



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NOS. 183 OF 2010 AND 184 OF 2010 AS CONSOLIDATED

CIBIYA WORLDWIDE LIMITED.....1ST PLAINTIFF

NEWTON OMONDI OSIEMO.....2ND PLAINTIFF

VERSUS

NATION MEDIA GROUP LTD.....DEFENDANT

JUDGMENT

This judgment relates to the two matters as consolidated by consent of the parties. For purposes of this judgment, the plaintiff in 183/2010 shall be the first plaintiff while the plaintiff in 184/2010 shall be the 2nd plaintiff.

By way of complaints dated the 31st March, 2010 and filed in court on even date, the plaintiffs have sued the defendant claiming general, aggravated and exemplary damages plus interest and costs of the suits.

Their causes of action are based on an article that was allegedly published by the defendant on the Sunday publication on or about the 28th March, 2010. The article is entitled;

“Lawyers on the spot over fraud cases – How the cemetery money was shared” which was said to have been a follow-up of an earlier article of 10th March, 2010 captioned “Mudavadi probed in graves plot scandal”

The 1st plaintiff avers that, in the said article of 28th March, 2010, a diagram was made by the defendant with arrows showing that the 1st plaintiff siphoned a sum of Kshs.28, 960,000/= from the City Council Cemetery purchase land and later disbursed a sum of Kshs. 7,000,000/= to one M/S Janet Kabura Nguku, through lawyers Odero Osiemo & Co. Advocates.

The first plaintiff has set out the natural and ordinary meaning of the Article in paragraph 6 of its complaint while the particulars under Order VI Rule 8 are set out in paragraph 7 of the complaint.

On the part of the 2nd plaintiff, he avers that a diagram was made by the defendant with arrows showing that the plaintiff through his company, Cibiya Worldwide Limited (the first plaintiff herein) siphoned a sum of Kshs. 28,960,000/= from the city cemetery purchase land and later disbursed a sum of Kshs. 7,000,000/= to one Ms. Janet Kabura Nguku through lawyer Odero Osiemo & Co. Advocates.

The natural and ordinary meaning of the article are set out in paragraph 6 of the complaint while the particulars under Order VI Rule 8 are set out in paragraph 7 of the complaint.

Both plaintiffs aver that due to the matters stated herein above, they have suffered enormous damages and lost their reputation and good standing in their business circles. They have prayed for judgment against the defendant as shown in the complaints.

The defendant filed defences on the 3rd May, 2010 in the two matters which are similar in contents and context.

In the said defences, it has denied the plaintiffs' claims but it has admitted having published the articles and the diagram complained of by the plaintiffs. It averred that the words form part of an article but denied the rest of the contents to wit, that, it showed the plaintiffs had siphoned the sums as alleged in the complaint.

The defendant denied that in their natural and/or ordinary meaning the words in their proper context were or were capable of bearing the meanings or either of them as pleaded in paragraph 6 of the complaints in respect of the articles or any defamatory meaning at all. It was its further defence that in so far as the words in the natural and ordinary meaning, or otherwise, consist of expression of opinion, they are fair

comments and fair information upon the facts which are matters of public interest.

Further and/or alternatively, the defendant averred that the said words in their natural and ordinary meaning were published under a sense of public duty and without malice towards the plaintiffs and in the honest belief that the information contained therein was true. That they were published as fair information on matters of public interest, the issue of land bought by the Nairobi City Council for a very substantial sum for a cemetery being a matter of public interest and therefore in the public domain.

The defendant further contended that the words were published on a privileged occasion and/or in the alternative it states that the said article was obtained from a report of the local committee of the parliament and was accurate and a fair reproduction of the contents of the report of the said parliamentary committee and therefore the said publication was on a privileged occasion.

The defendant denied that the plaintiffs have been injured in their reputation and/or good standing either as alleged or at all. The plaintiffs' claims for damages are also denied. It urged the court to dismiss the plaintiffs' claims.

The plaintiffs filed replies to the defences, on the 7th day of May, 2010 in which they have joined issues with the defendant on its defences and have repeated the contents of their respective complaints. With regard to the defences raised by the defendant, they averred that, the defendant had a duty to verify the said words were true and accurate and that the defendant failed to maintain a proper and just balance between the probable and foreseeable injury. They contended that the said words published by the defendant had no foundation, were not privileged and their publication was malicious.

At the hearing, the 2nd plaintiff testified on behalf of himself and that of the first plaintiff and called one witness in support of their case. The defendant did not call any witness.

In his evidence, the 2nd plaintiff, who is a director of the 1st plaintiff testified as PW1 and adopted his witness statement dated the 1st February, 2012. He produced the list of documents filed on even date and also the one dated 27th February, 2012 which was filed in civil suit number 183/2010.

In his evidence, he stated that the article in its ordinary and natural meaning was understood to mean that he is immoral, untrustworthy and a shoddy businessman, that he is deceitful and morally bankrupt. That the article was recklessly made without lawful excuse and in bad faith and that following the publication of the article, he has been confronted by friends and business associates who do not any more, want to be associated with him.

With regard to the first plaintiff, it was his evidence that the defamatory statements made against it could only be construed to mean that the 1st plaintiff is a dubious company that should be blacklisted; that is deceitful in the conduct of its affairs; morally bankrupt and conspires to defraud the government and people of Kenya. That the falsehoods therein damaged the 1st plaintiff's reputation and capabilities of doing business in the country and as a result, it has caused it to suffer loss and damage thus necessitating this suit. He denied the allegations contained in the article concerning himself and the first plaintiff.

Graham Shah testified as PW2 and adopted his witness statements filed in both cases on the 24th day of July 2012, as his evidence in chief. He stated that the two plaintiffs are known to him. It was his evidence that the article in issue was about both the plaintiffs wherein it was alleged that they were involved in a transaction with the Nairobi City Council and the cemetery. That he was concerned about the amounts involved and having done business with the 2nd plaintiff, he got concerned because of the business relationship he had with them.

That after reading the article, he called the 2nd plaintiff on phone and met him the following day when he sought clarification on the accuracy of the article and he raised concerns on their future relationship. At that time they were working on a number of projects with the 1st plaintiff. He sought clarification from the 2nd plaintiff who told him that the article was not true and that he had no connection with Nairobi County Council (then). He stated that until the court gives a determination on the issue, he remains impartial (neutral) but he does not hold the plaintiffs in the same position that he used to hold them before the publication of the article.

In cross-examination, it was his evidence that they did business with the plaintiffs from 2008 – 2010 but the relationship remained dormant. That besides the business, they were also friends and colleagues. He testified that the business was between the plaintiffs and Wilken Group of Companies to which he was the CEO. He stated that he could not make a judgment whether Mr. Osiemo advocate received the money or not but he was satisfied with the explanation given to him by the 2nd plaintiff.

At the close of the case, both parties filed submissions in support of their respective positions which, this court has considered together with the evidence on record and the pleadings.

From the pleadings the court identifies the following issues for *determination*:-

1. *Whether the article was published by the defendant.*
2. *Whether the same refers to the plaintiffs.*
3. *Whether the publication was defamatory of the plaintiffs*
4. *Whether the publication was false and malicious.*

5. Whether the defence of privilege and fair comment are available to the defendant.

6. Whether the plaintiffs are entitled to the orders sought and who should bear the costs of the suit.

There is no doubt that the cause of action herein is based on defamation. In Kenya, the Law on Defamation is now well settled and it's 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;

“In 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. Simpson (1982) QBD 491 Dave J defines it thus;

“A false statement about a man to his discredit”

In the well known work of Winfield, the definition given is as follows;

“It is the publication of a statement which tends to lower a person in the estimation of the right thinking members of the society generally or which tends to make them shun or avoid that person.”

Another authority often cited as definitive on defamation is that of Thomas vs. CBC (1981) 4WWR 289 as follows;

“The gist of the torts of libel and slander is the publication of matter usually words conveying a defamatory imputation 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 or to injure his reputation in his office, trade or to injure his financial credit. The standard of opinion is that of the right thinking persons’ generally.

To be defamatory, an imputation need not have actual effect on a person’s reputation. The law looks only to its tendency. A true imputation may still be defamatory although its truth may be a defence to an action brought on defamation; conversely untruth alone does not render an imputation defamatory.

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

On the first issue, it is not in dispute that the article was published by the defendant. Infact the same is admitted in paragraph 4 (A) of the defence.

On whether the article was defamatory, the plaintiffs’ submission were that from the diagram and the article, the simple and literal meaning which can be deduced from the use of the word “shared” in this context, is that the plaintiffs participated in defrauding the government and also that, they received monies knowing that the same was fraudulently obtained from the government. That it also meant that the 2nd plaintiff is deceitful and in disguise involves himself in the web conspiracy to defraud the government and ultimately the people of the Republic of Kenya.

It was further submitted that the matter is aggravated by the statement that the plaintiff was a brother to Odera Osiemo Advocate who is said to have transferred the fraudulently obtained funds to the first plaintiff where the 2nd plaintiff was a director.

On the part of the defendant, it was submitted that the plaintiffs’ suit are defective for failure to set out the particulars of the article complained of. Counsel relied on Order 2 Rule 7 of the Civil Procedure Rules which she submitted, is couched in mandatory terms. Counsel contended that the plaintiffs have only set out the title of the article but have not provided any particulars of the article complained of. She has relied on the case of Nkalubo v. Kibirige(1973) EA 102 wherein, the court held that, in all suits for libel, the actual words complained of must be set out in the plaint.

On the issue of malice, it was submitted that there was no deliberate attempt to attack the plaintiffs’ reputation. That the article does not demonstrate spite or ill will or even the recklessness complained of or that the language used was disproportionate to the facts.

By way of defence, the defendant contended that the article merely gave a fair report of allegations made against the plaintiffs in a parliamentary report on the procurement of cemetery land by the City Council of Nairobi in 2010 and therefore, the plaintiffs assertions that the article was published maliciously has no basis whatsoever. The case of Nation Newspapers Limited Vs. Gibendi (2002)KLR was relied on, to support this contention.

The defendant further submitted that the said articles were an expression of opinion and are fair comment and fair information upon facts in the public domain, on matters of public interest on a parliamentary report on procurement of cemetery land by the City Council of Nairobi in 2010.

On the aspect of reputation, the defendant submitted that the plaintiffs’ witness, PW2, fell short of the required test of character witness. Counsel argued that PW2 was not a credible witness as he claimed to have been in business with the plaintiffs and further had stopped

further business with them after the publication. She contended that the plaintiff failed to call the members of society who know and esteem him as a reputable person to testify on his character.

On the defences raised by the defendant, the plaintiffs submitted that no witness was called by the defendant to prove them. It was submitted that while the diagram shows that the 1st plaintiff shared the money allegedly received with one Janet Kabura Nguku, the report clearly states that it is his advocate who transferred the monies. That such reporting was negligent and malicious as it was only done to further the idea of “conspiracy” with Dr. Nguku, and sharing of the cemetery money with accomplices and therefore, the defendant’s defence of fair reporting cannot stand.

The plaintiffs also argued that they were not given a right of reply in that, neither of them was contacted to answer allegations before the committee.

They further contended that while the committee reported on how the money was transferred to 1st plaintiff, there were no bank account statements presented to prove the same and therefore, the defendant by publishing the findings further participated in the reporting of unconfirmed findings. It was submitted that the defendant cannot claim the defences of fair comment or opinion upon facts which do not exist. To support this contention, the plaintiffs relied on the cases of Philip Kisia vs. Nation Media Group Limited & Another (2017) eKLR, that of Anne Omollo vs. Oduor Ongwen & 5 others (Kisumu Hcc No. 16/2015) and that of Joseph Njogu Kamunge Vs. Charles Muriuki (Nyeri HcA. No. 42 /2014).

The court has perused the article complained of vis-à-vis the parliamentary report. Though the defendant did not call any evidence in support of their case, the report was filed in court and relied on by both parties. The 2nd plaintiff was cross examined on the contents of the same and no objection was raised by counsel for the plaintiffs. It was filed in court and it forms part of the record and being an official report of a parliamentary committee, the court is at liberty to look at it and consider the contents of the same.

The defendant in its paragraph 6 (D) of the defence, referred to the said report and stated that the article was obtained from it and was an accurate and fair reproduction of the contents of the same. The court notes that the plaintiffs have not denied the existence of the report or that there were such parliamentary proceedings that took place during which, the issue of the land bought by the defunct Nairobi City Council for a cemetery, was discussed by a Parliamentary Committee on Local Authorities and a report prepared.

Further, in its defence, the defendant has relied on the defence of privilege stating that the Article was obtained from a report of local committee of parliament and has averred that it was an accurate and fair reproduction of the contents of a parliamentary committee. It has also relied on the defence of fair comment and fair information on matters of public interest.

With regard to the defence of fair comment, Gatley on libel and slander, 9th edition states thus;

“The right to a fair comment is one of the fundamental rights of free speech and writing----- there are matters on which the public has a legitimate interest or with which it is legitimately concerned and on such matters, it is desirable that all should be able to comment freely and even harshly, so long as they do so honestly and without malice.”

Also in the case of Grace Wangui Ngenye vs. Chris Kirubi & Another (2018) eKLR in which the court of appeal stated;

“.....a fair comment must be based on facts that are true or substantially true”.

On what constitutes a matter of public interest, Lord Denning in the case of London Artists Limited vs. Little (1969) 2 A11 EIR 193 stated thus;

“.....such as to affect people at large, so that they may be legitimately interested in or concerned at, what is going on; or what may happen to them or to others and a matter “on which everyone is entitled to make a fair comment”.

The defence of fair comment is usually closely related to that of qualified privilege. In this regard, an extract from Salmond on the Law of Torts may be helpful thus;

“When an occasion of qualified privilege exists, a person is entitled to make defamatory statements about another. The right of freedom of speech prevails over the right of reputation but only to a limited extent..... the principle is that; that statement is protected if fairly made by a person in discharge of some public or private duty, whether legal or moral or in the conduct of his own affairs in the matters where his interest is concerned----- no complete list of each occasion is possible or desirable but it is generally agreed that the chief instances of qualified privilege are the following;

a. Statements made in the performance of a public duty.

b. Statement made in the protection of an interest.

In Halsbury’s Laws of England 4th Edition, the learned author explains the basis of the defence of qualified privilege and list some categories of occasions in which the defence would be applicable thus;

“On occasions of public policy the law affords protection on certain occasions to a person acting in good faith and without

improper motive who makes a statement about another person even when that statement is in fact untrue and defamatory. Such occasions are called occasions of qualified privilege. The principal categories of qualified privilege are;

- a. Limited communications between persons having a common and corresponding duty or interest to make and receive the communication.*
- b. Communications to the public at large, or to a section of the public, made pursuant to a legal, social or moral duty to do so or in reply to a public attack.*
- c. Fair and accurate report published generally, of the proceedings of a specified persons and bodies.*

Further, in ***Gatley on Libel and Slander 8th Edition***, the statements to which the defence of qualified privilege should apply are stated to include the following;

- a. Statement made in the discharge of a public duty.*
- b. Statement made on a subject matter in which the defendant has a legitimate interest.*
- c. Statements made by the defendant to obtain redress for a grievance*
- d. Reports of parliamentary proceedings*
- e. Extracts from or abstracts of parliamentary reports, papers, votes or proceedings published by the authority of parliament.*

The court has considered the defence of qualified privilege raised by the defendant, the provisions of the Defamation Act and Parliamentary Powers and Privileges Act.

Section 25(2) of Parliamentary Powers and Privileges Act provides as follows;

“In any civil or criminal proceedings instituted for publishing any extract from an abstract of any journal referred to in Sub-Section (1); if the court is satisfied that the extract or abstract was published bonafide without malice, no judgment or verdict, as the case may be, shall be entered for the defendant or accused.”

Section 11 of the Defamation Act which is on extracts from parliamentary reports provides as follows;

“In any action for libel in respect of the publication of any extract from, or abstract of, any parliamentary report, it shall be a defence for the defendant to show that the matter in question was in fact an extract from or abstract of a parliamentary report and that the publication thereof was bonafide and without malice.”

Having said that, I now turn to the contents of the Article as published, vis-à-vis the parliamentary report, both of which I have cautiously perused. The court has also looked at the diagram drawn as part of the article and the relevant part. The article states;

“Another lawyer named was Odera Osiemo who the committee said was the distributor of the money to various accomplices and hides behind Cibiya Worldwide Limited, whose director is his brother Newton Osiemo. In the diagram, Odera Osiemo & Co. Advocates are shown to have received kshs. 117,000,000/= which it transferred to Cibiya Worldwide Limited and Janet Kabira Nguku being kshs. 29,860,000/= and 7,000,000/= respectively.

On the other hand, the following is the relevant part as captured by the parliamentary committee.

On page 29 of the report, there is evidence of Dr. J. P. Mutonyi who by then, was the acting Director, Kenya Anti Corruption Committee who states that they have conducted investigations into the alleged procurement of cemetery land.

He further stated that; one Maina Chege was used for furthering the whole fraud.

In addition to his evidence, there is also the evidence of Tabu Lwanga, the Officer who was gathering evidence. The said officer stated that he had a chart that illustrates the way money from the Ministry of Local Government had been handled. He went on to state that the Ministry of Local Government provided a total of kshs. 290,694,000/= and a joint account was opened by three firms of advocates being;

- a) Odera Osiemo & Co. advocates
- b) P. C. Onduso & Co. Advocates.
- c) Alphonse Mutinda & Co. Advocates

That a total of Kshs. 281,300,000 was deposited in that account.

He further stated that out of that money, the firm of Odera Osiero & Co. Advocates received kshs. 117,000,000/-, part of which was distributed as follows;

a) *Cibiya Worldwide limited whose director is Newton Osiero a brother to Odera Advocate received Kshs. 29,860,000/= which he spent Kshs. 20,000,000/= in buying 5 acres of land from James Mwangi & Kshs. 1,660,000/= to buy a van from James Mithamo.*

b) *Janet Kabura Nguku who is the wife of Dr. Nguku, the Medical Officer of Health at Nairobi City Council, received a total of Kshs. 7,000,000/= out of which he used P. J. Kakad Advocates to purchase a house at Mlolongo for Kshs 4 million and 2 million to buy construction material for a house being built by Dr. Nguku in Mwingi*

On page 39 of the report, the committee observed that Odera Osiero Advocate was the distributor of money to various accomplices and also hides behind Cibiya Worldwide Limited, whose director is his brother, Newton Osiero. The committee went on to state that the said advocate was involved in the fraud and he should be investigated fully and be made to refund Kshs. 117,000,000/= or disclose for what purpose he has retained the money.

The committee also recommended that Cibiya Worldwide Limited which received Kshs. 29,860,000/= should be thoroughly investigated and the director Newton Osiero charged.

In his evidence, the 2nd plaintiff admitted that Odera Osiero Advocate is his brother and that he is a director of the first plaintiff. Though it was his evidence that he only show the parliamentary report in court at the time of the hearing, he did not deny that there were such proceedings that took place in parliament. He also did not suggest in any way that the report was not genuine.

In its defence, the defendant states that the article was obtained from the parliamentary report and was an accurate and fair reproduction of the contents of that report. The defendant has not stated that the contents of the article are true. It is not relying on the defence of justification at all. In my considered view, the defence of qualified privilege is available to the defendant and Section 11 of the Defamation Act affords the defendant the said defence. Similarly, Section 25(2) of Parliamentary Powers and Privileges Act covers the defendant in the circumstances of this case.

It is no doubt that the procurement of cemetery land by the City Council of Nairobi was a matter of great public interest and the public was entitled to know what was going on, in that regard.

There is nowhere in the Article that the 2nd plaintiff is said to have received any money in his personal capacity but the first plaintiff is said to have received Kshs. 29,860,000/=. The defendant only reported what the parliamentary committee stated after investigating the matter.

The defendant also took issue with the 2nd plaintiff's capacity to file suit on behalf of the 1st plaintiff for the following reasons;

- a. *No authority to file the suit was filed in court by the 2nd plaintiff*
- b. *There are no minutes by the 1st plaintiff authorizing the filing of the suit*
- c. *No certificate of incorporation was produced for the 1st plaintiff.*
- d. *The 2nd plaintiff did not produce evidence to prove that he is a director of the 1st plaintiff.*

It is trite law that a limited liability company is a legal person capable of suing and being sued on its own. It is different from the directors see ***Salmon v. Salmon***. I concur with the defendant's submissions that the 2nd plaintiff did not prove that the 1st plaintiff exists, by way of production of a certificate of incorporation; that the 1st plaintiff authorized him to file the suit; therefore, the 1st plaintiff's suit has no feet to stand on. In the circumstances, I find and hold that the plaintiffs did not prove their cases on a balance of probability.

As to the submission by the defendant that the plaintiffs did not draw the diagram in the plaint, this court is of the considered view that the contents in the plaint is what is portrayed in the diagram and therefore, the particulars of defamation were well set out in the plaint. The plaintiffs did not have to draw the diagram and their failure to do so, is in my view, not fatal in the circumstances of this case.

On the issue of malice, it is trite that malice can be express or it can be inferred from the circumstances of the case.

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

In the case herein the plaintiffs did not prove any malice on the part of the defendant. What the defendant published is a fair reproduction of what is contained in the parliamentary report.

Before I can conclude, I feel obliged to say something about the judgment in Hccc. Number 430/2010 (***Philip Kisia Vs. Nation Media group Limited & Oliver Mathenge***) which was relied on by the plaintiff in this case. I wish to confirm that it was my decision and the case

pursuant to which the decision was made, is related to the present matter in that, the facts in both cases surrounds the procurement of the of the Public Cemetery Land by the defunct Nairobi City Council.

In that case, I entered judgment for the plaintiff and awarded him Kshs. 5 million as general damages and kshs. 1 million as aggravated damages. I would like to distinguish the evidence and facts of that case with the one before me as follows;

1. The article published by the defendant in Hccc. no. 430/2010 had indicated that the prize of the cemetery land was inflated and that the investigations were being carried out by Kenya Anti-corruption Commission (KACA as it was referred to then). The article stated that the plaintiff therein (Philip Kisia) had been mentioned as the most culpable person.

2. The issue of the cemetery land had been alive since 2008 long before the plaintiff in Hccc. no. 430/2010 had taken employment with the City Council

3. The plaintiff's name was never mentioned in the Parliamentary Committee's Report that investigated the cemetery land. It was also not mentioned in the Auditor General's Report.

It was on that basis that the court entered judgment in favour of the plaintiff in Hccc. no. 430/2010. The facts and the evidence in that case are materially different from the ones in the case herein and that explains why the court arrived at a different finding in this matter.

Having made that finding, the law enjoins me to assess the damages that I would have awarded the plaintiffs had they succeeded on their claims. In awarding damages, the court has an absolute and wide discretion. The court in the case of Jones v. Poland set out some guidelines on what should guide the court in arriving at a fair and reasonable award which are;

a. *The objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it is published and any repetition.*

b. *The effect of the plaintiff's feelings not only from the prominence itself, but from the defendants conduct thereafter both up to and including the trial itself.*

c. *Matters tending to reduce damages.*

d. *Vindication of the plaintiff's reputation past and future.*

The 2nd plaintiff stated that his reputation and that of the first plaintiff were tarnished and the business affected. He called PW2 as a witness who gave evidence on behalf of both plaintiffs. Though the defendant submitted that PW2 fell short of the required test of a character witness, I do not agree with that submission.

PW2 knew both plaintiffs and related with them closely and therefore it was in order for him to testify as to the 2nd plaintiff's character.

On general damages, counsel for the plaintiffs has urged the court to award kshs. 7,000,000/= to each plaintiff and exemplary damages of Kshs. 3,000,000/= to each of them. He has relied on several authorities earlier quoted

On the part of the defendant, the court was urged to award kshs. 500,000/= to each plaintiff under the head of general damages making reference to the case of David Odhiambo Awino vs. Nation Media Group Limited (2008) eKLR.

On exemplary damages, counsel for the defendant submitted that the same should be disallowed for the reason that there is no evidence that there was financial gain derived from the publication.

The defendant also argued that no evidence was adduced of the conduct of the defendant before, during and after the trial of the suit or that the defendant republished the alleged defamatory words or had a sinister motive.

The court has considered the submissions with regard to the general and exemplary damages. I find that a sum of kshs. 1,000,000/= would have been reasonable to compensate each of the plaintiffs. In awarding the general damages aforesaid, the court is guided by the persuasive decisions in the case of Murugi & Another (HCC. No. 225/1999 and 2245/1999 (consolidated) and that of Nehemiah Stone vs. Radio Africa Group Limited (Civil Appeal No. 241/2008) where a sum of Kshs. 1 million was awarded in both cases.

I would not have awarded exemplary damages as the same was not proven but as stated earlier, the plaintiffs did not prove their case on a balance of probability and the same is hereby dismissed with costs to the defendant.

Dated, Signed and Delivered at Nairobi this 11th Day of December, 2019.

.....

L. NJUGUNA

JUDGE

In the Presence of

.....For the Plaintiff

..... For the Defendant