to different individuals and does not entirely talk about the Plaintiff, so that he cannot rely on portions of the article that do not refer to him to infer the alleged defamation.
13. According to the Defendant, the script about the Plaintiff was obtained from the reported court decisions and media reports hence the same is inaccurate.
14. It is also averred by the Defendant that nothing in the article suggests that the Plaintiff is a person who cannot be trusted or whose character traits are similar to those of a Mr Dehay, who is separately discussed in the article. Further the Defendant asserts that the Plaintiff has not shown any word in its ordinary meaning that refers to him or otherwise to imply that he is untrustworthy, his source of income is ingenuine and he is an extortionist.
15. Instead, the Defendant alleges that it exercises editorial independence over articles that are published in its Newspapers and can chose how to frame them provided they are within the law. That the publication in question was done within the confines of the law as it accurately reports outcomes on litigations involving the Plaintiff and media reports which had previously been published.
16. Further still, the Defendant contends that the Plaintiff has been involved in a number of litigations with others, some still pending in courts, so that the word habitual litigant should be accorded its ordinary meaning as 'regular' or 'usual' and hence not defamatory.
17. In view of the foregoing summary, the Defendant craves for the Plaintiff's case to be dismissed with costs.
18. Upon closure of pleadings, the parties confirmed compliance with pre-trial directions as provided for under Order 11 of the [Civil Procedure Rules](#) and the suit certified ready for hearing on November 11, 2021. It was then set down for hearing.
19. On March 9, 2022, the hearing commenced and the Plaintiff, a sole witness, testified as PW1. He opted to adopt his witness statement dated June 8, 2018 as his evidence in chief and produced a list and bundle and list of documents as exhibits in support of his case.
20. On cross-examination, the Plaintiff told court he is a businessman and owns many vehicles, one of which he uses in Neptune Business. He maintained that the contents of the article are untrue and only meant to taint his name. He said that his fight with Senior Counsel Ahmednasir is not captured in the article but admitted that he had filed a case against him seeking to have him struck off the Roll of Advocates seeking although before then the said counsel had represented him in other cases including the Winding-up Cause filed against Invesco Insurance Company Ltd. The Plaintiff also admitted that the Originating Summons (suit) was dismissed on Preliminary Objection but contended that the matters were pending before the Court of Appeal. He also admitted that he had been contracted by Erad Suppliers to act as debt collector against the National Cereals and Produce Board and he was expected to collect Kshs 25,000,000/=. He further admitted having been summoned by the Parliamentary Committee on the issue of National Cereals and Produce Board case. He denied being



a broker. He denied being a business associate of Mr Jacob Juma, Mr Waluke and M/S Wakhungu. He admitted having been charged for threatening to kill one Muambe Mutune but not Sharitilal Veshi Shah. However, for that reason, his firearm license had been recalled and there was a pending suit challenging the cancellation of his firearm certificate. He added that his concern with the article was among other issues that he had acquired his house mysteriously but did not deny that he had been sued vide ELC No 13 of 2009 for failing to remit rent and/or pay the purchase price for the house but he declined to respond on any issue in that regard as the case was pending before the Court of Appeal vide Appeal No 209 of 2019. He confirmed that Neptune had unsuccessfully filed a Winding-up Cause against Equity Bank because it owed him money in lieu of debt collection services rendered. He further admitted that he was found to be in contempt of court in Civil Application No NRB No 313 of 2014 but contended that he had filed an appeal against Hon. Justice Gikonyo's ruling. He dismissed the allegation that he was a habitual litigant as nonsense.

21. Benson Wambugu, testified on behalf of the Defendant as DW1 and also adopted his witness statement dated November 10, 2021 as his evidence in chief. In his witness statement, he confirms that he was one of the journalists who compiled the article in question with information sourced from court decisions and media reports. According to him, the court decisions and media reports are publicly available and can be accessed online and the Plaintiff has not challenged any of them or even file a defamation case against any one of them.
22. Further, DW1 in his statement stated that the article is not only about the Plaintiff but also addresses other persons including Meshack Onyango Dehay but without making a direct comparison between the two. In his view, having been sourced from already reported sources the part of the article referring to the Plaintiff does not tarnish or malign the Plaintiff's reputation.
23. On cross-examination, DW1 agreed that he had previously published stories about the Plaintiff and Jacob Juma but stated that the instant article was written by a group of Journalists, which he was a part of. He admitted knowing the Plaintiff, having met him in court and that he had given him Judgments to publish. He also recalled that the Plaintiff had handed to him a demand letter where he was seeking to wind up Equity Bank. He said that the Plaintiff also gave him a Judgment against Invesco which was in his favour. He explained that by reporting that the Plaintiff had put Invesco on its knees, it meant Invesco went up in smoke as the Plaintiff and his Company auctioned it over some debt. He denied inferring extortion by this reporting. When referred to the headline "Whistle blowers or con-artists who target the Rich" DW1 said that it is the Editor who is responsible for headlines and indicated that the article referred to one Meshack Onyango Dehay and the Plaintiff but did not know why the Plaintiff's photograph was the one used. He also stated that there have been several cases between the Plaintiff and Jacob Juma which have been of public interest such as the one where his guns were repossessed at Kibera Law Court. DW1 also explained that the cases reported in the article have been in court and are just normal cases reported out of public interest. He denied having reported any case about the Plaintiff out of an incentive. He qualified the article as fair comment in which they did not intend any malice and that the same was based on factual documents, such as the Erad and Equity case, the Plaintiff being put in jail at Industrial area and the Erad case. DW1 maintained that the publication about the Plaintiff was informed by materials which were in public domain and the character depicted in the said publication is what is known in public.
24. The Defendants case was closed and parties directed to file written submissions in support of their respective cases. And as the record reflects, the Plaintiff filed three sets of submissions dated the August 16, 2022, September 19, 2022 and October 5, 2022 respectively while those of the Defendant are dated October 3, 2022.



25. In his submissions, the Plaintiff argues that the publication alleges that he is a conman and blackmails individuals in society as an extortionist, which are not only false, but reckless and malicious thus has harmed the Applicant as he has been painted by the Defendants as being an unscrupulous, a cunning and dishonest business man whose source of income is not lawful. According to the Plaintiff, the Defendant did not take time to ascertain whether the statements it published were true or false thus implying malice. It is his further case that by the title of the article “Whistle blowers or con-artists who target the Rich” and the use of his image therein a perception is created that the Plaintiff is a con-artist who targets the rich. He has supported that position with excerpts from the cases of *Daniel Musinga v Nation Newspaper Ltd, Macharia v Wangethi Mwangi & Another and Nation Media Group Ltd & 2 Others v Joseph Kamotho & 3 Other* [2010] eKLR.
26. It is the Plaintiff’s submissions that for a claim in a defamation case to succeed, one has to show that: firstly, there exist the defamatory statement, secondly that the statement was published and thirdly, the publication referred to the claimant. He avers that those requirements have been met in this case in that the Defendant published the article in question about him without ascertaining the factual basis from the Plaintiff. More specifically, the Defendant failed to ascertain that the case for distress against the Plaintiff was found unmerited and the auctioneers disciplined. He goes on to submit that whereas he was fined for filing the liquidation claim against equity bank, he has appealed and the matter is pending before the Court of Appeal. Further, the Plaintiff states that the Defendant has continually published defamatory articles about him notwithstanding the injunctive orders issued to stop further defamatory publication about him.
27. On the defence of fair comment, it is the Plaintiff’s contention that the same is not available to the Defendant since the allegations in the article were false. That fair comment could not be discerned in the story as the facts were mixed up in a way that one cannot differentiate between what is reported and what is commented on. He goes on to state that the defence of qualified privileged information is equally not available to the Defendant as the publication was based on distorted facts which went to prove the element of malice and the Defendant failed to get in touch with the Plaintiff to verify the statements made in the publication.
28. It is the Plaintiff’s contention that damages are awardable in defamation cases with a purpose of restoring or giving back the injured party what he has lost, and in exceptional circumstances, then exemplary damages or punitive are awarded. In his view, the damages awarded should cure the damage that has been caused to his reputation by the publication as is provided for under Section 16A of the *Defamation Act*.
29. Further, the Plaintiff has further submitted that the defendant has not only damaged his reputation through the subject publication which has tended to lower his value and standing before his clients but has also exhibited malice by serially publishing libelous articles against him notwithstanding the restraints orders issued by the court.
30. To sum up, the Plaintiff argues that the article was calculated to ridicule him, invite the members of public to ridicule him and in the result, it affected his businesses, family virtues and public standing. He then invites the court to consider a number of judicial cases where damages on defamation cases were awarded and to align with the said awards made therein. He proposes a total award of Kshs 25,000,000/=.
31. The Defendant on the other hand has submitted that for a successful claim in a defamation case, an Applicant ought to show that; the publication referred to him, that they were defamatory in nature, that they were indeed published and for malicious purpose. The Defendant does not dispute the first two requirements by accepting that the publications were made and they referred to the Plaintiff. What



the Defendant disputes is whether the publications were defamatory and actuated by malice as pleaded by the Plaintiff.

32. It is submitted that the article herein was based on Judgments and rulings in cases filed by the Plaintiff in court, Newspaper articles on interviews willingly given by the Plaintiff and other newspaper reports which have not been challenged by the Plaintiff. According to the Defendant, the article was a truthful and accurate account of the court decisions, interviews by the Plaintiff and other news reports and therefore was not defamatory.
33. The Defendant also pleads the defence of justification and seeks the court to uphold the same in line with Section 14 of the Defamation Act which provides that the defence would only fail by reason that the truth of every charge is not proved. It would suffice that the substance of the libelous statement is justified in that it meets the sting of the charge.
34. Further, the Defendant has submitted that the article constituted fair comment on matters of public interest and constituent of the right of speech and expression. According to the Defendant, the Plaintiff has been shown as a habitual litigant in view of the numerous cases he has filed. And as for the allegation that he is a controversial businessman, the same is justified by the admitted facts that the Plaintiff has been involved in various controversies which include a suit he filed seeking to have Senior Counsel Mr Ahmednasir struck off the roll of advocates notwithstanding that the said counsel had previously acted for him in previous matters.
35. As for whether malice has been proved, it is the Defendant's submission that provided the facts of the publication are believed to be true, the failure for prior investigations or inquiry would not imply any malice as the Plaintiff connotes. In any event, malice would only be discerned if the publication was based on ulterior motives or for financial gain, hence the exemplary damages sought are not awardable.
36. Further, it is the Defendant's submissions that the Plaintiff has not presented a case that warrants an award of damages. However, if at all the court is inclined to award any damages, it should award a sum of Kshs 1,000,000/= in total.

Analysis and determination

37. I have carefully considered the pleadings filed by parties, the evidence on record, the submission as well as the authorities relied on by parties. In my view, that the issues which crystallize for determination in this case are as follows: -
 - a) Whether the publication in the Sunday Nation Newspaper of May 6, 2018 was defamatory of the Plaintiff; and if so,
 - b) Whether the Defendant has tendered any justifiable defence on the same?
 - c) Whether the Plaintiff is entitled to Damages for the alleged defamation.
38. In the present case, the Plaintiff's claim for defamation is premised on an article published by the Defendant in its Sunday Nation Newspaper on the May 6, 2018. Having read and considered the pleadings herein, I find that it is not in dispute that the article was published by the Defendant. It is also not in dispute that the statements complained of therein referred to the Plaintiff. What is in dispute is whether the statements in the article are defamatory.
39. Defamation is better defined as 'a communication or speech which tends to injure the reputation of a person to whom it refers or diminish esteem, respect, goodwill or confidence in the person alleging defamation or tends to excite derogatory feelings or opinion about such a person or subject the person



to or opinion about such a person or subject the person to public disgrace, or ridicule or adversely affect the person's business or trade, office or profession.

The *Black's Law Dictionary*, Tenth Edition defines 'defamation' as;

“malicious or groundless harm to the reputation or good name of another by making of a false statement to a third person”.

40. The particular forms of defamation are libel and slander. In libel, the defamatory statement is made in some permanent and visible form in writing or otherwise recorded, such as, printing, typing, pictures, photographs, caricatures, effigies, (See the High Court case of *Julius Vana Muthangya v Karuuni Mbila Nzai* [2019]eKLR). In slander, the defamatory statement or representation is expressed by speech or its equivalents, that is, in some other transitory form, whether visible or audible, such as a nod, wink, smile hissing, the finger-language of the deaf and dumb, gestures or inarticulate but significant sounds. (See *Halsbury's Law of England*, 4th Edition, Vol.28).
41. From the pleadings in the instant case, the Plaintiff's case is based on the tort of defamation, more particularly libel. The Court of Appeal in the case of *Musikari Kombo v Royal Media Services Limited* [2018]eKLR, had this to say:-

“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 neighbor. 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 not 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”.

42. The Court of Appeal in setting out the law relating to the tort of defamation had this to say in the case of *JP Machira T/A A Macharia & Company Advocates v Wangethi Mwangi & Nation Newspapers Limited* CA No 175 of 2019:-

“Generally speaking, every person is entitled to his/her good name and to the esteem on which he/she is held by others, and has a right to claim that his or her reputation shall not be disparaged by defamatory statements made about him/her to a third person(s) without lawful justification or excuse. The classic definition of defamation is given by Mr Justice Cave in *Scott v Simpson* [1882]8 QBD 491 as “a false statement about a man to his discredit”. In *Sir V Stretch* [1936] 52TLR 669(671) Lord Atkin gave this test; “would the words tend to lower the complaint in the estimation of the right thinking members of the society generally”.

43. Defamation is therefore best defined as a communication or speech which tends to injure the reputation of the person to whom it refers or diminish esteem, respect, good will or confidence in the



person or excites derogatory feelings or opinion about such person. As expounded by the Court of Appeal Judges in the *Machira case* (supra) a defamatory statement is one:-

“..... which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be shunned or avoided or regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Defamation, therefore, is the wrong done by a person to another’s reputation by words, signs, or visible representations”.

44. Therefore, the test for defamation 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. Thus, a statement will be considered defamatory of the person about whom it is published if it tends to lower him in the estimation of right-thinking members of the society and expose him to hatred, contempt, ridicule or injures his reputation in the office, trade or profession or injures his financial credit. The *Halsbury’s Laws of England*, 4th Edition Volume 28 at page 23 elaborates on the test for ‘defamation’ as follows: -

“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”

45. The defunct East African Court of Appeal authoritatively stated in the case of *Onama v Uganda Argus Ltd* [1969] EA 92, *inter alia* that: -

“In deciding whether the words are defamatory, the test is what the words could reasonably be regarded as meaning, not only to general public, but also to all those who have greater or special knowledge of the subject matter.....”

46. In the case of *Daniel Muthe Ngeere v Nation Media Group Limited & Another* [2019] eKLR, the court observed that: -

“The essence of a defamatory statement is its tendency to injure the reputation of another person. Its, however, upon the plaintiff to show or establish how he was exposed to public hatred, contempt or ridicule or that the words had caused him to be shunned or avoided by certain people. The plaintiff has also to prove the actual words complained of and it is not sufficient to show that the defendant made a defamatory statement.”

47. With regard to whether the article in the Sunday Nation of May 6, 2018 was defamatory of the Plaintiff, it is the Plaintiff’s submission that in the article the Defendant alleged that he strongarms and blackmails individuals in the society as an extortionist, which he states is not only false but reckless and malicious as this has painted him as an unscrupulous, cunning and dishonest businessman whose sources of income are not lawful. In essence, the article had the tendency of portraying the Plaintiff before the eye of any ordinary right thinking person.

48. The Plaintiff also took issue with the title of the article “Whistle blowers or Con-Artists who target the rich?” He states that the same was followed by various allegations that are inclined towards the latter end of the title hence creating an impression that he was a con-artist who targets the rich to earn



a living. He also pointed out that the article bears prominent photographs of him, hence he has been identified therein as one of the so called con-artists.

49. All in all, the Plaintiff testified that the article was made of untrue information and the Defendant was not justified to question his life-style and legal right to seek redress, which he felt was an infringement to his constitutional right. He also stated that the Defendant had made no effort to establish the truth from him before the publication. For instance, the Plaintiff states that while it is true that he was sued by the then owner of his Kitsuru home, the Defendant never bothered to establish whether he had appealed against the decision. Similarly, that the Defendant ignored the fact that the Plaintiff had appealed against the decision of the court wherein he had been fined for filing liquidation proceedings against the Equity bank. He further contends, that the Defendant has not published any apology to mitigate the harshness of the publication on the Plaintiff but instead had published another defamatory article on 5th January after filing the suit.
50. On its part, the Defendant has urged the court to dismiss the Plaintiff's claim. It has submitted that the publication was not defamatory as it contained the truth on Judgments and rulings in court decisions filed by the Plaintiff Newspaper articles on interviews willingly given by Plaintiff and other media reports which are in the public domain. As for any portions that amount to journalist or editorial comment, it is the Defendant's submission that the same are fair comment on a matter of public interest. That the Plaintiff has not challenged the facts set out in the article and infact confirmed the same in cross-examination.
51. To support the assertions that the contends in the article were true, fair and accurate account of the court decisions, interviews by the Plaintiff and other media reports, the Defendant produced in its bundle of documents an article titled, "Bryan Yongo: My life as a Debt Collector" published on the July 12, 2013 by the Standard as an interview with the Plaintiff wherein he acknowledged his flamboyant lifestyle and influence, including his 30-roomed Kitsuru house, and big fortune payments he was then expecting having acted for Erad Supplies in a claim against National Cereals and Produce Board. In the same interview, it is reported that the Plaintiff also acknowledged the acrimony between him and learned Senior Counsel, Ahmednasir. When cross-examined, the Plaintiff stated that he had no problem with the article published on July 12, 2013 and was indeed happy with it.
52. The Defendant also produced court decisions (rulings) including the case of *Neptune Credit Management & Bryan Yongo v Jigisha P Jani & Another* [2017] eKLR, which revolved around the Plaintiff's ownership and or occupation of the Kitsuru house, The *Neptune Credit Management v Invesco Insurance & Others* (2012)eKLR, In the matter of *Invesco Insurance Company Ltd and Neptune Credit Management Limited* [2009] eKLR, *Equity Bank Limited v Bryan Yongo* [2014]eKLR, *Brian Yongo v Attorney General & 2 Others* [2017] eKLR, *Judicial Service Commission v Speaker of the National Assembly & Another* [2013]eKLR, *Bryan Yongo v Chief Licensing Officer & another* [2014]eKLR and *Republic v Boniface N- Chief Licensing Officer & Another Ex-parte Bryan Yongo*.
53. The Defendant contends that in referring to the Plaintiff as a habitual offender, the same was a comment following the facts in the numerous cases he has filed as enumerated in the bundle of documents wherein he has not denied his involvement or the issues in the said cases as discussed in the article published on May 6, 2018. As for the Defendant referring to the Plaintiff as a "controversial businessman" the Defendant submits that it was a comment relating to the controversy he has had with his business associates like Jacob Juma and the relationship with his lawyer, Senior Counsel Ahmednasir.
54. To justify that there was public interest in the article, the defendant submitted that actions by the Plaintiff and his Company Neptune against Invesco Insurance and Equity Bank had effects on the



public interest as the two Companies involve members of public who have invested in them through policies and deposits.

55. I have carefully read through and considered the article complained of while weighing the gist of the assertions made therein in line with the pleadings and submissions by either party. As reiterated in the case of *Selina Patani & Another v Dhirany V Patani* [2019]eKLR, the law of defamation is about the protection of reputation of persons, that is, the estimation in which such persons are held by others. In the case, the Court of Appeal stated that:-

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

- i. The statement must be defamatory.
- ii. The statement must refer to the Plaintiff.
- iii. The statement must be published by the Defendant.
- iv. The statement must be false.

56. There is no doubt that the article and title herein were published by the Defendant, a fact confirmed by DW1 in his testimony to court when he admitted that he was part of the team that authored the article. There is also no doubt that part of the statements in the article refer to the Plaintiff. What is in contention is whether the statements are defamatory and false or whether they were made in the public interest on an occasion of privilege or maliciously.

57. Whereas the Plaintiff claims that the article compared him to Meshack Dehay, I have established that the story of the Plaintiff and that of Dehay are separately discussed without per se comparing the character traits of the two. Nonetheless, the part which discussed the Plaintiff majorly outlined four subjects of him.

58. The first being the story in which the Plaintiff described himself as debt collector and in media interviews, boasted of how he started making money at an early age and acquired his 30-roomed Kitsuru home. The Defendant added that the Plaintiff had been sued by the owner of the said house on the ground that the Plaintiff had reneged on the promise to pay the agreed purchase price and the court had made a finding that the Plaintiff had acquired the house in mysterious ways. In the second story, the Defendant described the Plaintiff as a habitual litigant and went on to outline the cases the Plaintiff has pursued including the winding up cause against Invesco Insurance wherein the Plaintiff claimed Kshs 14 Million in debt collection fees and later obtained orders to dispose off the Company assets, and the winding up cause against Equity bank which was dismissed and the Plaintiff condemned to pay a fine of Kshs 500,000/-. The third story about the Plaintiff in the article outlined the controversy between him and Learned Senior Counsel, Ahmednasir wherein he alleged that the Senior

Counsel was irregularly admitted to the bar and ought to be struck off. The article in the fourth story pointed out that the Plaintiff had not withstanding the petition seeking to strike out the senior counsel, sought legal representation of the same counsel in a number of matters including the dispute between Erad Supplies Ltd and National Cereals and Produce Board.

59. Allowable defences in an alleged libel case include justification (i.e. the truth of the statement), fair comment (i.e., whether the statement was a view that a reasonable person could have held), and privilege (i.e., whether the statements were made in Parliament or in court, or whether they were fair reports of allegations in the public interest). In a plea of justification as the Defendant herein has pleaded, the onus lies with the Defendant to prove the statement was true and covers not only the bare



statements of facts in the alleged libel but also any imputation which the words in their context may be taken to convey. Having studied the article and record herein, I am persuaded that the Defendant has partly proved the above defences on the contents of the article.

60. More specifically, the Defendant has established that the Plaintiff has in previous interviews confirmed his flamboyant lifestyle and the thirty (30) roomed Kitsuru House. Also, the Plaintiff has not disputed that he was sued by the then owner of his Kitsuru House allegedly on a claim for recovery of unpaid arrears on an agreement for the sale of the said house vide *Neptune Credit Management & Bryan Yongo v Jigisha P Jani & Another* [2017]eKLR. From the cases included in the Defendant's list and bundle of documents, confirmed the scenarios and litigations in which the Plaintiff was involved in are confirmed in the contents of the article. In that regard, where a publication clearly states what the person alleging defamation has done and then expresses an opinion on the same, the same is construed as a fair comment which cannot do him any harm or injustice. Therefore, the Plaintiff having previously acknowledged the media interview and the court cases cited by the Defendant in its article dated May 6, 2018, wherein it expressed a fair opinion on the same, it cannot be said that the same was defamatory of him if they align with the facts he has admitted. It would remain for the Plaintiff to show or demonstrate that the language in the contents of the article is disproportionate to the facts in the cited judicial cases and reported media interviews so as to infer malice on part of the Defendant. It then follows that to a large extent, the contents of the article in so far as the media interviews and cases are concerned, are not per se defamatory nor do the same meet the threshold for defamation.
61. What is of concern for this court as invited by the Plaintiff, is whether the title of the article was defamatory. The same reads as "Whistleblowers or con artists who target the rich?" According to the Plaintiff, the latter end of the title portrays him as a con-artist who targets the rich to earn a living. It is then followed with prominent photographs of the Plaintiff. On the other hand, the Defendant submitted that the title (topic) is simply a question which invites members of the public to draw views and make a review of the articles. In my humble view, while the Defendant submitted that the title (topic) of the article was not conclusive, the same has clearly invited members of public or any person reading it, to either classify the Plaintiff or the other persons mentioned therein as either whistle-blowers or con-artists who target the rich. It follows that through the article, however truthful some of the facts therein are, the Defendant intended for the readers to make a Judgment from the cases and media interviews, on whether the Plaintiff was either a whistle-blower or a con-artist who targets the rich by themselves. There was no other evidence to support this title.
62. Similarly, I find that the Defendant has not established that the statement in the title of the article published on May 6, 2018 was in any way justified or truthful. In my view, it was disproportionate to the facts which the Plaintiff has admitted to in the interviews which were eventually reported or in the decisions made by the court on some matters and facts involving the Plaintiff.
63. Given that none of the facts gathered from the mentioned interviews and court decisions relied on by the Defendant describe the Plaintiff as a whistle-blower or a con-artist who targets the rich, I am persuaded that the Defendant's expression of opinion in the title of the article was likely to lower the Plaintiff in the estimation of a reasonable reader who has knowledge of such other facts not contained in the statement.
64. Considering the threshold for defamation as discussed above, I am persuaded that the title of the article was defamatory of the Plaintiff as it was to depict him as either a whistle blower or con-artist who targets the rich depending on how each reader would discern it, thus caused his reputation, and or exposed him to hatred and ridicule, without any evidence of proof thereof.



65. Infact, the article also went on to describe the Plaintiff as a habitual litigant, which almost connotes him as a person who is always entangled in litigation, whether justified or unjustified, and for sinister reason. In reporting that the Plaintiff “literally brought the Insurance Firm on its knees” and in citing the Equity case, it clearly appears the publication was using these cases to be considered by the readers in discerning or answering the question in the title of the article.
66. On whether the title to the article was malicious, the defendant merely stated that the same was a statement or a question posed to the public for them to tender an opinion on the same. In this court’s view, it was left open for the readers or public to make their own conclusion on whether was either a whistle blower or co-artist who targets the rich without any evidence that the contents of the article justified the title. I find the title to the article was unfair, inaccurate and unjustified, that it cannot be termed as either a fair comment or having been made on a privileged platform.
67. In the resultant, I am persuaded that the Plaintiff has proved that he was defamed by the title to the article which portrayed him as either a whistle blower or con-artist who targets the rich, especially through litigation. In this court’s view, like every Kenyan citizen, the Plaintiff is entitled to pursue his rights or interests, whether in court or other forum as long as he has justified claim, no matter the number. Also, as a businessman, a fact not disputed, the Plaintiff muse depend on having a good name so as to exude confidence in clients and or business associates; who depend on what each discerns of the title, could stay away or shun the Plaintiff.
68. Having found that the Plaintiff has proved that he was defamed by the title to the article published on May 6, 2018, for determination now are the prayers sought in the Plaint dated May 8, 2018. On the first claim for general damages, I have considered both parties’ submissions on the same. I wish to reiterate that an award of damages in a defamation case is discretionary and the court has a wide latitude which has to be guided by various principles, some of which have been laid down in the persuasive case of *Jones v Pollard* [1997] EMLR 233-243. The court therein laid such guidelines to include 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; 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; matters tending to mitigate damages for example, publication of an apology; matters tending to reduce damages; vindication of the Plaintiff’s reputation past and future.
69. Also, in the case of *Standard Media v V Kagia T/A Kagia & Company Advocates* [2010]eKLR, the court took the view that in;
- “situations where the author or publisher of a libel could have with due diligence verified the libelous story or in other words, where the author or publisher was reckless or negligent, these factors should be taken into account in assessing the level of damages. The court also stated that the level of damages awarded should be such as to act as deterrence and to instill a sense of responsibility on the part of the authors and the publishers of libel and that personal rights, freedoms and values should never be sacrificed at the altar of profiteering by authors and publishers.”
70. From the cited authorities and other judicial sources on the same subject, what I gather is that a successful Plaintiff in a defamation action is entitled to recover the general compensatory damages in such sum as will compensate him for the wrong he has suffered. The court must thus compensate him for damages to his reputation and the extend of the quantum should vindicate the plaintiff’s name,



taking into account the distress, hurt and humiliation which the defamatory publication may have caused him.

71. Having considered the cases cited by both parties and the guiding principles which have laid above, I have also considered the extent of circulation of the publication in which the article was carried, I find that Kshs 3 Million is a reasonable amount that should compensate the Plaintiff in the circumstances of his case. I am especially guided by the case of *Patrick Nyoike v People Limited* [2013]eKLR, where the court awarded Kshs 4 million general damages and the case of *Ken Odondi & 2 Others v James Okoth Omburah T/A Okoth Omburah & Company Advocates* [2013]eKLR, where the Court of Appeal likewise awarded Kshs 4 Million for such Plaintiff.
72. Secondly, the Plaintiff sought exemplary damages which this court and others within our jurisdiction have time and again held, to be damages which stretch beyond compensation and are meant to punish the Defendant. They will only be ordered against the Defendant who acts out of improper motive e.g where the defendant acts on malice, insistence on a flurry defence of justification or failure to apologize. Having established herein above that the title was ideally meant to harm the Plaintiff and tarnish his reputation by opting to invite members of public to classifying him as either a whistle blower or a con-artist who targets the rich, I find this a fit case for an award of exemplary damages. On this, I am guided by the *Ken Odondi & 2 Others v James Okoth Omburah case* (supra), I award the Plaintiff Kshs 500,000/= as aggravated damages.
73. Lastly, the Plaintiff has also prayed for an unconditional apology. I would have ordered the Defendant to do so, but given that the publication was done roughly over five (5) years ago from the date hereof, an apology would have no effect on the damage that has already been caused to the Plaintiff's reputation. Accordingly, I proceed to award the Plaintiff Kshs 100,000/= damages in lieu of an apology.

PARA 74.

For avoidance of doubt, Judgment is entered in favour of the Plaintiff as against the Defendant in the following terms:-

- a) The Plaintiff be and is hereby awarded;
- i. Kshs 3,000,000/= as general damages.
 - ii. Kshs 500,000/= as aggravated damages
 - iii. Kshs 100,000/= as damages in lieu of an apology.
- b) Costs of the suit

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF MARCH, 2023.

D. O. CHEPKWONY

JUDGE

Plaintiff in person – present

M/S Sirawa holding brief for Mr Ochieng for the Defendant

Court Assistant – Simon

