



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 446 OF 2012

HON. BISHOP DR. MARGARET WANJIRU KARIUKI (M.P)....PLAINTIFF

VERSUS

THE NATION MEDIA GROUP LIMITED.....DEFENDANT

JUDGMENT

By a plaint dated 24th August 2012 the plaintiff is seeking the following reliefs:-

- a. **General, aggravated and/or exemplary damages for libel.**
- b. **An injunction restraining the defendant either by itself, its servants, agents and any other person acting under the direction of the defendant from further publishing or causing to be published words defamatory of the plaintiff.**
- c. **An order that the defendant makes a full and unqualified apology, and such apology to be given the widest possible circulation and publication, in the three leading newspapers namely; The Standard, The Nairobi Star and the Daily Nation.**
- d. **Costs of the suit.**
- e. **Interest on (a) above at court rates.**

The plaintiff's cause of action arose from a publication by the defendant on 17th September 2011 which stated as follows:-

“A bad week for

BISHOP WANJIRU

The Starehe MP and Presiding Bishop of Jesus is Alive Ministries was banned from conducting weddings after the registrar of marriages cancelled her licence.”

The plaintiff testified that she is a Bishop running a Christian ministry under the name Jesus is Alive Ministry (JIAM). The article that was published by the defendant on 17th September 2011 was defamatory and degraded her character. Her picture was next to the publication. It was stated in the publication that she had been banned from conducting weddings since the registrar of marriages had cancelled her licence. It is her evidence that the statement was not true. She had a valid marriage licence as of that date. She had obtained a licence to conduct weddings in 1997 when she was a pastor. In 2010, she became a Bishop and applied for another Bishop's marriage licence. The words **“banned”** in the article and also the words **“cancelled”**, and **“licence”** were part of the article and were meant to injure her reputation. She was the one who had initiated the process of cancelling the first licence so that she could use the Bishops' licence.

It is the plaintiff's evidence that the author of the article implied that something was wrong with her licence or that she had done something bad which was not true. The true position was that she was licenced to conduct marriages in 1997 and was ordained to be a Bishop in 2010 and this changed her status. With the new status, she was authorised as a Bishop to ordain other ministers. These other ministers can also be licenced to conduct marriages. She could therefore ordain ministers under her Jesus is Alive Ministry and subsequently recommend them to the registrar of marriages for licencing to conduct marriages. For anyone to have come with a negative story means that such a person had evil intentions.

The plaintiff further testified that the publication injured her reputation. She was portrayed as a fake Christian leader, as a quack, as a con woman in the society and it also attacked her previous character. Many families which she had presided over their marriages were destabilized. Some people had booked to be married in her church but the bookings were cancelled. It is also her evidence that at the time

the publication was made she was the Member of Parliament for Starehe Constituency and an Assistant Minister for Housing. The publication gave an opportunity to her political opponents to attack her. Some of the people she had presided over their marriages started flocking at Sheria House at the Attorney General's office to enquire about her licence. She had a valid licence and the defendant did not seek clarification from her. She demanded an apology but there was no response to a demand letter. She is also calling for a full apology and a clarification of the matter in detail.

It is PW1's further evidence that she had had a licence to preside over marriages since 28th July 1997. She got the second licence with her status as a Bishop on 13th September 2011. There was a Gazette notice No. 10875 of 9th September 2011 which indicated that her licence had been cancelled. She is the one who had initiated the process cancelling that licence. According to her the publication stated that it was a bad week for her as the Registrar of marriages had banned her from conducting marriages and cancelled her licence. She did not have a bad week and was not also banned from conducting weddings. She could still conduct weddings. The defendant could have contacted her at any time. She was not fired as an Assistant Minister because of the publication but her image was portrayed negatively. She also filed other suits against other media. There was a case against the Star Newspaper and she was awarded damages in Civil Case No. 445 of 2012. Because of the publication, some members of her church left. She is the head of the church and the publication was an attack on her.

PW2 Rev. Geoffrey Obongo is an engineer by profession and also an ordained church minister under the Jesus is Alive Ministry. It is his evidence that in 2011 he was working as a Pastor at JIAM in charge of Evangelism. At that time the plaintiff was the presiding Bishop of the church. On 17th September 2011, he saw a caption in the Daily Nation and a photograph of the plaintiff. After reading the caption he thought that the plaintiff as not qualified or competent to conduct marriages in the country and had been holding herself otherwise. He was astonished as the plaintiff had presided over his marriage on 16th December 2006. The publication made him to question the validity of his marriage. The church had a calendar for the weddings that were to take place in the months of September upto December 2011. The publication caused anxiety in the church and some members cancelled their weddings with the church out of anger. Other people went to the church to find out if their marriage certificates were valid. Some members of the congregation felt embarrassed by the allegations. The plaintiff informed him that as of 17th September 2011 she had already been issued with a licence by the registrar on 13th September 2011. He had known the plaintiff since the year 2000 when he was a student.

Mr. Sekou Owino testified for the defendant. He is the head of Legal department at the defendant company. He relied on his witness statement dated 8th July 2019. It is his evidence that the statement was published as a matter of public interest and concern pursuant to Gazette Notice No. 10875 dated 9th September 2011. The Gazette notice is a requirement of the law and gives names of ministers whose licences to celebrate marriages under the African Christian Marriage and Divorce Act had been cancelled. The plaintiff was one of the affected ministers. At the time of the publication, the plaintiff had no legal authority to celebrate any marriage even if the plaintiff was issued with a new licence dated 13th September 2011 for purposes of conducting marriages, she could still not conduct any marriage at the time of the publication. The publication was therefore done under a sense of public duty and without malice to the plaintiff. It was done in the honest belief that the information was true on matters of public interest. The defendant was exercising the right of free speech and expression which ought not to be undermined. It is his further evidence that a demand letter was sent but there was no response to it. Although the plaintiff had a licence it was not in the public knowledge. The defendant did not seek any clarification from the plaintiff.

Parties filed written submissions in support of their respective positions. Counsel for the plaintiff submitted that the plaintiff proved her case on a balance of probabilities that the published statement was defamatory. Counsel referred to the book **Gartley on Libel and Slander, 11th Edition at page 38** defines a defamatory statement as follows:-

“one which is to the claimant's discredit; or which tends to lower him in the estimation of others or causes him to be shunned or avoided; or exposes him to hatred, contempt or ridicule”

Counsel further submitted that the plaintiff has to establish whether the statement was malicious, whether it was published and whether it lowered her reputation before right thinking members of the society. Malice can be inferred from the statement. The words used were disproportionate with the facts. The defence evidence did confirm that at the time of the publication, the plaintiff's licence had not been cancelled. There was therefore no truth in the publication. Counsel referred to the case of **J.P MACHIRA T/A MACHIRA & CO. ADVOCATES VERSUS WANGETHI MWANGI & ANOTHER (1998) eKLR** where the court of Appeal stated that malice can be inferred from a deliberate or reckless or even negligent ignoring of facts. Counsel also referred to the case of **PHINEAS NYAGA V. GITIBU IMANYARA [2013] eKLR** where the court stated as follows:-

“The failure to inquire into the facts is a fact from which inference of malice may properly be drawn”.

Counsel for the plaintiff further submitted that there is no dispute that on 17th September 2011 the defendant published the statement. Millions of readers both in and outside the country were able to access it. The said publication injured the plaintiff's reputation. It destroyed her reputation as a religious figure and leader. It also led to some of the believers failing to trust her teachings and boycotting or leaving her church. It demonstrated the plaintiff as a cheat, a dishonest and corrupt individual who is unfit to lead any congregation. Many of her fellow worshippers in her church began to question the authenticity of the marriage certificates issued by the church. The publication led to the plaintiff's political competitors to use it as a tool to discredit her and she lost her Starehe Constituency seat in the general elections that followed since she had been elected on the platform of her good and sound religious background.

On the issue of damages, counsel for the plaintiff submitted that the court has the discretion to award damages. Counsel urged the court to award the sum of Kshs.10 million as damages for the injury, damage and harm suffered by the plaintiff.

Counsel for the defendant submitted that the issues for determination are whether the words complained of are defamatory of the plaintiff and the amount of quantum of damages payable to the plaintiff if any. It is submitted that the plaintiff had the duty to establish the essential elements of defamation as stated in the case of **WYCLIFFE A. SWANYA VS TOYOTA (E.A) LIMITED & ANOTHER [2009] eKLR** which stated as follows:-

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

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

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

(iii) That it was published maliciously

(iv) In slander, subject to certain exceptions, that the plaintiff has suffered special damage.”

Counsel further submitted that although the defendant is not disputing the publication, the same was not defamatory of the plaintiff as the content was indeed a true statement of facts and was true in substance. The publication was an expression of opinion which was a fair comment and fair information on matters of public interest. The publication as made under qualified privilege. For a statement to be held to be defamatory it has to lower a person in the estimation of right thinking members of the society or it has to cause him/her to be shunned or avoided. There was no evidence that the plaintiff was shunned or avoided and the allegation of defamation cannot stand.

Counsel for the defendant further submitted that the plaintiff had the onus of proving actual malice, ill will or spite or any direct or improper motive on the part of the defendant. There was no deliberate attempt by the defendant to attack the plaintiff’s reputation. There was no malice by the defendant. The words complained of were based on facts published in the Kenya Gazette Notice No. 10875 dated 30th August 2011 and gazetted on 9th September 2011 and the same was justified in the circumstances. As of 9th September 2011, the plaintiff’s licence to conduct marriages had been cancelled. Section 6 of the African Christian Marriages and Divorce Act allows the minister to give licence for celebrating marriages and the same minister can cancel such a licence. The Gazette Notice was titled “Cancellation of licences” and a Senior Deputy Registrar of marriages is the one who gave the notice which affected eight (8) ministers under various denominations. As at the date of the publication the plaintiff had no legal authority to celebrate any marriages under the act pending the subsequent publication that was gazetted on 23rd day of September 2011 vide Gazette Notice No. 11829 which was a period of 6 days after the publication.

According to the defendant, the publication of 17th September 2011 was made pursuant to Gazette Notice No. 10875 dated 30th August 2011 and there was no malice by the defendant. It was done on a qualified privilege occasion and did not require any explanation or contraction. Counsel referred to the case of **JAMES KIMEU MULINGE V. NATION MEDIA GROUP [2018] eKLR** where the defence of qualified privilege was stated as follows:-

“In common law the privilege was recognized where it was deemed that the maker of the statement in question has a legitimate interest in making the statement and the recipient(s) of the statement have a legitimate duty or interest in receiving it. As Lord Atkinson in Adam vs. Ward [1917] A.C 309 at page 334 best put it:

“A qualified occasion is an occasion where the person who makes a communication has an interest, or duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential.”

It was also submitted that the evidence does not show that after the publication the plaintiff was shunned by members of the society who knew her. The plaintiff is different from her church. The article was published on 17th September 2011 and the general election was held in 2013. The plaintiff confirmed that she was not thrown out as an Assistant minister in the Government of Kenya. There is no evidence of any grave public ridicule, scandal, odium and contempt experienced by the plaintiff in the eyes of right thinking members of the society. Counsel referred to the case of **S.M.W VS. ZWM [2015]eKLR** where it was held:-

“The trial judge had considered the testimony of witnesses with a view to assessing their credibility and at no point did any of the Appellant’s witnesses at trial consider the appellant to have been defamed by the contents of the letter. there was no evidence of any public ridicule, hatred or even shunning experienced by the appellant.

The appellant had only testified at the trial court that he felt shy to interact with some of his friends in tea farming. The appellant appears to have had an apprehension of defamation on himself ostensibly based on how he himself considered his standing in the society. That is not what defamation is in law.... In the premises, we do not find any reason to interfere with the trial Judge’s findings and are satisfied that the letter dated 15th March 2001 cannot be understood to bear the meaning ascribed to them.”

On the issue of quantum, it is submitted that should the court find it fit to award the plaintiff damages then a sum of Kshs. 500,000/- would be sufficient. The defendant submitted that the plaintiff was awarded Kshs.2,000,000 as general damages and Kshs.1,000,000 as exemplary damages in her **CIVIL CASE NO. 445 OF 2012 (MARGARET WANJIRU KARIUKI VS. NAIROBI STAR PUBLICATION LIMITED)**. It was submitted that in view of the above award, Section 16 (2) of the Defamation Act can be used to mitigate the damages to be awarded to the plaintiff.

Analysis and Determination

The issues for determination are whether the Article of 17th September, 2011 relating to the plaintiff amounted to defamation and if so, what

amount of damages is payable to the plaintiff. The plaintiff's case is that the said article injured her reputation taking into account the fact that she is the presiding Bishop at Jesus is Alive Ministry. At the time of the publication she was a member of parliament as well as an assistant minister. There is no dispute by the defendant that indeed there was a publication referring to the plaintiff in the Daily Nation of 17th September, 2011.

According to the defendant, the publication was indeed true and was in response to Gazette Notice number 10875 which had cancelled the plaintiff's licence. The plaintiff's position is that she was not banned from conducting weddings. She was only undergoing a self-initiated process of replacing her status as a pastor to that of a Bishop. Had the defendant contacted her, she would have explained the correct position.

In the case of **OCHIENG & 8 OTHERS V STANDARD LIMITED, [2004] 1 KLR 275** while referring to the cases of **PAMITER V COMPLAND (18210) 6 MAN 105 AT 108** and that of **SCORT –V- SAMPSON (1882) QBD 503** held *inter alia*:-

1. Defamation is a publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule.

2. 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 credit, and if such false statements are made without lawful excuse, and damage results to the person of whom they are made, he has a right of action.

The plaintiff's explanation on the publication is quite clear. She had not been banned from conducting weddings. She was only transiting from a pastor who was conducting weddings to a Bishop who could not only conduct weddings but could also ordain other ministers who could conduct weddings. She was already in possession of a Gazette Notice dated 13th September, 2011 that was part of the transition process. That notice was officially gazetted on 23rd September 2011. It is evident that had the defendant taken its time to contact the plaintiff, she would have explained the correct position. The defendant could also have contacted the office of the registrar of marriages to find out the cause of the cancellation.

The Gazette Notice No. 10874 of 9th September, 2011 indicated that the plaintiff's licence was cancelled. The impugned publication stated that the plaintiff had been banned from conducting marriages after her licence had been cancelled. There were seven Reverend whose licences were equally also cancelled in the gazette notice but the defendant only picked on the plaintiff who is indicated as a Pastor. The plaintiff produced a letter dated 15th August, 2011 from **Bishop Arthur Kitonga** which states as follows:-

“15th August 2011.

The Registrar of Marriages,

Department of the Registrar-General,

P.O. BOX 30031-00100,

NAIROBI

Dear Sir/Madam,

RE: LICENCING OF CHURCH MINISTER AS MARRIAGE OFFICER.

This is to inform you that Hon. Bishop Dr. Margaret Wanjiru, MP, is the presiding Bishop of "Jesus is Alive Ministries" working independently.

She was ordained Bishop under "Redeemed Gospel Church" and licensed to celebrate marriages under "Redeemed Gospel Church" on 29th July, 1997 (copy attached for ease of reference).

In this regard therefore; I kindly request you to revoke her license to celebrate marriages under "Redeemed Gospel Church" and subsequently license her to celebrate marriages under "Jesus Is Alive Ministries".

Your quick action on this important matter will be highly appreciated.

Yours sincerely,

REDEEMED GOSPEL CHURCH INC.

BISHOP ARTHUR KITONGA

APOSTOLIC BISHOP”

The plaintiff's evidence does establish that there was an on-going process of replacing her licence that had been issued on 29th July, 1997

when she was a pastor with a fresh licence having achieved the rank of a Bishop. A letter dated 15th August 2011 from the Assistant Registrar General addressed to Jesus is Alive Ministries partly reads as follows:-

“We are in receipt of your letter dated 1/08/2011 on the above. Attached herein please find marriage licenses in respect of the following persons:-

-REV. DANSON MUE KANGA

-REV. DUNCAN OKOMA MATINI

Please note that in regard to Bishop Margaret Wanjiru Kariuki's license, the same could not be processed because she is already a licensed marriage officer under the Redeemed Gospel Church. She is therefore advised to seek for degazettement through the said church so that we can proceed to license her under the Jesus is Alive Ministries.” (emphasis added)

The defendant's contention that the publication was true cannot be true. This was a simple process of upgrading the plaintiff's licence and the claim that the plaintiff had been banned from presiding over marriages was not true. The Black's Law Dictionary, 10th edition at page 172 defines the word **“Ban”** as:-

- 1) A legal or otherwise official prohibition against something.**
- 2) An authoritative ecclesiastical prohibition; an interdict or excommunication.**

The Oxford English Dictionary (12th edition) define the noun ban as **“officially or legally prohibit.”**

The totality of the plaintiff's evidence is that her licence was neither cancelled nor was she banned from conducting marriages. She was only replacing her old licence as a pastor to a new one under the rank of a Bishop. The defendant could not have picked the gazette notice of 9th September, 2011 in isolation and shield itself under the cover of qualified privilege or the duty to inform members of public.

Section 7 of the Defamation Act Cap 36 Laws of Kenya states as follows:-

- (1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless such publication is proved to be made with malice.**
- (2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish, in the newspaper in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.**
- (3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.**
- (4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of [section 4](#) of the Law of Libel Amendment Act, 1888, of the United Kingdom) (Act No. 51 and 52 Vict. c. 64.) immediately before the commencement of this Act or conferred by this Act.**

The defendant also made reference to statements which are privileged without explanation or contradiction as stated under part of the schedule of the Defamation Act. Section 4 reads as follows:-

“A notice, advertisement or report issued or published by or on the authority of any court within Kenya or any judge or officer of such court or by any public officer or receiver or trustee acting in accordance with the requirements of any written law.”

It is true that there was a gazette notice indicating that the plaintiff's licence had been cancelled. That action was a formality and not the normal cancellation which can be caused by misuse of the licence or failure to comply with required conditions. The publication painted a bad picture of the plaintiff. I do agree with the plaintiff's contention that the use of the words **“Bad Week”** and **“Banned”** was intended to give a bad picture of the plaintiff. There was no bad week or banning of the plaintiff. By 17th September, 2011, the plaintiff had in her possession licence issued through gazette notice number 11629 dated 14th September, 2011. Indeed she already had the notice in her favour individually which was dated 13th September, 2011 and could have clarified the issue had the defendant bothered to talk to her. The fact that the gazette notice was done on 23rd September 2011 does not offer any protection to the defendant.

From the evidence on record, I am satisfied that the publication defamed the plaintiff. Malice can be inferred from the language of the publication. The defendant was also reckless in that it did not bother to counter check the reasons for the gazette notice either from the registrar of marriages or the plaintiff.

The defendant contends that there is no evidence that the publication affected her reputation and that any negative effect caused to the church cannot be attributed to the plaintiff. The publication referred to the plaintiff in person. Even if she did not lose her position as an assistant minister, it is evident that her person as the presiding Bishop of Jesus is Alive Ministries was affected. The evidence of PW2 does strengthen the plaintiff's contention that her reputation as someone who was presiding over marriages was affected. The effect of the publication was that the plaintiff must have done something contrary to the requirements of her licence and that led to the cancellation of her licence.

In the case of **MARGARET WANJIRU KARIUKI –V- NARIOBI STAR PUBLICATIONS LIMITED [2016] eKLR** Justice L. Njuguna observed as follows:-

“The article, the subject matter of the suit herein was published on the 16th September, 2011 by which time the Plaintiff had a valid licence. It is, therefore, clear that by the time the article was published the Plaintiff was a holder of a valid licence and could celebrate marriages under the marriage Act yet the Defendants went ahead and wrote the article oblivious of the damage it could cause to the Plaintiff's reputation. The Defendants cannot, therefore, rely on the defence of justification because as at 16th September, 2011, it was not a fact that the Plaintiff did not hold a valid licence and therefore the article as published was false.”

I am in agreement with the above finding on a similar article and do equally hold that the plaintiff was defamed and there was malice in the publication.

The next issue relates to the quantum of damages payable to the plaintiff. The defendants have referred to Section 16 of the Defamation Act on mitigation. The Section states as follows:-

(1) In any action for libel or slander the defendant may, after giving notice of his intention so to do to the plaintiff at the time of filing or delivering the plea in such action, give evidence in mitigation of damages that he made or offered an apology to the plaintiff, in respect of the words complained of, before the commencement of the action or, where the action was commenced before there was an opportunity of making or offering such apology, as soon thereafter as he had such opportunity.

(2) In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

Section 17 of the Defamation Act provides for consolidation of defamatory suits against several defendants involving the same defamatory statement. Section 17 states as follows:-

(1) The court or a judge may, upon the application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamatory statement brought by the same plaintiff, make an order for the consolidation of such actions.

(2) After the making of an order under subsection (1) of this section, and before the trial of the consolidated actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamatory statement and brought by the plaintiff in the consolidated actions, shall be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(3) In a consolidated action under this section, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the court gives a verdict against more than one of the defendants it shall proceed to apportion the amount of damages so assessed between such defendants, and if costs are awarded to the plaintiff the court shall thereupon make such order as may seem just for the apportionment of such costs between such defendants.

(4) For the purposes of this section, “defamatory statement” means libel, slander, slander of title, slander of goods and other malicious falsehoods.

The record shows that a demand letter was sent to the defendant but was not responded to. No apology was made to the plaintiff. To that extent Section 16(1) of the Defamation Act does not assist the defendant. It is established that the plaintiff was awarded Kshs.3 million in High Court Civil Case number 445 of 2012 relating to a similar publication. In that case, the plaintiff even talked to the defendant and classified the position before the publication was done. The defendant ignored that clarification and went ahead to publish the defamatory statement.

The effect of Sections 16 and 17 of the Defamation Act is to mitigate and consider the quantum of damages payable to a complainant where the defamatory statement is published by different defendants. If the suits are consolidated under Section 17, the court would consider the award in favour of the plaintiff noting that there are more than one defendant. If the suits are heard separately as is the case herein, the court would consider what has already been awarded in similar cases.

Counsel for the defendant made reference to the judgment of Justice L. Njuguna in **HCCC 445 of 2012** which referred to the case of **JONES –V- POLLARD [1997] EMLR 233** where the considerations for awarding damages in defamation cases were stated as follows:-

“Exemplary damages on the other hand had gone 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”. Exemplary damages on the other hand had gone 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”.

In the case of **KIPYATOR NICHOLAS KIPRONO BIWOTT –V- CLAYS LIMITED & 3 OTHERS (HCCC 1067 of 1999)**, the court stated:-

“In assessing damages the court must look at the whole conduct of the plaintiff and the defendant from the time of the publication until the time of judgment; the court will look at the conduct of the parties before action, after action and in court during trial; and that malicious and insulting conduct on the part of the defendant will aggravate the damages to be awarded.”

In the English case of **JOHN –V- MGN LTD (1996) 2 ALL E.R, 35** the court stated as follows:-

- 1. The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition.**
- 2. The subjective effect on the plaintiff's feelings not only from the prominence itself but from the defendant's conduct thereafter both up to and including the trial itself.**
- 3. Matters tending to mitigate damages, such as the publication of an apology.**
- 4. Matters tending to reduce damages.**
- 5. Vindication of the plaintiff's reputation past and future.**

Given the above guidelines and authorities and taking into account the award of Kshs.3,000,000 in favour of the plaintiff in HCCC No. 445 of 2012 relating to a similar publication, I do find that an award of Kshs.2,000,000 as general damages and Kshs.500,000 as exemplary damages to be reasonable compensation to the injury suffered by the plaintiff.

I do further take cognizance of the fact that the publication was made on 17th September 2011 over ten (10) years ago and in my opinion, I find that an order of injunction or apology would be belated and of no significance. The two prayers are not granted.

The upshot is that judgment is entered for the plaintiff against the defendant as follows:-

a) General damages - Kshs.2,000,000

b) Exemplary damages - Kshs. 500,000

Total - Kshs.2,500,000

The plaintiff is awarded costs and interest at court rates.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2021.

.....

S. CHITEMBWE

JUDGE