



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 446 OF 2006

DR. CHRISTOPHER NDARATHI MURUNGARU.....PLAINTIFF

VERSUS

JOHN GITHONGO..... DEFENDANT

JUDGEMENT

1. The plaintiff herein filed a tortuous action against the defendant vide the plaint dated 28th April 2006 in which he sought for the following reliefs:

a) An order of injunction to restrain the defendant, his servants and or agents from further publishing words or articles relating to the plaintiff and in particular linking the plaintiff to corrupt activities and the Anglo-leasing affair.

b) General damages for libel.

c) Aggravated, punitive and exemplary damages for libel.

d) Costs of the suit.

e) Interest on (b) and (c) above.

f) Any other or further relief this court deems fit to grant.

2. The defendant filed a defence to deny the plaintiff's claim and allegations. The defendant further set up the defences of qualified privilege and averred that publication was a matter of important public interest.

3. When this suit came up for hearing, the plaintiff testified and summoned four witnesses namely: Rev. Bildad Wang'ondy (PW2), Gladys Wanjiru Wambugu (PW3), Eliud Njua Njuma (PW4) and Nicholas Kamau Warui (PW5) to testify in support of his case. The defendant on the other hand too testified and summoned one Joseph Odindo (DW2) to testify in support of his defence.

4. It is the evidence of Dr. Christopher Ndarathi Murungaru (PW1) that on 22.11.2005, John Githongo (DW1), the defendant herein, published and or caused to be published a report and or statement which was referred to by the Print and electronic media as "**The Githongo Dossier**" ostensibly addressed to H. E. Mwai Kibaki, the former President of the Republic of Kenya.

5. PW1 referred the following portion of the report and or statement which he claimed was defamatory to him:

"While attending a money laundering conference in Mombasa that was opened by Hon. David Mwiraria, the Minister of Finance, Hon. Mwiraria pulled me aside during a break and told me that Hon. Murungaru had recently called him. Apparently Murungaru had asked Mwiraria to ask me whether I had authorized an investigation into the bank accounts of an individual called Anura Parera at Equitorial bank

Those mentioned by the investigators at this stage included Hon. Moody Awori, Hon. Kiraitu Murungi, Hon. David Mwiraria, Hon. Chris Murungaru, Ps Home Affairs, Mr. Sylvester Mwaliko, PS Finance, Mr. Joseph Magari, PS Internal Security Mr. David Mwangi, Mr. Alfred Getonga, Mr. Deepak Kamani and Mr. Jimmy Wanjigi

... on 4th of May 2004, I was invited to lunch by Hon. Kiraitu at the Vice President's home. Minister Murungaru also attended. We had an inconclusive discussion on the Anglo Leasing matter which I briefed you on later. The ministers questioned the need for an investigation into the matter since the Vice President had already given a parliamentary statement...

....They explained while interviewing PS Magari he had pointed out to them that Hon. Murungaru had asked for them to pull back.....

.... Hon. Kiraitu told me that we had to be careful that the investigation did not knock out key political people like Alfie and Murungaru. He argued that these were key players at the very heart of government'....

...He expressed concern that he'd heard I was investigating him, Hon. Murungaru and even Brig. Boinett. On the 20th May, 2004, Hon. Kiraitu Murungi called me to his office in the afternoon. He warned me that I needed to 'go easy' on 'our friends' Murungaru and Alfie in particular, Hon. Kiraitu pulled out a file given to him by the lawyer (A.H) Malik. ...Hon. Kiraitu emphasized the nervousness of Alfie Getonga and Hon. Murungaru with what I was doing and the risk of a major political fallout as a result. He said 'you know we have lost Keriri already, if Chris is dropped and Alfie is dropped – we are in trouble, the enemy will have won'.

.....After my meeting with the PAC I visited a senior politician who had been seeking for us to have a chat. I was aware that he was in close contact with both Hon. Murungi and Hon. Murungaru and had calculated that being a friend of my father he may communicate to me messages that perhaps the two leaders may have wanted to emphasize to me. He warned me that 'Murungaru would not let you destroy them, they will kill you first'. He emphasized repeatedly that my security was now an issue and he hoped that I would take more of a back seat in the Anglo Leasing investigations. He also warned me quite logically that if the stability of the regime was threatened by my work then the President would stop backing me. He told me Alfie Getonga was going around complaining openly about my work; Hon. Kiraitu was accusing me of working for foreigners and Murungaru was threatening my life directly. His final piece of advice was that I needed to visit the President together with my father and advise him of my dilemma.

.... Your Excellency; on that night I briefed you on how the PAC session had gone and the fact that Hon. Kiraitu had indicated to me that in every likelihood Hon. Murungaru and Alfred Getonga were behind the Anglo Leasing matter.

....Later the same day, after a briefing lunch for the diplomatic community Dave Mwangi the PS in Hon. Murungaru's docket called me for a meeting which I attended. He said that Hon. Murungaru and others he did not name were concerned about whether or not I appreciated the political implications of my investigations. I had been advised by an assortment of sources that the resurrection of this project under our administration had been engineered by the likes of Deepak Kamani, Jimmy Wanjigi, Chris Murungaru, Dave Mwangi, Alfred Getonga, Mr. C. Oyula the Financial Secretary, among others Kiraitu claimed that he had also raised the corruption allegations with Hon. Murungaru who had never responded conclusively.

..... Indeed on the 11th of June, 2004 Hon. Kiraitu called me sounding agitated and told me that Hon. Chris Murungaru had called him while on an overseas trip in the UK to ask what was happening with regard to the Ojiambo matter.

He said he would drop in on me later that day.

..... over these days Hon. Mwiraria, PS Dave Mwangi, Hon. Murungaru, Hon. Nyachae and Hon. Murungi all directly or indirectly opposed the arrest of Ojiambo ostensibly on the grounds that he might implicate senior people in the government and cause it to fall.

.... Your Excellency, you asked me who I believed was behind Anglo Leasing and Finance and, I told you that in my convinced opinion the Hon. Vice President, Hon. Murungaru, Alfred Getonga, Hon. Mwiraria, former PS Magari Financial Secretary Oyula, former PS Mwaliko and perhaps Hon. Kiraitu knew who Anglo Leasing were. This was especially the case because Hon. Kiraitu had admitted to me the involvement of Hon. Murungaru and Mr. Alfred Getonga for example on 11th June, 2004.

..... I responded to your agreement that they were mostly locals and concluded even 'some of our own people including the Vice President, Murungaru, Alfred Getonga, Magari, Mwaliko, Oyula and Onyonka (the head of the debt management department at the treasury). I remember Your Excellency, that I proceeded as well to inform you that we probably had several other odd contracts in the security sector.

..... On 29th June, 2004, I met with Hon. Kiraitu at his office. Essentially, he said it that it was now clear that Anglo Leasing was 'us' – our people. He said that no matter what, he did not have what it took to order or countenance the arrest of Chris Murungaru for corruption because 'they had too much history'. He was blunt and emotional. He admitted that people like Murungaru were key to the transactions of Anglo Leasing and even though he personally did not have the details, the excuse given to him was that the money was needed for political fund raising. Hon. Kiraitu told me that he had done all he could to try and save me but Hon. Murungaru, Alfie Getonga, Hon. Mwiraria and Ambassador Muthaura had convinced H. E. the President that I had to be moved.

... I remember informing your Excellency that surely Boinett of NSIS, Murungaru and his PS Dave Mwangi could track down this man because all their departments had been working with him for some time. On 6th June, 2004 Hon. Kiraitu Murungi stepped into my office looking exhausted. He blamed Muthaura and Hon. Murungaru for the botched attempt to demote me. He said he had advised against it but they had not listened.

... I will admit your Excellency, to being slightly troubled during this time because H.E. made a number of public announcements seeking evidence before action on graft. This was despite the fact that individuals like Hon. Murungi had admitted to me openly that the issues being investigated by the KACC were engineered by the likes of Hon. Murungaru and Alfred Getonga.

.... The next day Hon. Kiraitu Murungi and I had a long meeting about political party financing. I expressed to him my disquiet at the contradictions caused by the fact that we were fighting corruption on one side and this fight was in direct contradiction with the supposedly 'resource mobilization' efforts of people like Hon. Murungaru and others. In our discussion on political party funding with Hon. Kiraitu Murungi, he admitted Anglo Leasing and other such deals were essentially part of 'resource mobilization' carried out essentially by Hon. Murungaru and Alfred Getonga. He repeated his fear that he expected another Goldenberg type scandal to be generated from our struggle to hold together the coalition. Both implicitly and explicitly he had indicated that H.E. the President knew all about these shenanigans. We agreed that the matter should be kept low profile though I feel we also agreed that at the lest we should get to the bottom of all these strange goings on. We had a major graft problem and it was been perpetrated by characters within our administration.

.... on 24th October, 2004, I met with Simeon Nyachae .. we discussed the fact that high level corruption was everywhere and acknowledged that people like Hon. Murungaru were involved in Anglo Leasing. He explained that Hon. Murungaru were involved in raising ksh.5 billion for the next election through these schemes. Naturally, I was deeply frustrated by the limited action despite the evidence available.

.....I had a long meeting with Joseph Kinyua .. for the first time, Kinyua enunciated his concerns about the integrity of his own minister Mwiraria, Murungaru and other key figures.

..... on 14th January, 2005, Hon. Kiraitu came up to my office and pointed at me and said that party elections were around the corner and I was the one holding up the financing of these elections. ... the last time we had spoken, he suggested a meeting with Mwiraria to agree on a transparent system of financing elections but (in this meeting) he said he'd organize a meeting between Chris Murungaru and me. It was a bizarre discussion with Hon. Kiraitu opening up to me in a totally unusual manner – essentially admitting the suspect contracts I had spent the past year pursuing were all along schemes to raise political finance and by interfering with them I was undermining the party. He confirmed that the people who knew Perera were Hon. Murungaru and Alfred Getonga.

.... on 20th January, 2005, I had the same conversation with Hon. Kiraitu and Hon. Murungaru. I played possum throughout. Hon. Murungaru pointed out that H.E the President had once been Minister for Finance and understood how these things were done.”

6. The plaintiff stated that upon reading the aforementioned report and the words and or statements he was mentally anguished at the adverse, malicious and baseless reference made on him. PW1 also stated that the publication caused consternation and anxiety among his constituents, family, friends, clergy and business associates who contacted him severally over the publication.

7. The plaintiff further stated that the publication was not founded by any evidence linking him to corrupt dealings but instead, the words consist of a pack of falsehoods, rumors, gossips and hearsay. PW1 also alleged that the defendant posted and or caused to be posted and published the said report and defamatory words on the internet and circulated worldwide. He mentioned the following websites that published and circulated the report namely:

<http://jukwani.proboards.com/ubdex.cgi?board=jukwaa&action=print&thread=134> and
<http://www.scribd.com/doc/2204881/GITHONGO-REPORT>

8. The plaintiff also stated that the defendant caused to be published the offensive publication which were serialized verbatim by all the print media in Kenya and posted on the internet in their respective websites for worldwide circulation. PW1 further said that the defendant gave interviews to broadcasting stations such as British Broadcasting Corporation (BBC) and gave lectures in many parts of the world thus repeating the publication of the offensive words and statements.

9. PW1 further stated that the publications in their natural and ordinary meaning meant and were understood to mean that he inter alia engaged in corrupt practices, lacking in integrity and honesty, involved in obstruction of justice, unfit to hold public office, was the mastermind and or the key architect of Anglo-leasing scandal and that he has no regard to the rule of law and common decency.

10. The plaintiff also stated that the publications were calculated to injure, discredit, intimidate and destroy him in his personal, political and professional image and that the timing of the publication was calculated to inflict maximum political damage to his career.

11. PW1 alleged that as a result of the publication his reputation was gravely injure and that he has suffered both mental agony and embarrassment.

12. The plaintiff also referred to the book authored by Michela Wrong titled “IT’S OUR TURN TO EAT” the story of a Kenyan Whistle blower, published in 2009 stating that the book drew heavily from the ‘Githongo Dossier’. He also pointed out that the book came complete with his portrait in the background of ksh.1000/= notes indicating pictorially that is what he is alleged to be eating from the public funds.

13. In a nutshell, the plaintiff said that on 22.11.2005, the defendant fired a forwarding letter to H.E. Mwai Kibaki, the third President of the Republic of Kenya depicting him as a high priest of graft and that he was further depicted as the fulcrum on which Anglo-leasing type of contracts rotate.

14. It was further stated by the plaintiff that although the ‘Githongo dossier’ was specifically addressed to H.E the President of the Republic of Kenya, the defendant deliberately disseminated it to the whole world through various media channels. PW1 also said that the “Githongo Dossier” was aired in television stations such as KBC, NTV, CNN, BBC and Aljazeera as well as all radio stations broadcasted the contents of the dossier.

15. It's further the evidence of PW1 that at the time of the publication, he was an elected member of Parliament for Kieni Constituency, a cabinet minister, a pharmacist and a businessman.
16. PW1 summoned the evidence of four witnesses to testify in support of his assertion that he was a man of good reputation and that the publication ruined that reputation.
17. Bildad Wang'ondy Maigua (PW2), a priest of the Anglican Church of Kenya, Mweiga parish in Kieni Constituency stated that he has personally known the plaintiff for over 20 years. PW2 stated that the plaintiff is a man of integrity, decorum and vision. He said that he was shocked when he came across the serialized report published by the local dailies and labeled the "**Githongo Dossier**".
18. PW2 stated that he understood the publication to mean that the plaintiff was corrupt, lacks integrity, unsuitable to hold public office and that he has no regard for the rule of law. He said the publication came as an absolute shock to him.
19. PW2 also stated that due to the relationship he forged with PW1 and knowing the values and the principles he stood for, he did not believe the vicious and malicious allegations leveled against the plaintiff. PW2 however pointed out that as a result of the publication members of his church and the general population in Kieni Constituency lost confidence in his ability to lead them and therefore he was unable to retain his parliamentary seat for the aforesaid Constituency.
20. Gladys Wanjiru Wambugu (PW3) said that she had known the plaintiff for over 20 years and that she supported him when he vied for the seat of Member of Parliament, Kieni. She said that she knew PW1 as a man of integrity and honesty. PW3 said she was shocked when she read the serialized "**Githongo Dossier**" depicting the plaintiff as a man without integrity and corrupt.
21. PW3 said that she lost confidence in him due to the publication and thus she shifted her support to another candidate come the 2007 general elections. PW3 further stated that she knew many people in Kieni Constituency who lost faith in the plaintiff and that is why he failed to recapture his parliamentary seat.
22. The other witness who testified in support of the plaintiff's case is Eliud Njua Njuma (PW4). PW4 said that he has known the plaintiff for the past 21 years being his close political ally and supporter. Just like PW3, PW4 stated that he was shocked when he came across the serialized report which depicted the plaintiff as corrupt dishonesty, lacking in integrity, the mastermind and key architect of Anglo-leasing type of contracts, criminal and a fraudster.
23. PW4 stated that he is aware that the people of Naro moru ward in Kieni Constituency in general lost faith and confidence in the plaintiff and his ability to lead them as their member of parliament as a result of the publication and that is why the plaintiff was unable to retain the seat he had for ten (10) years in the general election of 2007.
24. PW4 further stated that he personally suffered in his political career and business interests for being close to the plaintiff. It is the evidence of PW4 that his political detractors used the malicious allegations made against the plaintiff to tarnish his reputation as a political associate making him lose a chance to serve the people of Naro Moru ward as their M.C.A.
25. Nicholas Kamau Warui (PW5) told this court that he had known the plaintiff for over 15 years having been his supporter in the 1998 and 2002 general elections in Kieni Constituency elections. PW5 said he came across the serialized publication in 2006 in which the plaintiff was portrayed as **inter alia** corrupt, lacking in integrity, the mastermind of the Anglo-leasing type of contracts and lacking regard to the rule of law.
26. PW5 also stated that although the plaintiff pleaded his innocence on several occasions he lost faith and confidence he had for him. PW5 further said that he therefore shifted his support to another candidate other than the plaintiff for the seat of M.P Kieni Constituency.
27. The defence case is backed by the evidence of **John Githongo** (DW1) and that of **Joseph Odindo** (DW2). DW1 denied having published the dossier save to the addressees of the letter. The defendant stated that he personally handed over the report and or statement to the addressees and therefore if the respective addressees chose to publish the same then he is not liable for the publication.
28. DW1 further stated that he took steps as the holder of the office of permanent secretary, in charge of Governance and Ethics, office of the President to forward the **dossier** to the President and to the Director of the Anti-Corruption Commission. DW1 produced a copy of letter of appointment which enumerated his duties as a Permanent Secretary.
29. It is the evidence of the defendant that he authored the letter addressed to the President after he resigned from his job and had left the country in a huff for fear of his life.
30. DW1 averred that where a private citizen makes a report to the Anti-Corruption Commission or to the President as an "informer" one is immune to proceedings such as these. Based on the foregoing, the defendant stated that the **dossier** cannot form the basis of a defamation suit.
31. The defendant further stated that the publication was made on an occasion of qualified privilege because he has an interest or duty, legal, social or moral to make it to the person to whom it was made who also had a corresponding interest to receive it.
32. The defendant also averred that being seized of the information obtained in exercise of his mandate as a permanent secretary in charge of Ethics and Governance, he had a legal, moral and social duty to forward the information to the President and the Director of Anti-corruption Commission even upon leaving office.

33. DW1 further stated that he had no capacity to investigate on his own or the discretion seek for the views of the plaintiff to first establish the truth or otherwise of the allegations before reporting the same to the concerned authorities.
34. The defendant also stated that the communication of the **dossier** to the President and the Director of the Anti-corruption Commission is a privileged occasion because of the common interest doctrine.
35. The defendant has stated that when the matter commenced on as one of the public concern like in this case, the qualified privilege arises. DW1 went ahead to state that the contents of the **dossier** constituted matters of intense public interest.
36. DW1 has also stated that he interviewed the plaintiff and took his time to compile the dossier before ensuring that it was personally handed over to the President and the Director of the Anti-corruption Commission. The defendant further stated that the contents of the publication was already in the field of intense political and public discussion.
37. The defendant stated in his evidence that he was approached by the Nation Media Group to be interviewed to clarify on the publication given that various versions of the **dossier** were circulating around.
38. DW1 also stated that the plaintiff failed to tender credible evidence to show what was aired by BBC was transcribed and pleaded with the required particularity.
39. **Joseph Odindo** (DW2) told this court that at the time of the publication of the offensive statement and words, he was the managing Editor of the Daily Nation. DW2 stated that the so called **Anglo-leasing scandal** first came to public limelight when Hon. Maoka Maore, MP Ntonuiri Constituency exposed it in parliament.
40. He stated that the Nation Media Group carried out its investigations and published several articles copies of which he produced in evidence as exhibits. DW2 also stated that the media house was in the process of publishing a full report on Anglo-leasing scandal which they came across the so called "**Githongo Dossier**".
41. DW2 further stated that he contacted the defendant for interviews on the report which he granted. DW2 also stated that by the time Nation Newspapers serialised the contents of the said report, matters relating to the Anglo-leasing scandal and the plaintiff's possible involvement were matters within the public domain.
42. In his written witness statement, DW2 stated that prior to the Serialization of the **Githongo dossier** the plaintiff had been adversely mentioned in relation to the Anglo-leasing matters forcing him to step aside as a cabinet minister.
43. In cross examination, DW2 stated that the newspaper articles he produced did not refer to Murungaru as corrupt. DW2 said that he and other journalist were sent to London to cross-check and verify the **Githongo dossier** from John Githongo. DW2 confirmed that in the book titled "**IT IS OUR TURN TO EAT**" it is published that when John Githongo (plaintiff) failed when to get a response from the President and the Director Anti-Corruption Commission over his dossier he turned to the media.
44. In cross-examination Joseph Odindo, DW2 admitted that the plaintiff did not actually step aside from his position but he was simply not re-appointed in the cabinet reshuffle after the 2005 referendum thus retracting his evidence in-chief.
45. At the close of evidence, learned counsels appearing in this matter were invited to file and exchange written submissions. Having considered the evidence and the rival submissions plus the authorities cited, it is apparent that two main issues commend themselves for the determination of this court. **First**, is whether or not the plaintiff was defamed by the publication.
- Secondly**, whether or not the plaintiff is entitled to an award of damages and if yes how much.
46. On the first issue, it is clear that the defendant has vehemently denied publishing the statement and or words save for the fact that he gave his report to the President and the Director of Anti-Corruption Commission. The defendant has been emphatic that he did inform the duo by virtue of the office he held and therefore the communication was privileged and in public interest hence he should not be held liable.
47. The plaintiff is of the view that the defendant was the author and cause of the publications hence the aforesaid defences are not available to him.
48. Having carefully considered the rival submissions and the material placed before this court it is apparent that though the defendant denied disseminating the information to other persons and or media houses other than the **President** and **Anti-Corruption Commission** there is credible evidence that he deliberately authored and caused the same to be published by other media houses both in print and electronic.
49. The plaintiff stated before this court in cross-examination that he personally gave his story to Michela Wrong and even read the manuscript of the book titled "**IT'S OUR TURN TO EAT**" and approved it for publication.
50. In the aforesaid book which was produced as an exhibit in evidence, the author narrates how the '**Githongo Dossier**' came to her possession. It was clearly stated that the defendant personally stage managed and went to great lengths to ensure that the publication was done.
51. Joseph Odindo (DW2) stated in his evidence that the Daily Nation dispatched him and another senior editor to London to obtain for publication the dossier from the defendant personally.

52. In page 248 of the book, titled “ITS OUR TURN TO EAT” the author states as follows:

“In mid-December, Joe Odindo the Nation Group’s Managing editor confirmed that he and editorial director Wangethi Mwangi had persuaded their bosses to send them to Oxfords to find out what the anti-corruption chief had to say.”

53. In my view, it cannot be true to suggest that the Daily Nation would at great cost sent two senior journalists to seek for a clarification of what they already had. It is evident that the Daily Nation executed the plot as planned by the defendant by serializing the **dossier** with daily banner headlines. Those newspapers were also available online hence globally within reach.

54. The defendant was therefore not candid when he claimed that he did not give the dossier to the media houses. The defendant further republished the offensive publication when he granted interviews to various television stations. In the circumstances the defences of qualified privilege and public interest are not available to the defendant. The aforesaid defences could have been available to the defendant had he restricted the dissemination of the dossier to the President and the Director, Anti-Corruption Commission.

55. Having come to the conclusion that the defendant is the author and the cause of the publications, the next question is whether the publications were defamatory of the plaintiff. A careful reading of the publication will reveal that the plaintiff was depicted as a person who inter alia engaged himself in corrupt practices, lacked integrity and was dishonesty. The publication also portrayed the plaintiff as the mastermind of the Anglo-leasing scandal and or type of contracts.

56. There were no iota of evidence presented by the defendant and his witness linking the plaintiff to corrupt practices. Therefore the contents of the **dossier** in the absence of evidence to establish their truthfulness or justification means that the publication is and was defamatory of the plaintiff. In his evidence in cross-examination John Githongo (DW1) is on record as having said as follows:

First, that he is not aware that Mr. Murungaru was charged with any corruption related cases. **Secondly**, that he is not aware of any monies being traced into Murungaru’s account. **Thirdly**, that he told the President that the plaintiff’s colleagues told him that the plaintiff was corrupt. **Fourthly** that Mr. Murungaru’s colleagues gave him no evidence. **Fifthly**, that Dr. Murungaru was not charged by Kenya Anti-corruption Commission with any offence.

57. In light of the defendant’s testimony, it is clear that there was no factual basis to assert that the plaintiff was engaged in corruption. It cannot be stated by any stretch of imagination that the defendant’s his job description as a Permanent Secretary mandated him to defame the plaintiff. He acted outside his core mandate of advising the President on policies and strategies of fighting corruption. Therefore, he is personally liable for his actions.

58. Having come to the conclusion that the plaintiff’s reputation was injured by the publication, the final issue to determine is whether or not he is entitled to the reliefs sought in the plaint.

59. The first relief sought is for an order of injunction to restrain the defendant, his servants and or any agents from further publishing words or articles relating to the plaintiff and in particular linking the plaintiff to corrupt activities and the Anglo-leasing affair.

It is clear from the evidence presented to this court that the defendant is likely to republish the offensive publication as against the plaintiff unless he is restrained. I am satisfied that the plaintiff has established on a balance of probabilities that he is entitled to the prayer sought. Consequently, the order for injunction is granted as sought in the plaint.

60. The other prayers relate to general, aggravated and exemplary damages for libel. On damages, the defendant is of the submission that the plaintiff failed to demonstrate that his reputation was injured. The plaintiff is of the submission that the publication of the dossier caused him serious damage to his reputation. I have considered the evidence of the four witnesses (PW2 -5) summoned by the plaintiff to testify on his reputation and I am convinced that the plaintiff was able to show that his reputation was destroyed by the publication.

61. There was uncontroverted evidence that as a result of the publication the plaintiff’s supporters, business associates and friends lost confidence and faith in him. There was also uncontested evidence tendered showing that as a result of the publication, the plaintiff lost the Kieni Parliamentary seat, his cabinet portfolio and friends.

62. The defendant was of the submission that the plaintiff had no reputation to protect in Kenya because he was already tainted. It is unfortunate that the defendant failed to tender evidence nor summon witnesses to establish that the plaintiff had no reputation to protect. The plaintiff summoned four witnesses (PW2 -5) who testified to show that the plaintiff was a person of integrity and vision. The aforesaid witnesses were also able to show that the plaintiff’s reputation was destroyed by the publication. I am convinced that the plaintiff’s reputation was destroyed by the publication hence he is entitled to be paid damages.

63. On damages, the plaintiff proposed to be paid ksh.100,000,000/= representing both general, aggravated and exemplary damages. The plaintiff argued that the intensity and worldwide scope of the publication is unrivaled. It is argued that its dissemination was carefully planned and executed to inflict maximum damage to the plaintiff’s reputation. The plaintiff cited the following cases:

i. Henry Obwocha =vs= Head Link Publishes Ltd (2014) eKLR

In this case the claimant was awarded ksh.15,000,000/= and kshs.5,000,000/= as general and aggravated damages respectively.

ii. Samuel Ndungu Mukunya =vs= Nation Media Group Ltd & Another (2015) eKLR, where this court made an award of ksh.15,000,000/=, ksh.3,500,000/= and ksh.1,500,000/= in respect of general, aggravated and punitive damages in lieu of apology respectively.

iii. Christopher Obure vs= Tom Oscar Olwaka & 3 Others Nairobi H.C.C.C no. 956 of 2003 in which this court awarded ksh.15,000,000/= and ksh.2,000,000/= being general and punitive damages respectively.

iv. Bauer Media Pty Ltd vs= Wilson (No.2) (2018) VSCA 154 in which the Australian Court of Appeal awarded a sum equivalent to ksh.43,950,688/96 as general damages for defamation.

v. Rayney vs= The state of Western Australia, (No. 9) (2017) WASC (Australian), where the court made an award equivalent to ksh.192,174,860/76 being general damages.

vi. Nazerali vs= Mitchell 2016 BCSC 81 (Canada) where the claimant was awarded a total equivalent to kshs.69,438,116/= representing general, aggravated and punitive damages.

64. The defendant submitted that the plaintiff's prayer to be awarded ksh.100,000,000/= as damages was without any legal basis and unprecedented. This court was urged not to make any award on damages in favour of the plaintiff. The defendant further stated that if this court is minded to make any award on damages then it should award nominal damages.

65. Having considered the rival proposals on damages and having taken into account the authorities cited, I am convinced that in the circumstances of this case the plaintiff should be awarded both general, aggravated and punitive damages. It is apparent from the evidence presented before this court that the defendant intended to have the publication to be extensive, global in nature and with intensity. It would appear the defendant wanted to inflict maximum damage on the plaintiff.

66. On general damages, it is clear from the authorities cited that this court has so far has awarded an average of ksh.15,000,000/=. In other jurisdictions, the authorities cited show that the court has awarded between ksh.30,000,000 and ksh.192,000,000/=. The plaintiff has asked this court to award him ksh.40,000,000/= on this head. Doing the best I can, I think an award of kshs.20,000,000/= is a reasonable award. Consequently, I award the plaintiff kshs.20,000,000/= for general damages.

67. The plaintiff has beseeched this court to award him a sum of kshs.30,000,000/= as aggravated damages. The authorities supplied show that this court has previously awarded a sum between ksh.2,000,000/= and ksh.5,000,000/= for aggravated damages. In this case, the defendant continued republishing the defamatory material and the defendant maintained throughout the trial that the plaintiff had no reputation to protect. I am satisfied that the plaintiff is entitled to claim aggravated damages. He is awarded a sum of kshs.5,000,000/= on this head.

68. The plaintiff has further asked this court to award him a sum of ksh.30,000,000/= for exemplary/punitive damages. In this case it is apparent that the defendant has offered no apology. He has also failed to make any retraction. In the circumstances, I am satisfied that the plaintiff is entitled to claim exemplary damages. From the authorities supplied, this court has in the past awarded on this head a sum of between ksh.1,500,000/= and kshs.3,000,000/=. I am of the view that a sum of kshs.2,000,000/= is reasonable.

69. In the end, judgment is entered in favour of the plaintiff and against the defendant as follows:

a. Order of injunction as prayed in the plaint.

b. General damages **20,000,000/=**

c. Aggravated damages **5,000,000/=**

d. Exemplary damages **2,000,000/=**

Total **27,000,000/=**

e. The aforesaid amount to attract interest at court rates from the date of this judgment until full settlement.

f. Costs of this suit.

Dated, signed and delivered at Nairobi this 2nd day of May, 2019.

.....
J K SERGON

JUDGE

In The presence of

..... for the Plaintiff

..... for the Defendant