



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 598 OF 2010**

TAIB ALI TAIB .....PLAINTIFF

- V E R S U S -

THE NATION MEDIA GROUP LIMITED.....DEFENDANT

**JUDGEMENT**

1) On 28<sup>th</sup> November 2010, the Sunday Nation, a publication of the Nation Media Group Ltd, the defendant herein published a story titled “**On the trail of Drug Barons**” Taib Ali taib, the plaintiff stated that the article was defamatory to him. He consequently filed this suit seeking for damages against the defendant vide the plaint dated 7<sup>th</sup> December 2010.

2) In paragraph 3 of the plaint, the plaintiff reproduced the offensive words verbatim as follows:

*How a brave officer set out to catch drug traffickers but walked into a tangled web that ended his promising career in the police force.*

*By Jeff Davis*

[jdavis@ke.nationmedia.com](mailto:jdavis@ke.nationmedia.com)

*On December 31, 2004, Senior Superintendent Mohammed Godana Jarssa was summoned by then director of the criminal investigations department (CID), and given a special and sensitive new assignment.*

*He was attached to a team investigating the entry of illegal drugs into Kenya, and was given the particular task of ‘investigating the diversion of ‘transit goods’ (dumping) into the local market, thereby destabilising the economy.’*

*The assignment set him up to arrest corrupt Kenya Police and Kenya Revenue Authority officers who were suspected of facilitating the illegal shipping out of these goods from the port of Mombasa.*

*As it turned out, this was not the dream investigative assignment the senior officer would have hoped for. It was Mr. Jarssa’s first step into a tangled web that would soon suffocate and end his promising career in the police force.*

*In a letter written by Mr Jarssa to the anti-corruption commission, he accuses his bosses of having frustrated his efforts.*

*The names of then commissioner of police, Maj-Gen Hussein Ali, and the then deputy director of the CID Peter Kavila are also mentioned in the documents tabled in Parliament by Central Imenti MP Gitobu Imanyara last week.*

*The letter was copied to the then justice minister Martha Karua, then minister for Internal Security John Michuki, Attorney-General Amos Wako, head of Civil Service and secretary to the cabinet Francis Muthaura and the chairman of the Public Service Commission. It is not clear from the documents tabled in the house whether the officials named received the letters.*

*On Friday, Justice Ringera protested that he had neither met Mr. Jarssa nor received his letter.*

*Just a month after beginning his investigations, in January 2005, Mr. Jarssa had “unearthed evidence of high-level corruption involving sugar-barons.”*

*Specifically, Mr. Jarssa had intercepted 18 containers of sugar that had been illegally removed or “stolen” from the Port of Mombasa and was being held at a warehouse situated in Ganjoni Estate within Mombasa.*

*Digging further, he found the warehouse, the containers and their contents all belonged to Mr. Taib Ali Taib, prominent Mombasa politician and his brother Mohammed Taib.*

*On January 5, Mr. Jarssa arrested the three KRA workers who were manning the gate when the sugar left the port on grounds of corruption and collusion with the “sugar barons”. At this point, Mr. Jarssa says, the investigation was put off the rails by Maj-Gen Hussein Ali and Michael Waweru, the commissioner general of the Kenya Revenue Authority.*

*The day after the arrests, Mr. Jarssa gave a routine daily briefing to Maj-Gen Ali, who was personally supervising the investigation during the course of which “no major decisions in the handling and dealing with the impounded sugar and the arrested suspects was to be made without his direct authority and approval.*

*According to Mr. Jarssa’s documents, Maj-Gen Ali told his officers he had spoken with Mr. Waweru, the KRA boss, who “promised to send his deputy and other KRA officers to assess duty due to government of Kenya for impounded sugar worth sh200 million – duty had to be paid before the criminal investigation”.*

*Maj-Gen Ali then directed Mr. Peter Kavila DCP to release the three KRA officers on police bond so that they could report to CID office in Mombasa for questioning.*

*But as it turned out, after the three KRA officers were released they did not appear before the CID. Furthermore, Mr. Jarssa says, no KRA officials reported to Mr. Taib’s warehouse to assess and collect customs duties owed.*

*Then, “under mysterious circumstances” the police officers attached to the Central Police Station in Mombasa guarding the impounded sugar were withdrawn without Mr Jarssa’s knowledge. Visiting the warehouse, Mr. Jarssa found the impounded sugar was being “sold off by agents to the owners and being loaded onto trucks and carried away.”*

*When he confronted DCP Kavila on why and how all of the above could be done under his authority, “he replied he was acting on the express authority of the commissioner of police Maj Gen Hussein Ali”.*

*Seeking to document this highly irregular action, Mr. Jarssa photographed the sugar on its way out of the warehouse. This was not appreciated by Mr. Kavila, who notified Maj-Gen Hussein Ali, and told Mr Jarssa all his movements in Mombasa were being monitored by “them”.*

*“I had the impression that they felt that I was investigating them: Mr Jarssa wrote in his report.*

*Days later, Mr jarssa was removed from active duty with the police force. He was removed from the investigation commission, his firearm was withdrawn by then director of ICD Joseph Kamau, and he was transferred to the Likitang Division of police in Rift Valley.*

*“I declined to take up the said transfer because I perceived it as being a plot by the commissioner of police to cover up his tracks on the acts of corruption committed by him,” Mr Jarssa wrote in his report.*

*On Jan 16 2006, Mr Jarssa next turned to the Kenya Anti-Corruption Commission, reporting to Integrity House with the intention of briefing the then KACC director Aaron Ringera on his ordeal. He was not permitted to meet with Mr. Ringera, and after giving an overview of his corruption accusations to KACC senior counsel Mr. Kenneth Mwinge met with Dr. John Mutonyi, currently KACC’s deputy director in charge of investigations. They requested a comprehensive written summary of his accusations of abuse of office against Maj-Gen and others.*

*On January 18, Mr Jarssa presented his report to another KACC officer named Mr. Waiguru, who promised to send KACC analysis officers to Mombasa and confirm and verify the reports of corruption.*

**Maj-Gen Hussein Ali, former commissioner of police**

*Squashed an investigation into illegal importation of “transit sugar” into Kenya by businessman and politician Taib Ali Taib in 2005.*

*Ordered the release of three Kenya Revenue Officers arrested by Mr Jarssa for corruption and colluding with the “sugar barons” by allowing 18 containers of sugar to illegally leave the port of Mombasa.*

*Ordering police officers guarding Mr Taib’s warehouse off duty, and allowing the 18 containers of “sugar” to be sold and shipped from Mombasa by truck despite ongoing investigations.*

*Removing SSP Jarsa off the investigation, and ordering his transfer to Nyanza and later, his suspension.*

**Mr. Taib Ali Taib, prominent Mombasa politician and his brother Mohammed Taib**

*Accused of illegally importing into Kenya 18 containers of Egyptian “transit sugar” in 2005, a time when no sugar could be imported into Kenya without express authorization by the Kenya Sugar Board.*

*Selling illegally imported sugar worth an estimated sh.200 million.*

**Kenya Revenue Authority**

*Failure to collect duties owed to the government of Kenya by Taib Ali Taib for the illegal importation of sugar with an estimated value of sh.200,000,000.*

*Allowing Mr Taib’s 18 containers of sugar to be sold and shipped form Mombasa by truck despite an ongoing investigation (he worked with Maj-Gen Ali on this, as the accusations go)*

**Peter Kavila, then deputy commissioner of police**

*Released on police bond three KRA officers who had been arrested by Mr. Jarssa for helping Mr*

***Taib illegally remove the sugar from the port of Mombasa, upon orders from Maj-Gen Ali.***

***Was involved in removing police guards from Mr Taib's warehouse and allowing the sugar to be sold and removed.***

**Joseph Kamau, then director of the criminal investigations department**

***Informed Mr Jarssa of his assignment to the anti-drugs investigations team in Mombasa.***

***Took away Jarssa's gun following his removal from the investigating commission.***

**Albert Wamimitire, Patrick Mugoro and Sara Kibera: Kenya Revenue Authority officers**

***These three were responsible for manning Gate 1 of the port of Mombasa the night Mr Taib's sugar illegally left the port."***

3) The plaintiff averred that the aforesaid words in their natural and ordinary meaning were understood to mean and meant that the plaintiff:

***a. was involved in the illegal narcotics trade;***

***b. was engaged in business with drug barons;***

***c. was corrupt and/or had engaged in fraudulent and illegal activities***

***d. was guilty of misrepresentation or wrongful declaration of goods for customs purposes;***

***e. was involved in high level corruption'***

***f. was involved n a conspiracy with corrupt Kenya Police and Kenya Revenue Authority officers;***

***g. was illegally diverting transit goods into the local economy and thereby destabilizing the economy;***

***h. was a person without proper morals***

***i. was engaged in business with sugar barons;***

***j. was an illegal importer of rice and/or sugar;***

***k. dealt with stolen products;***

***i. was guilty of tax evasion;***

***m. was guilty of or involved in criminal offences;***

4) The defendant filed a defence to deny the plaintiff's claim. The defendant stated that the words were not defamatory of the plaintiff but were expressions of opinion. It is also said that the story was fair comment and information.

5) When this suit came up for hearing the plaintiff testified and also summoned an independent witness to buttress his case. At the close of the plaintiff's case, the defendant closed its case without summoning witnesses to testify. Taib Ali Taib (PW 1) told this court that the article was reckless, damning and malicious. He said his good standing and reputation in society, in political circles and among his peers in legal circles was damaged by the offensive publication. PW1 categorically stated before this court that he is not nor has he ever been involved in the drug trade, he is not nor has he ever been involved in the

import and trade of sugar, he does not owe any back taxes nor is he involved in any schemes to defraud the Kenya Revenue Authority and or the government of Kenya of any taxes. The plaintiff further stated that he has never owned any warehouse in Ganjoni Estate within Mombasa and to his knowledge he has not been the subject of any investigation with respect to any of the imputations contained in the article. The plaintiff was also forthright that he has never been charged with any criminal offence despite the damning tone and criminal allegations case upon him by the offending article. The plaintiff summoned Neville Amollo Walusala (PW2), his close friend and former school mate to testify in support of his case. PW2 said that when he read the article he reacted with hostility, suspicion and contempt because the story implicated the plaintiff in a myriad of corrupt and illegal activities. PW2 said he has been PW1's friend for over 32 years. He said that although he had thought the article to be factual and true, he was convinced its inaccuracies, falsehood and recklessness only after he and the plaintiff had discussed the same and the plaintiff went ahead and filed this suit. The defendant on its part did not deem it fit to summon witnesses. In its defence the defendant avers that the information it published was contained in a parliamentary report hence it was privileged information which was fair reporting. The defendant however failed to adduce the alleged parliamentary report as an exhibit in evidence. The defendant has also failed to tender credible evidence to prove that the offending article was published on a privileged occasion. The defendant has further failed to present evidence showing the article was indeed true, accurate or based on some or any tangible or verifiable and reliable facts.

6) After considering the evidence and the rival submissions, I think two main issues commend themselves for determination:

First, whether or not the article complained of was defamatory to the plaintiff.

Secondly, whether or not the plaintiff is entitled to damages including aggravated and or exemplary damages.

7) On the first issue as to whether the publication was defamatory to the plaintiff, it is clear from the publication in its ordinary and natural meaning that the plaintiff is implicated in illegal and corrupt activities. A careful reading of the same will reveal that it is insinuated that the plaintiff is involved in narcotics trade, corruption, tax fraud and conspiracy to undermine the economy of this country. Serious and damning allegations are made in the article and the plaintiff is referred by name and described as a Prominent Mombasa politician. In short, I find that the article is defamatory of the plaintiff. The story identifies the plaintiff and implicates him in a web of corruption, fraud and conspiracy with the effect of causing any reasonable persons reading the said an article to immediately associate him with the said activities consequently lowering the reputation and estimation of the plaintiff in their eyes. The defendant had raised the defence of qualified privilege but unfortunately the defendant presented no evidence in support therefore the defence lacked both evidential and factual basis. The defendant had also set up the defence of fair comment. The defendant failed to verify any of the facts before proceeding to name and shame the plaintiff. The defendant failed to even interview the plaintiff or to ask for his comments. I am convinced that the practice of publishing unverified material not as opinion but rather as factual information for the consumption of the general public is and should be rightly held as constructive malice.

8) Having come to the conclusion that the plaintiff was defamed, let me now consider the element of quantum.

9) I have perused the plaint and I note that the plaintiff has prayed for general damages, exemplary and or aggravated damages and injunctive orders. The plaintiff has demonstrated that the defendant published the offending article defaming the plaintiff by implicating him with all manner of illegal activities consequently exposing him to ridicule, shame and lowering his reputation in the eyes of the reasonable people. For these reasons therefore the plaintiff is entitled to general, aggravated and exemplary damages. The plaintiff has urged this court to award him an all encompassing sum of kshs.15,000,000/= as adequate compensation. The plaintiff relied on the case of **Samuel Mukunya =vs= Nation Media Group Ltd and another (2015) eKLR** where this court awarded ksh.15,000,000/= in general damages, ksh,3,500,000/= in aggravated damages and ksh.1,500,000/= in lieu of apology.

