REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 549 OF 2012

SAMSON NJOKA MWENDA .....1ST PLAINTIFF

HILDA KAARI MWENDA .....2ND PLAINTIFF

VERSUS

CFC STANBIC BANK LIMITED .....1ST DEFENDANT

CREDIT REFERENCE BUREAU AFRICA LTD.....2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a plaint dated 29th August 2014, seeking for orders that judgment be entered against the Defendants jointly and severally in the following terms;

(a) Special damages in the sum of Kshs. 5,000,000.00

(b) Interest on (a) above at commercial rates from 4.2.2011 until payment in full;

(c) General damages for injurious falsehoods;

(d) Costs of this suit plus interest thereof;

(e) Any other or further relief the Honourable court deems fit to grant

2. The background facts of the case are that, the Plaintiffs applied for a house mortgage facility from the 1st Defendant and were granted the same. That, subsequently the facility was redeemed in full on 25th November 2010. Thereafter, they applied for another credit facility from Barclays Bank of Kenya Limited, for the purpose of completing the purchase of a house namely, MF 1817, situate on L.R. No. 25980 and for use of other financial obligations. However, that request was declined. Upon inquiry they established that, they had been listed as defaulters based on information forwarded by the 1st Defendant to the 2nd Defendant on 4th February 2011.

3. The Plaintiff argue that the adverse information was illegal, unlawful and irregular because; as at 4th February 2011, they did not owe the 1st Defendant any money; the 1st Defendant did not inform them that it had submitted their names to the 2nd Defendant as defaulters, which is in defiance of the Banking (Credit Reference Bureau) Regulations, 2008; and that the 1st Defendant did not issue them with advance notice; Further, in defiance of the aforesaid Regulations, the 2nd Defendant failed to implement strict quality control procedures in order to ensure the maximum possible accuracy of its database; and/or failed to take reasonable steps to ensure that the information maintained by it on the Plaintiffs was current, authentic, legitimate, reliable, accurate, truthful and it reflected the existing situation on the Plaintiffs and/or failed to promptly take the corrective measures necessary to correct the deficiencies on the Plaintiffs information, thereby causing them pecuniary damages.

4. That as a result of the Defendants aforesaid actions, the Plaintiff credit-worthiness was imperiled and were unable to complete the purchase of the house at Madaraka, yet they had paid 50% deposit for the house and were also unable to meet their other financial obligations. As a result they were injured in their credit, character and reputation, in their personal and business lives and were brought into hatred, ridicule and contempt.

5. The Plaintiffs argue that the Defendants employees and/or agents were actuated by extreme malevolence and intended to cause and have

caused them pecuniary damage, more particularly, failure to purchase flat number MF 1, then valued at Kshs. 5,000,000.00.

6. However, the 1st Defendant filed a statement of defence dated 29th October 2012 and denied the claims by the Plaintiffs, save for the fact that, it supplied the credit information to the 2nd Defendant. However, it was argued that, prior to the supply of the information, it gave the Plaintiffs notice on the 14th December 2009, that, it would submit their names to the 2nd Defendant for listing within 14 days, due to the Plaintiff's persistent default on the facilities advanced to them. But the Plaintiffs did not regularize their accounts in accordance with the notice and consequently, their details were forwarded to the 2nd Defendant for listing. In that case, the information submitted was in relation to default as at 7th April 2010. It was therefore neither irregular or unlawful, itt was accurate.

7. Similarly, the 2nd Defendant filed its statement of defence dated 29th October 2012 and denied the Plaintiffs claim save that, it received information from the 1st Defendant, in relation to the Plaintiffs, and merely in the lawful performance of its functions. That the handling of such information was and is the subject of a qualified privilege under Regulations 14(1) and 28(6) of the Regulations.

8. The 2nd Defendant pleaded that, in the alternative and without prejudice, under Regulation 14(1) of the Regulations, as read together with Section 31(4) of the Banking Act, Chapter 488 of the Laws of Kenya. It is mandated to facilitate the sharing of information concerning non-performing loans between Institutions licensed under the Banking Act. Therefore the information contained in its data base was not unlawful, illegal and irregular and/or actuated by extreme malevolence and/or intended to cause pecuniary or any other damage to the Plaintiffs.

9. It was further averred that, Regulation 28(3), (4) and (5) of the Banking (Credit Reference Bureau) Regulations, place a duty on the financial Institution licensed under the Banking Act, when providing any information to Credit Reference Bureaus; to provide accurate information to credit reference bureaus and to update all submitted customer information on a monthly basis or within such earlier time as an update is necessary; and give an amendment notice instruction to credit reference bureaus, to delete any inaccurate information and replace the deleted information with correct information whenever it became aware that the information previously submitted was inaccurate.

10. Therefore, if at all any information was provided to it by the 1st Defendant as alleged and if all such information was inaccurate and if at all the Plaintiffs have suffered any loss and/or damages therefrom, which is denied, the 1st Defendant is solely liable to the Plaintiffs and/or the 2nd Defendant is entitled to indemnity from the 1st Defendant.

11. The 2nd Defendant argued that, under Regulation 20(5) of the Regulations, where a customer of an institution licensed under the Act, believes that, the information contained in the database, maintained by a Credit Reference Bureau is inaccurate, erroneous or outdated, such customer is entitled to notify the Credit Reference Bureau in writing of the information disputed and upon receipt of such notice of dispute, the Credit Reference Bureau is under obligation to initiate an inquiry particulars whereof are provided for under Regulations 20(5) to (13) of the Regulations.

12. That, save for a demand for apology addressed to the 1st Defendant and copied to the 2nd Defendant, the Plaintiffs have never issued the 2nd Defendant with any notice of dispute under Regulation 20(5) of the Regulations so as to trigger the inquiry envisaged under Regulations 20(5) to (13) of the Regulations. Therefore, so long as the 2nd Defendant has not been put under inquiry through a notice of dispute, its duty under Regulations 17(c) of the Regulations cannot be deemed to have arisen. Therefore the suit is premature and amounts to abuse of the process of the court.

13. The 2nd Defendant further averred that, under Regulation 18(2) of the Regulations, financial institutions are prohibited from utilizing customer information maintained by Credit Reference Bureaus solely to affect the customer's chances of obtaining credit. Therefore, if at all the Plaintiffs were denied credit, as alleged or at all; the denial could not solely have been based on the listing undertaken by the 1st Defendant in the 2nd Defendant's database.

14. At the close of the pleadings, the case proceeded to a full hearing on 19th September 2017, whereby the 1st Plaintiff testified on his own behalf and on behalf of his wife the 2nd Plaintiff. He told the court that, the Plaintiffs obtained a mortgage facility in the sum of; Kenya Shillings Eleven Million (Kshs 11,000,000), from the 1st Defendant in June 2008. The mortgage was secured on their house situate on; LR No. 209/3151 Kileleshwa Maisonette No. 7, Mwingi Villas.

15. Subsequently, they decided to sell the house and sought for authority from the 1st Defendant to sell and it was granted. Upon agreement that the sale process would be channeled through the Plaintiff's mortgage account at the 1st Defendant's bank to redeem the mortgage debt, the house was then valued at Kenya Shillings, Twenty Two Million Five Hundred Thousands (Kshs. 22,500,000).

16. In the month of October 2010, they signed a sale agreement with the buyer of the house, for Kenya Shillings Nine Million Five Hundred (Kshs. 19,500,000), and the money was channeled as agreed. Thereafter, 1st Defendant deducted the outstanding mortgage debt of Kenya Shillings, Eleven Million Nine Hundred and Fifty Six Thousand Two Hundred and Eighty Five (Kshs. 11,956,285), and on 2nd November 2010, a discharge of charge was executed.

17. In the meantime, the Plaintiffs entered into a sale agreement to purchase an apartment at Madaraka and paid a deposit of Kenya shillings Two Million Three Hundred Thousand (Kshs. 2,300,000) with the intention of using the balance of the sale proceeds to complete the purchase. In the month of January 2011, they approached the 1st Defendant for a loan of Kenya Shillings, Two Million (Kshs 2,000,000) towards the purchase of the apartment, but they were informed to wait for six (6) months after clearing the mortgage debt. As the six (6) months period was long, they decided to approach Barclays Bank of Kenya Limited for the facility but it was declined for reasons already stated herein, mainly that, they had been listed in February 2011, by the 2nd Defendant on the ground that they had defaulted on loan repayment.

18. On further inquiry from the 1st Defendant, they were informed that, they had been listed because they had not paid insurance for the mortgage in 2011. However, after further consultation the 1st Defendant's officer conceded that there had been a mistake and promised to write to the 2nd Defendant to inform them that, the Plaintiffs had cleared the loan. Although the Plaintiffs thought the 2nd Defendant would remove their names entirely from the listing, but it simply updated the information, to the effect that, they had cleared the debt but the Plaintiffs names still remained as a defaulters.

19. The Plaintiffs then returned to Barclays Bank of Kenya Limited, for review of its decision on the loan application but the bank declined again as the 2nd Plaintiff was still on the listing. Therefore they were unable to get credit facilities anywhere and/or invest in the apartment at Madaraka. As a result, they suffered great loss, which created financial strain to an extent of not being able to meet regular financial obligations such as rent payment, school fees for their children, and payment for medical treatment for 2nd Plaintiff.

20. However the 1st Defendant in response, testified on 10th November 2017 through its credit manager one Ann Kaswii Muli, whereupon, she joined issues with the Plaintiffs on the request for a loan facility and the subsequent charging of the Plaintiff's property to secure the same. However she stated that the Plaintiffs defaulted on loan repayment on numerous occasions,, whereupon the 1st Defendant wrote to them on 8th September 2009, requesting for the immediate repayment of the outstanding arrears with notice that failure to pay the arrears would lead to forwarding of their details to the Credit Reference Bureau.

21. The 1st Defendant reiterated that the recourse of forwarding the Plaintiff's names for listing by a Credit Reference Bureau was clearly spelt out in terms and conditions attached to the agreement between the parties and that, they were issued with a listing warning that, if they did not regularize their ongoing default within fourteen (14) days period of the listing notice, the 1st Defendant would forward their names to the 2nd Defendant for listing. As such the 1st Defendant had no choice but to forward their names to the 2nd Defendant for listing.

22. That, quite contrary to the assertions by the Plaintiffs, that the default complained of, was default as at 7th April 2010 and the 1st Defendant testified that the date at which the complaint was made by the 1st Defendant is marked, in the Consumer Credit Report as the Delinquency date as 7th April 2010, yet the Plaintiffs only redeemed the mortgage on 25th November 2010, months after the delinquency date and after selling the mortgage property.

23. Finally, the 2nd Defendant testified that, it is not privy to any dealings or transactions entered into by the Plaintiffs for the purchase of any flat as such they cannot be held liable for any such purported transactions falling through.

24. At the close of the hearing of the case, the parties filed their respective submissions. I have considered the same alongside the pleadings herein and the evidence adduced. I find that, the issues that have arisen for consideration are as follows;

> *(a) Whether the Plaintiffs and the 1st Defendant entered into any contract for provision of a credit facility to the Plaintiffs and if so,*
>
> *(b) Whether the same was advanced and if so, whether it was fully repaid and/or there default in the repayment;*
>
> *(c) If there was default, wether the 1st Defendant was justified in forwarding the 1st Plaintiff's name to the 2nd Defendant for listing; and*
>
> *(d) whether the Plaintiff is entitled to the prayers sought fr herein*

25. I have considered documents produced by the parties, in relation to the 1st issue and I find that, there is no dispute that the Plaintiffs applied for a home mortgage loan from the 1st Defendant vide an application dated 14th May 2007. Subsequently, the 1st Defendant issued the Plaintiff with a letter of offer on 12th July 2007. According to the loan statement produced by the 1st Defendant, the loan was disbursed on 6th May 2010 and the charge document executed on 13th June 2008.

26. However, it is conceded that the loan was irregularly serviced by the 1st Plaintiff as admitted during cross examination although eventually, it was fully repaid on 28th November 2010, as confirmed by the 1st Defendant. The question that arises is; when did the 1st Defendant forward the information and/or details to the 2nd Defendant for listing? Was it before or after the loan had been repaid in full. According to the 1st Defendant, there was a history of delinquency on the Plaintiffs loan account, and on 8th September 2009, it wrote to the Plaintiffs for immediate repayment of the outstanding arrears. A copy of this letter was produced by the 1st Defendant and state inter alia, as follows;

> *"Also take note that as per Central Bank Credit Reference Bureau Regulations 2008, we shall have your name and credit history listed with the Credit Reference Bureau. This information will be available to every financial institution, thereby hampering your ability to obtain credit both locally and internationally."*

27. Further, on 14th December 2009, the 1st Defendant again wrote to the Plaintiffs issuing them with a listing notice which stated as follows:-

> *"Please take note that we are proceeding to have your name and credit details listed with Credit Reference Bureau as a defaulter. This will be done in the next Fourteen (14) days from the date hereof, unless you make full payment of your outstanding balance before expiry of this notice."*

28. I find that, indeed at the time the two letters were written, the Plaintiffs were in default of repayment of the loan facility and in arrears. But as per the notice of 14th December 2009, the details and/or particulars of the Plaintiffs should have been referred to the Credit Reference Bureau by 28th December 2009. But when were they forwarded?

29. According to the Plaintiffs' evidence, they learnt from Barclays Bank of Kenya Limited, that they had been adversely listed with the 2nd Defendant as defaulters on 4th February 2011.

30. It suffices to note that, the Plaintiff had fully repaid the loan by the 28th November 2010, as evidenced by a letter dated 22nd December 2010 written by CH Coulson Harney Advocates, to the firm of Muriu Mungai & Company Advocates, in which the author gives the details of disbursement of; Kenya Shillings Sixteen Million Six Hundred and Fifty Thousand (Kshs 16,650,000) realized from the sale of the security property in that, a sum, Kenya Shillings Twelve Thousand (Kshs. 12,000), was paid to the 1st Defendant to offset the outstanding balance on the house mortgage facility advanced to the Plaintiffs. On 2nd November 2010, a discharge of charge was registered with the Lands registry effectively discharging the property from encumbrance, arising from the money advanced to the plaintiffs from by the 1st Defendant. The question however remains, when was the listing information send to the 2nd Defendant. I shall revert back to this question.

31. At this stage, it may suffice to consider the law on the listing of defaulters with Credit Reference Bureau. In that regard, Section 3(b) and (4) Banking Act or Regulations provides as follows:

> *"3(b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006), institutions licensed under the Sacco Societies Act, 2008 (No. 14 of 2008), institutions registered under the Co-operative Societies Act (Cap. 490), public utility companies and any other institution mandated to share credit information under any written law shall, in the ordinary course of business and in such manner and to such extent as the Cabinet Secretary may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):*
>
> *Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement, (4) Without prejudice to the generality of subsection (3)(b) or (c), regulations under that subsection may provide for the establishment and operation of credit reference bureaus, for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and institutions licensed under the Microfinance Act, 2006, and the Sacco Societies Act, 2008, and public utility companies and any other institution mandated to share credit information under any written law and disseminating it amongst such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed".*

32. It is clear that, the 1st Defendant is a Bank as defined under Section 2 of the Act and mandated to share credit information and/or collect or disseminate the information among authorised institutions and the 2nd Defendant is a limited liability company duly licensed by the Central Bank of Kenya to carry on business as a Credit Reference Bureau under Section 31(3)(b) and (c) and (4) of the Banking Act. Therefore, they fall under the provisions of Section or Regulations

33. However, it is noteworthy that, Regulation 18 of the Credit Reference Bureau Regulations 2008 (herein "the Regulations") mandates the 1st Defendant to share information with third parties and states as follows:-

> *"18. (1) Customer information which shall be exchanged pursuant to these Regulations is any customer information concerning a customer's non-performing loan and any other negative information and may include details specified in sub-regulation (4).*
>
> *(2) An institution licensed under the Banking Act shall in addition to exchanging the information required under sub-regulation (1), exchange positive information of their customers with Bureaus.*
>
> *(3)An institution other than banks may in addition to exchanging the information required under sub-regulation (1), exchange positive information with Bureaus with prior written consent of the customers concerned.*

39. Further, Regulation 28(1)(3) and (4) lays down the responsibilities of the institution empowered under Section 2 of the Banking Act to disseminate and share customers' information. These regulations states as follows:-

> *"28(1) Institutions shall be required to-*
>
> *(a) notify each customer of the name and address of the Bureaus to which the customer's information has been submitted under these Regulations, within thirty days of the first listing of the customers' information with the Bureaus;*
>
> *(b) issue an adverse action notice to a customer against whom a decision has been taken or determination made, in whole or in part, that is adverse to the interests of the customer based on information obtained from a Bureau;*
>
> *(c) the adverse action notice shall be provided at the time the adverse decision or determination is communicated to the customer and shall notify the customer-*
>
> *(i) that customer information played a role in the decision;*

(ii) the name, address and telephone number of the Bureau that provided the customer information;

(iii) the customer's right to a free copy of the information provided by the Bureau; and

(i) the customer's right to dispute such information with the bureau, if erroneous or out-dated, have it corrected.

28(3) Institutions shall be responsible for providing accurate information to Bureaus;

28(4) Institutions shall be entirely responsible and under obligation to submit and update all customer information to the Bureau in accordance with these Regulations."

40. It is against the background of these provisions that, I shall consider inter alia, whether the 1st Defendant gave the Plaintiff notice of its intention to list them with the 2nd Defendant and/or any other bureau. As already stated, on 14th December 2009, the 1st Defendant gave the Plaintiff a notice that it would list them with Credit Reference Bureau due to the arrears of Kenya shillings 125,360.00 as at 8th September 2009. The Plaintiffs did not dispute this issuance and/or receipt of this notice. Therefore, it suffices as notice prior to listing. The notice was for fourteen (14) days and therefore it expired on 28th December 2009.

41. However, it does appear that, the 1st Defendant did not send the particulars of the Plaintiffs to the 2nd Defendant immediately upon the expiry of this notice. This is informed by the fact that, according to the Consumer Credit Reference Report, the date of listing of the complaint is indicated as 4th February 2011 and the delinquency date is indicated to be 7th April 2010. If these dates are correct, then it follows that at the time the information was forwarded to the 2nd Defendant, the Plaintiffs had already repaid the loan by the 28th November 2010.

41. However, the Report given to the Plaintiffs by the 2nd Defendant on 4th May 2011 clearly indicates that the loan had been fully repaid, but there is no clear indication as to when this information was updated after the listing date, but it seems to have been updated after the Plaintiffs learnt of the adverse listing and approached the 1st Defendant to inquire into the same. This evidence by the fact that the record from the 2nd Defendant indicates that the 1st Defendant made inquiry on the Plaintiffs after the Bank's inquiry.

42. In conclusion I find that, indeed the Plaintiffs defaulted on the repayment of the loan and they were served with the default notice and notice of listing. However, the listing was not done immediately and subsequently the Plaintiffs fully repaid the loan. But at the time of the listing, the loan was fully repaid. In that regard, any information given to the 2nd Defendant was not correct.

43. The 1st Defendant was duty bound pursuant to Regulation 28 to give the correct information to the 2nd Defendant. If the correct information had been given to the 2nd Defendant, it would have indicated that at the date of listing, the loan had been fully repaid and there would be no need for the adverse listing. As a result any natural and probable consequences arising out of the adverse listing will be borne by the 1st Defendant.

44. I have considered the submissions by the 2nd Defendant to the effect that they simply acted on the information received and are under no duty to verify that it is correct. Further the Plaintiffs did not serve them with a notice of dispute as required under Regulation 20(5) and (13) to enable them enquire into the accuracy of information provided and/or correct the same. I am in total agreement that the Plaintiff did lodge formal complaint with the 2nd Defendant and in that case, the 2nd Defendant cannot be held liable for any inaccurate information and/or probable or natural consequences arising therefrom. I therefore find that, the 1st Defendant is wholly to blame for the information that was forwarded to the 2nd Defendant.

45. I shall now deal with the prayers in the plaint. The Plaintiffs seek for general damages of Kshs. 5,000,000. They produced a sale agreement dated 10th December 2010 made between one Jaqueline Githinji and themselves for the sale of a property described as Flat No. MF 18H erected on L.R. No. 25980 situate at Madaraka Estate Flats. The consideration thereof was Kshs. 5,000,000. The evidence reveals the Plaintiffs were to pay Kshs. 2,500,000 upon signing of the sale agreement. Therefore, they were only seeking for finance of Kshs. 2,500,000. In that case, if they suffered any loss arising out of lack of finance, it would only be to the extent of 50% purchase price, which is Kshs. 2,500,000.

46. Be that as it were, as per the letter of 10th December 2010, from the firm of Nduati & Company Advocates, representing the vendor in the sale, it does occur that the Plaintiffs were not able to pay the 50% purchase price payable immediately upon signing the sale agreement. In a further letter dated 16th December 2010, it is indicated that the Plaintiffs had paid Kshs. 2,000,000 and the vendors Advocate was demanding the balance of Kshs. 500,000. A further demand letter dated 9th May 2011 written by the vendor indicates that, the balance of Kshs. 2,500,000 payable by the Plaintiffs was Kshs. 150,000.

47. From the report issued by the 2nd Defendant, it is indicated that, Barclays Bank of Kenya Limited made an enquiry on the Plaintiffs credit worthiness on 28th April 2011, by that time the Plaintiffs had not even fully repaid their 50%. In that case, the aborted sale, cannot be fully blamed on lack of finance by Barclays Bank of Kenya Limited. In fact, in the letter dated 16th May 2011, the Plaintiffs' lawyer writes to the vendor's lawyer stating that the clients were still desirous of completing the sale. But there is no indication that by that they had paid the 50% deposit of the purchase price payable by the Plaintiffs by then.

48. Further, it is noteworthy that, the claim of Kshs. 5,000,000 is pleaded as special damages. The law is very clear, that special damages must not only be pleaded but must be specifically proved. There is no proof thereof herein.

49. The next prayer seeks for general damages for injurious falsehood. The Plaintiffs averred in the pleadings, that were injured in their in their credit, character and reputation, both in their personal and business lives, and were brought into hatred, ridicule and contempt. In their final submissions, they sought for exemplary damages in the sum of Kshs. 500,000 and punitive damages in the sum of Kshs. 5,000,000. However, the 1st Defendant submitted that, the quantum of damage alleged is unsupported. The 2nd Defendant in lengthy and elaborate submissions on the issue argued that the Plaintiffs claim on injurious falsehood is baseless and cannot be sustained on the ground inter alia that they did not plead to injurious falsehood or words in verbatim. That the claim is statute barred and the defences of justification, qualified privilege are available against the claim.

50. The 2nd Defendant further submitted that, even if the court were to assess general damages in favour of the Plaintiffs, the court should be guided by principles laid down by the case of; *Ken Odondi & 2 Others vs James Okoth Omburah t/a Okoth Omburah & Company Advocates (2013) eKLR* and take note of the fact that in the instant case, the purported libel was not published to the general public but only two institutions, the Plaintiff and Barclays Bank of Kenya Limited. Further, the inconvenience suffered, was only temporary in nature. The 2nd Defendant suggested that an award of Kshs. 500,000 as general damages would be adequate and relied on the case of; *Jamlick Gichuhi Mwangi vs Kenya Commercial Bank Limited & Another (2016) eKLR.*

51. In my considered opinion, the evidence availed through the report from the 2nd Defendant produced by the Plaintiffs is that the adverse listing was limited to Barclays Bank Kenya Limited and CFC Stanbic Limited who made an enquiry about the Plaintiff's listing. Indeed as already found herein, there is no evidence that the failure to purchase property in Madaraka Estate was purely because of the adverse listing. Even then, the evidence reveals that at the time the Plaintiffs were given the report by the 2nd Defendant on 4th May 2011, it was clearly indicating that the loan had fully been repaid. Barclays Bank Limited had just made an enquiry hardly five days earlier being the 28th April 2011.

52. In addition, the Plaintiffs merely aver that they applied for a credit facility from Barclays Bank of Kenya Limited, there is no evidence of the same neither do they indicate the exact date they applied for this facility, taking into account they had repaid the loan on 25th November 2011 and only five (5) months had gone by. Even then, before re-applying, the Plaintiffs therefore had an opportunity to file a notice of dispute with the 2nd Defendant to cause the deletion of suspect information, they did not.

53. Therefore, the assessment of general damages will take into account these factors. In that regard I enter Judgment in favour of the Plaintiffs as against the 1st Defendant in the sum of Kshs. 1,000,000 as general damages, plus costs and interest at court rates from the date of this Judgment to payment thereof in full. The costs of the suit be borne by the 1st Defendant. The suit as against the 2nd Defendant is dismissed with costs.

54. Those then are the orders of the court.

Dated, delivered and signed in an open court this 6th day of May 2019.

G.L. NZIOKA

JUDGE

In the presence of;

Ms. Nyambura for Kipkorir for the Plaintiffs

Ms. Abuya for Mr. Ogunde for the 1st Defendant and

holding brief for Mr. Kissinger for the 2nd Defendant

Dennis……..Court Assistant