



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 413 OF 2014**

**DR. EDWARD IKINYA MAINA.....PLAINTIFF**

**VERSUS**

**AERONAUTICAL SOCIETY OF KENYA.....1<sup>ST</sup> DEFENDANT**

**DR. FAUSTINE ONDORE.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

Dr. Edward IKinya Maina, the plaintiff in the present instance lodged a suit against the defendants vide a plaint dated 14th day of November, 2014 and sought the following reliefs;

- a) General damages for libel and injurious falsehoods.
- b) Exemplary damages
- c) Interest on (a) and (b) above plus the costs of the suit.

The plaintiff pleaded in his plaint that on 2<sup>nd</sup> February 2014, he was called to Kenya Civil Aviation Authority (KCAA) offices at JKIA and upon arrival was ushered into the office of Colonel (RTD) Hilary Kioko, the then Director General of KCAA, and presented with a letter dated 31<sup>st</sup> January, 2014 addressed to the Director General KCAA in which, the defendants wrote and published concerning the plaintiff the words following;

***“31<sup>st</sup> January, 2014***

***Our Ref: EASK/KCAA/Recruit/Mgr-***

***Airworthiness/2014/01***

***To***

***Colonel Kioko***

***The Director General***

***Kenya Civil Aviation Authority***

***KAA Complex, Jomo Kenyatta***

***International Airport, Nairobi***

***P. O. Box 30163-00100 Nairobi***

***Email: [info@kcaa.or.ke](mailto:info@kcaa.or.ke)***

***Cc.***

***Kenya Anti-Corruption Commission***

*Integrity Center*

*Milimani/Valley Road Junction*

*P. O. Box 61130-00200 Nairobi, Kenya*

*Email: [eacc@integrity.co.ke](mailto:eacc@integrity.co.ke); [report@integrity.co.ke](mailto:report@integrity.co.ke)*

*Nation Media Group Limited*

*Nation Centre*

*Kimathi Street, Nairobi*

*Postal Address: P. O. Box 49010-00100, Nairobi, Kenya*

*[digitalnews@nation.co.ke](mailto:digitalnews@nation.co.ke)*

*Standard Media*

*Nairobi*

*[ktanui@standardmedia.co.ke](mailto:ktanui@standardmedia.co.ke)*

**REF: RECRUITMENT-MANAGER AIRWORTHNESS**

*We refer to the above and express our reservations of the purported imminent appointment of the above applicant to the position of Airworthiness manager at the Kenya Civil Aviation Authority. Further we cannot, as a professional Society, keep quiet even on the unconfirmed reports of the possible appointment.*

*The purpose of this letter is to give a warning that appointment of unqualified and un experienced individuals to the above safety-critical role undermines the very mandate of KCAA's air safety oversight function. We demand that you refrain from making this and other inappropriate appointments.*

*There are the reasons; -*

*1. From the information available to us, the individual is a non-British citizen. And from our direct knowledge and experience he could never even secure a Security Clearance to visit any of the UK security/defence establishments or bases, leave alone work there. This shows that the person is not telling the truth.*

*2. The applicant's CV shows that he was training as an officer at RAF Cranwell whilst studying in PHD at Southampton, 200 miles. This is impossible unless he had access to a helicopter for shuttling between the two sites and different functions. In our view, this is not only suggests extreme untruthfulness on the part of the applicant, but could also be a fraudulent claim;*

*3. As an aeronautical society with deep and intimate knowledge of the aerospace industry with particular focus to aviation safety issues, we find it funny that somebody with any reasonable exposure to the safety procedures could claim the kind of claims on the CV. We need to point out in particular the role of airworthiness manager is not only very senior, but is critical to delivery of airworthiness products and services. Typical experience is over 20 years in other senior airworthiness related roles. potential appointees are people of high repute across the relevant sectors of the industry. This is not the kind of role for evidently, a novice. Your consideration for entertaining this kind of applicant even to an interview speaks volumes about your own management competencies in such critical matters. We know that nobody with scant capabilities in these could even contemplate making such wild claims;*

*We appeal to you to give this matter your utmost urgency as it has a direct impact on the management of aviation safety in Kenya. It is our earnest hope that our fears are totally unfounded and therefore would highly appreciate your earliest replying comments.*

*Yours sincerely,*

*Dr. Faustin Ondore*

*Chairman – Aeronautical Society of Kenya”.*

He averred that as a result of that publication by the defendants, whose contents were false in all material particulars and also malicious, the plaintiff's chances of securing an appointment to the position of Airworthiness Manager of the KCAA were hopelessly decimated and became virtually unattainable.

He contended that by the aforesaid words in their natural and ordinary meaning and in the full context in which they were published, the defendants meant inter alia; that the plaintiff is a crook; a monstrous liar; is extremely dishonest and untruthful; is a fraudster and is a deceiver per excellence and had cheated the KCAA to such an extent that KCAA had gullibly proceeded to shortlist and call him for an interview while he possessed at best, scant capabilities for the position he was being interviewed for.

He averred that by publication of the said words, the plaintiff has been greatly injured and his reputation lowered in the estimation of the right thinking members of the society and in particular in the estimation of the members of the aviation fraternity and engineering industry, his peers, professional colleagues and fellow engineers. That as a result, his exemplary unblemished reputation as a respectable academician, meticulous engineer and able aviator were diminished and he was exposed to scandal, ridicule, odium and contempt in the eyes of his peers and fellow academicians and all those known to him.

He asserted that in publishing the offending words, the defendants were actuated by actual malice, gross negligence and the defendants fully understood and knew the words and the facts therein stated were untrue, malicious and ill motivated. He prayed for judgement for the reliefs he has sought.

The defendants denied the plaintiff's claim vide their joint statement of defence filed on 27<sup>th</sup> March, 2015. They denied authoring the letter dated the 31<sup>st</sup> January, 2014. In the alternative, and without prejudice to the foregoing, they averred that the contents of the aforesaid letter were not false or malicious as alleged by the plaintiff. They contended that the recruitment of Airworthiness manager by KCAA was a matter of national and public interest and being the society with most expertise in matters of aviation, they were justified in raising the concerns addressed in the said letter.

The defendants further averred that their concerns were fair comment, and were published in good faith, without malice as a matter of public interest and that the position that the plaintiff was seeking being that of a public officer, it was within their right in exercising their constitutional right of self-expression. That the first defendant is under a social and moral duty to question the conduct of the employing authority to wit KCAA, as well as any potential employees of the authority.

They denied that the alleged letter was meant in any way to harm the reputation of the plaintiff or expose him to scandal, ridicule, odium or contempt in the eyes of his peers or at all nor was it actuated by malice or gross negligence. They stated that the letter was motivated by desire to safeguard the public interest in demanding for a transparent system of recruitment as well as to forestall abuse of recruitment process. They denied having been served with any demand letter or a request to make apology to the plaintiff or admission of liability.

At the hearing of the suit, the plaintiff and the 2<sup>nd</sup> defendant testified as the sole witnesses in support of their respective cases.

The plaintiff started by setting out his professional and academic qualifications and stated that in the year 2013, he spotted an advertisement from Kenya Civil Aviation Authority (herein referred to as KCAA) in the Nation Newspapers which was on a job offer of airworthiness manager and since he considered himself having qualified for it, he did apply and was called for an interview on the 14<sup>th</sup> day of November, 2013 and he was informed the results would be out in two (2) weeks' time.

He stated that on the 7<sup>th</sup> January, 2014 he wrote to KCAA enquiring about the results and they informed him that the Christmas festivities had slowed down the process. That in the beginning of February, 2014, he was called by Colonel Kioko, the then Director General, and on proceeding to his office, he handled him the letter dated 31<sup>st</sup> January, 2014 which letter was addressed to colonel Kioko and copied to the Nation and Standard newspapers. He averred that his reputation was damaged and the letter undermined all his professional qualifications and career. He produced the plaintiff's list of documents filed on 27<sup>th</sup> November, 2014.

The 2<sup>nd</sup> defendant in his evidence stated that he is a professor at the Technical University of Kenya and he also set out his professional and academic qualifications. He stated that during the period in question, he was the chairperson of the Aeronautical society of Kenya whose core membership areas is to ensure the safety of Aircraft operations in Kenya and whose core mandate is to protect the public safety in Aviation by ensuring that individuals and organizations hold the highest international standards in the world.

It was his further evidence that in executing the 1<sup>st</sup> Defendant's mandate, they deal with KCAA as the main focus organization because by law, it is mandated to ensure Kenya Aviation safety and Security and since KCAA was about to appoint an Airworthiness Manager which is a key position with reference to their work, the first defendant had interest on who was to be appointed.

That towards this end, the 1<sup>st</sup> defendant held a meeting on the 23<sup>rd</sup> November, 2013 during which, it was resolved that he writes a letter to the chairman of KCAA and express the concerns of the 1<sup>st</sup> defendant as it had transpired that the person who was about to be appointed had very interesting qualifications and experience. He stated that the letter was not sent to the organizations that it was copied to. He denied that the letter was defamatory but asserted that it was just a safety issue and he had no reason to ridicule or harm the reputation of the plaintiff. He produced the documents' in the defendants amended list filed on the 28<sup>th</sup> April, 2016.

At the close of the hearing, the court gave directions for parties to put in written submissions which this court has considered, together with the evidence on record and the authorities relied on.

From the pleadings, the court identifies the following issues for determination;

- a) Whether the publication dated the 31<sup>st</sup> January, 2014, is defamatory of the plaintiff.
- b) Whether the publication was published by the defendants.

- c) Whether the publication was false and malicious.
- d) Whether the defences of fair comment and privilege are available to the defendants.
- e) Whether the plaintiff suffered any loss or damage as a result of the publication and if so, whether he is entitled to the reliefs sought.
- f) Whether a demand letter was served upon the defendants by the plaintiff.
- g) Who should bear the costs of the suit.

As can be discerned from the pleadings and the evidence on record, the plaintiff's cause of action is based on defamation. In Kenya, the law on defamation is now well settled and is governed primarily by the Defamation Act, Cap 36 Laws of Kenya which has its foundation in the Constitution and in particular, Article 33 (3) which states as follows;

***“In the exercise of the right to freedom of expression every person shall respect the rights and reputation of others.”***

The tort of defamation is defined variously with not one agreed single definition that fits all. In the English case of **Scott vs. Sampson (1882) QBD 491 at Page 503 Dare J.** defined the word as follows;

***“A false statement about a man to his discredit”.***

In the well-known work of Winfield, the following definition is given;

***“It is a publication of 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.”***

On the other hand, Halsbury's laws of England vol. 28, 4<sup>th</sup> edition at para. 10 page 7 defines it as follows;

***“A defamatory statement is a statement which tends to lower a person in the estimation of the right thinking members of the society or cause him to be shunned or avoided or to expose him to hatred, contempt or injurious to him in his office, profession, calling, trade or business.”***

In the case of **Joseph Njogu Kamunge vs. Charles Mungai Gacheri (2016) eKLR** the court adopted the definition as set out in **Gatley on Libel and Slander** as follows;

***“The gist of the torts of libel and Slander is the publication of matter (Usually words) conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule to injure his reputation, his office, trade or profession or to injure his financial credit-----”***

The test for whether a statement is defamatory or not, is an objective one. It is not dependant on the intention of the publisher but on what a reasonable person reading the statement would perceive. In **Halsbury's Laws of England, 4<sup>th</sup> Edition**, the author opines that;

***“In deciding whether or not a statement is defamatory, the court must 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.”***

In the case herein, the cause of action is said to have arisen from the letter dated 31<sup>st</sup> January, 2014 written by the 2<sup>nd</sup> defendant as the chairman of the first defendant.

It was written to Colonel Kioko, the then Director General of KCAA and copied to Kenya Anti-Corruption Commission (KACC), the Nation Media Group limited and the Standard Media. The contents of the said letter are set out elsewhere in this judgment.

The plaintiff contends that the allegations in the said letter are false and/or untrue and that by reason of the publication and the circulation of the same, his reputation has been seriously injured.

In their defence, the defendant mainly relies on the defences of fair comment on a matter of public interest, justification and privilege.

I will now proceed to consider the issues for determination as set out hereinabove.

From the outset, it has not been denied that the letter was written by the 2<sup>nd</sup> defendant on behalf of the 1<sup>st</sup> defendant and that it refers to the plaintiff. What the court has to determine is whether it was defamatory of the plaintiff, whether the contents are false and malicious and whether the defences relied on by the defendants are available to them, in view of the evidence on record. The court will also determine if the plaintiff suffered loss and damage as a result of the publication. The issue of the service of the demand letter also arose and it is one of

the issues that this court will have to determine.

In the letter dated the 31<sup>st</sup> January, 2014, the defendants questioned the qualification and experience of some individuals who had applied for the position of Manager Airworthiness KCAA which they have stated, is a critical role and gave a warning that appointment of such individuals would undermine the very mandate of KCAA's air safety oversight function. They demanded that KCAA should refrain from making that, and other inappropriate appointments.

In the said letter, they gave the following reasons.

1. That the individual is a non-British citizen and from their direct knowledge and experience, he could never even secure a security clearance to visit the UK security/defence establishment or bases, leave alone work there.
2. The applicant's CV shows that he was an officer at RAF Cranwell whilst Studying in PHD at Southampton, 200 miles away. This, according to them, was impossible unless he had access to a helicopter for shuttling between the two sites and different functions.
3. As an aeronautical society with deep and intimate knowledge of the aerospace industry with particular focus to aviation safety issues, they find it funny that somebody with any reasonable exposure to the safety procedures could claim the kind of claims on the CV.

In his evidence, the plaintiff produced the following documents to attest to his qualifications and experience.;

1. Doctor of Philosophy degree in Engineering from university of Southampton which was marked as exhibit (2).
2. Master of Engineering degree, University of Southampton marked as exhibit (3).
3. Royal Airforce testimonial marked as exhibit (4)
4. Royal Air Force certificate of service marked as exhibit (5)
5. Royal Airforce Engineer specialist training qualification marked as exhibit (7).
6. A certificate of commission from her majesty the queen Elizabeth 11's community school (exhibit 10)
7. A permanent commission in the Royal Air Force Engineer branch (exhibit – 11)

The court notes that the authenticity of these documents was not challenged and/or disputed by the defendants.

The plaintiff's employment and his 10 years working experience with the Royal Airforce in the UK was also not disputed and more so, his academic and professional qualifications.

This court has perused the Advertisement that was carried out by KCAA for the position of Air Worthiness Manager and in particular the qualifications vis-à-vis the professional and academic qualifications attained by the plaintiff herein and I can safely state that he had met the required qualifications for that position. It is no wonder that he was shortlisted for the same and he was interviewed. In his own evidence, the 2<sup>nd</sup> defendant stated that the plaintiff was about to be appointed for that position. He had a working experience of ten (10) years but KCAA only required a five (5) years experience.

The defendants in their letter also raised the issue of whether the plaintiff could secure a security clearance. During the 2<sup>nd</sup> defendant's cross examination, he admitted that there are some exceptional cases when one can obtain the same. In any event, the plaintiff having produced a letter proving his employment with the RAF, this was a clear indication that the statement by the defendants about the plaintiff's capability of having the security clearance was disproved. The 2<sup>nd</sup> defendant also admitted that by the time he wrote the letter, they did not know that the plaintiff had a security clearance.

The plaintiff also explained how he was in training as an officer at RAF while studying in PHD at Southampton, 200 miles away and on a balance of probability the court is satisfied with his explanation. He stated that his PHD programme was not full time and he was not required to be in class on daily basis. His doctorate degree was not challenged by the defendants in any way.

On considering both the academic and professional qualifications of the plaintiff, I find that the contents of the letter dated 31<sup>st</sup> January, 2014 were defamatory of him. The defendants alleged that he was not qualified and that he did not possess the necessary qualifications which was not true. A perusal of his CV and his testimonials shows that he is truthful, he had met the requirements for the position that he applied for, and he is a person of integrity as borne out in the commission by the Queen. I concur with the plaintiff that the letter portrayed him as a dishonest person, a liar, a fraudster and lacking in integrity which must have injured his reputation. The letter dated 31<sup>st</sup> January, 2014 was written to Colonel Kioko in his official capacity and the same must have been read by other members of staff. From the evidence of the 2<sup>nd</sup> defendant and the wording of the aforesaid letter, there was a high possibility that the plaintiff could have secured the job.

On whether the publication was false and malicious, it is clear that it was out rightly false as can be borne out from the evidence of the plaintiff who was able to prove on a balance of probability that the allegations contained in the letter dated the 31<sup>st</sup> January, 2014 were not

true.

On whether there was malice on the part of the defendants, the 2<sup>nd</sup> defendant submitted that there was no malice as the plaintiff was not known to them either personally or professionally and that the letter was informed by the plaintiff's unsupported CV. That by calling him a novice, the defendants were only expressly their opinion, for whether or not a person is a novice, is a matter of practice in a particular industry.

It is trite that malice can be inferred and for it to be inferred, the language of the publication ought to have altered the facts and their meaning and there ought to be animosity.

In the case of *Phineas Nyaga vs. Gitobu Imanyara (2013) eKLR* Odunga J. held;

***“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 ----- malice may also be inferred from the relations between the parties.***

***-----the failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”***

On the other hand, malice can be assumed if what is stated in the publication is false and defamatory. see the case of *Gideon Mose vs. Onchwati*.

In the case of *Joseph Njogu Kamunge*, the court was also of the view that malice does not necessarily mean spite or ill will but there must be lack of justifiable cause to utter the words complained of. Evidence showing that the Defendant knew the words complained of were false or did not care to verify can be evidence of malice.”

The court has perused the letter complained of. In this regard, the 2<sup>nd</sup> defendant in his evidence stated that they wrote the same on the basis of the CV alone and they had not seen the documents. For example; he stated that he was not aware that the plaintiff had presented the security clearance certificate. Though it was his evidence that the plaintiff's documents were missing, he did not bother to ask the KCAA to request the plaintiff to provide them with copies for verification before they could write the letter yet, the plaintiff had referred to his academic and professional qualifications in his CV.

In his witness statement, the plaintiff stated that on or about 30<sup>th</sup> October 2013, he was called by Colonel Hilary Kioko who informed him that the documents he had presented were missing specifically his educational qualifications and work experience in the UK at RAF, which meant that his adulterated documents indicated that he had no university degrees and had not served with UK Royal Air force. He re-submitted the documents the same day ie. on 30/10/2013 to the KCAA (Complex) at JKIA. Going by that evidence, it therefore means that all the plaintiff's documents were available to KCAA by 31<sup>st</sup> January, 2014 when the letter was written. It is only that the defendants did not bother to ask for them from KCAA which in my view, is evidence of malice on the part of the defendants. Had they done so, they could have written the letter from point of information rather than from their own knowledge, as the 2<sup>nd</sup> defendant alleged.

The other evidence of malice is the language used in the publication. In as much as the 2<sup>nd</sup> defendant was doing the letter on behalf of the 1<sup>st</sup> defendant, the language used was uncalled for, harsh and derogatory. To borrow the words of Odunga J. in the case of *Phineas Nyaga(supra)*, the language used was utterly beyond and disproportionate. I therefore find that there was malice on the part of the defendants. It is also peculiar that the subject of the letter was the plaintiff, yet, there were other applicants who had applied for the same job which gave the impression that the defendants' interest in writing the letter was only on the plaintiff and not other applicants.

On the defences mounted by the defendants, in the case of *Joseph Njogu Kamunge vs. Charles Muriuki Gachari (2016) eKLR* the court had this to say about the defences available to a defendant in a defamation suit;

***“As pointed out above, there is a wide range of defences that may be pleaded in defamation but the one that is most famously associated with public interest is qualified privilege” the essence of this defence is that a person making a statement has a duty to do so and that the person who hears, or reads the statement has a corresponding interest in doing so. The defence is by no means limited to the publication of stories by the media but it is in that context that the idea of publication in the public interest is at its most pronounced”.***

The defendants herein relied on the defence of justification and fair comment on a matter of public interest.

In the case of *Grace Wangui Ngenye vs. Chris Kirubi & Another (2015) eKLR* the Court of Appeal held that fair comment ought to be based on facts that are either true or substantially true.

Also in the case of *Ndung'u Njoroge & Kwach Advocates & Another vs. Standard Limited & 8 Others (2018) eKLR*,

***“---Publication of a matter of public interest to the general public is protected by qualified privilege unless it is shown that the publication was irresponsible.”***

In the case herein, it fell upon the defendants to satisfy the following ingredients associated with the defence of fair comment as enunciated by the court of Appeal in the case of *Nation Media Group Limited & Another vs. Alfred Mutua (2017) eKLR* as follows;

**“First, the comment must be on a matter of public interest. Second, the comment must be recognizable as a comment, distinct from an imputation of fact. Third the comment must explicitly or implicitly indicate at least in general terms, what are the facts on which the comment is being made. the reader or the hearer should be in a position to judge for himself how far the comment was well founded. Fifth, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views.”**

With all due respect to the defendants, I find that they did not bring their allegations within the purview of public interest. They did not prove that the contents of the letter dated 31<sup>st</sup> January, 2014 were true or substantially true. To the contrary, the evidence availed by the plaintiff proved that the contents were false. In any event, this court having made a finding that there was malice on the part of the defendants, that displaces their defences of fair comment and justification as the same were not based on any truth.

On whether the defendants were served with a demand letter, the evidence available to this court is that the 2<sup>nd</sup> defendant is/was chairperson of the 1<sup>st</sup> defendant. The letter was, on 11<sup>th</sup> August, 2014 stamped by the chairman of the department of Aeronautical Engineering though there is no signature on the stamp. The 2<sup>nd</sup> defendant stated that he saw the letter for the first time in court and according to him, that is not the stamp that they were using at the material time because the college became a university in the year 2013. Though most of the stamp details are not legible, the words “*the school of engineering sciences and technology Kenya Polytechnic University College*” are legible. I find that the demand letter was served upon the 2<sup>nd</sup> defendants.

On whether the plaintiff is entitled to damages, having found that the letter was defamatory and that his reputation was injured, it therefore follows that he is entitled to damages as libel is actionable per se. On damages, the following factors are helpful in assessing damages as per David Price in his work titled; **Defamation law, procedure & practice (P. 161)**

1. The gravity of the allegation
2. The size and influence of the circulation.
3. The effect of the publication
4. The extent and nature of the plaintiff’s reputation
5. The behavior of the defendant
6. The behavior of the plaintiff.

The case of ***Jones vs. Pollard*** also set out some guiding principles in what should guide the court in arriving at a fair and reasonable award as follows;

- a) The objective features of the libel itself, such as gravity, its prominence, the circulation of the medium in which it was published.
- b) The effect of the plaintiff’s feeling not only from the prominence itself, but from the defendants conduct thereafter both up to and including the trial itself.
- c) Matters tending to mitigate damages, such as the publication of an apology.
- d) Matters tending to reduce damages.
- e) Vindication of the plaintiff’s reputation past and future

The plaintiff urged the court to award a sum of Kshs. 8,000,000/- as general damages and a further sum of Kshs. 2,000,000/- as exemplary damages basing their submission on the case of ***Musikari Kombo vs. Royal Media Services Limited (2018) eKLR (Civil Appeal no. 156/2017*** where Kshs. 5,000,000/- and Kshs. 1,000,000/- were awarded for general and exemplary damages respectively.

He also relied on the case of ***Hon. Uhuru Muigai Kenyatta vs. Baraza Limited (2011) eKLR*** where Kshs. 7,000,000/- was awarded as general damages.

On their part, the defendant did not make any submission on the quantum of damages.

The court has considered the submissions by the plaintiff and his academic and professional qualifications and being guided by the case of ***Musikari Kombo (supra)***, I find an award of Kshs. 4,000,000/- reasonable as general damages. The court has taken into account the medium of circulation and the fact that it was not widely circulated unlike libel that is circulated in National Newspapers.

The plaintiff had also prayed for exemplary damages. Exemplary damages unlike general damages go beyond compensation and are ordinarily meant to punish the offending party. Going by the evidence on record, I am of the view that the plaintiff is entitled to damages under this head. Being guided by the case of ***Ken Odongo & 2 Others Vs. James Okoth Obura t/a Okoth Obura & Co. Advocates (civil appeal No. 84/2009)***, I would award the plaintiff Kshs. 500,000/- as exemplary damages.

In the end, judgment is hereby entered in favour of the plaintiff and against the defendants jointly and severally in the following manner;

General damages                      Kshs. 4,000,000/-

Exemplary damages                    Kshs. 500,000/-

TOTAL                                      Kshs. 4,500,000/-

The general and exemplary damages to earn interest from the date of this judgment.

The Plaintiff is also awarded the costs of the suit.

Orders accordingly.

**Dated, signed and delivered at Nairobi this 15<sup>th</sup> day of October, 2020.**

.....

**L. NJUGUNA**

**JUDGE**

**In the presence of**

..... for the Plaintiff

.....for the Defendants