



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 432 OF 2013

BRIAN ODHIAMBO OLUOCH.....PLAINTIFF

VERSUS

STANDARD CHARTERED BANK LIMITED.....DEFENDANT

JUDGMENT

The plaintiff's case as pleaded in the plaint dated 8th October, 2013 and filed in court on 10th October, 2013 is that he was a lawful account holder with the defendant operating account number [...]. That he applied and was granted credit facilities by the defendant which credit facilities he serviced in accordance with the loan agreement. He alleged that it was an implied term of the agreement that the defendant owed a duty to him to operate the account in an efficient, professional and confidential manner.

That on 10th January, 2013, the defendant without any colour of right illegally, wrongfully and without due process published and/or caused to be published a statement to Credit Reference Bureau Africa Limited and Metropolitan Credit Reference Bureau Limited to the effect that he had failed to service his loan facilities and therefore was in arrears for 107 days as at 1st January, 2013 while the defendant knew or ought to have known that the plaintiff was not in arrears. He claimed that the information published by the defendant on the face of it is false, malicious and was authored with an intention to defame and injure his reputation. He further claims that the defendant's act of listing him and publishing matters they knew to be false, defamatory, malicious and libelous were meant to scandalize, humiliate, injure his professional image, general honest standing in the society and to vex him. He has set out the particulars of the defendant's defamatory and malicious act.

That, by reason of, and as a result of the aforesaid statement, the plaintiff has been greatly injured in his credit, reputation, character and has suffered loss and damage. He has set out the particulars of loss and damage in paragraph 9 of the plaint which he has listed as:- loss of professional and personal reputation, loss of good will, mental anguish and trauma, loss of credit facilities, loss of employment and reduced earning capacity.

It is further pleaded that by reason of the aforesaid facts and by reason of the plaintiff's personal and professional reputation, his integrity has been seriously injured and he has suffered considerable distress, agony, mental torture, humiliation and embarrassment. That as a result of the wrongful, illegal and irregular listing of his name by the defendant, his employer served him with a notice to show cause why his employment should not be terminated and despite the show cause letter, the defendant refused to admit liability for wrongful listing and remove his name from CRB and thereby exposed him to loss of employment.

He has prayed for damages for defamation, aggravated and exemplary damages for continued libel and

slander, a declaration that his listing by the defendant to credit reference Bureau is wrongful, illegal, null and void, damages for loss of employment, cost of the suit and interest at court rates.

The defendant filed its defence on the 14th November, 2013, where in it admitted that the plaintiff applied for and obtained a loan from it. That, the plaintiff made monthly repayments due in respect of the loan until the 28th August, 2012 when he made a lump sum payment of Kshs.80,000/- into the loan account. The defendant avers that the plaintiff gave no instruction on how the lump sum payment was to be treated and in the absence of such instructions, the defendant treated it as a reduction of the principal amount due under the loan. That thereafter, the plaintiff failed to make the monthly loan repayments and by 10th January, 2013 the loan account was non-performing and the defendant was under obligation to report to CRB- Pursuant to section 31 (3) (b) of the Banking Act and regulation 14 (1) of the Banking (credit reference Bureau) regulations, 2008.

The defendant further averred that it wrote a letter dated 20th January, 2013 notifying the plaintiff of the report to the CRB and the consequences thereof. That the plaintiff did not request for correction under regulation 20 of the Banking (Credit Reference Bureau) regulations, 2008. The defendant denied that the said report was made illegally, wrongfully or without due process or maliciously or with intent to defame or injure the plaintiff's reputation as alleged in the plaint, or at all. That the reports or words complained of were published pursuant to a statutory obligation and was therefore published on an occasion of absolute privilege, alternatively on an occasion of qualified privilege and that the information forwarded to CRB was not false.

The defendant further avers that the information was forwarded only to the two credit bureaus and was not published by the defendant to any other person. The particulars of injury to the plaintiff's personal or professional reputation or integrity, distress, agony, mental torture, humiliation or embarrassment are all denied and if the plaintiff suffered any loss as a result of the listing, then such injury was caused or contributed to by his failure to exercise the right to request for correction under regulation 20 of the Banking (Credit Reference Bureau) regulations 2008 or to raise any complaint about the treatment of the lump sum payment made on the 28th August, 2012 until the 4th September, 2013.

The plaintiff testified and did not call any witnesses while one witness testified on behalf of the defendant.

In his evidence, the plaintiff told the court that he is a banker by profession and at the material time he was working with Southern Credit Bank. He confirmed that he applied for a loan with the defendant. He told the court that on 10th January, 2013, he received a call from a lady called Hellen who was working for the defendant who told him that his loan was going into bad debt. He told her that another employee from the defendant namely Alice had called him in December regarding the same issue and he explained to her that he had paid a sum of Kshs.80,000/- towards the said loan. He produced a receipt dated the 28th August, 2010 as evidence of payment of the Kshs.80,000/-.

It was his further evidence that when he paid the said amount it was meant to cover installments for the months of August to December, 2012. That after Hellen called him, they agreed that he should be paying every 28th of the subsequent month and that he should continue paying the normal installments. That sometimes in April, 2013 he received a letter through the post office indicating that he had been listed with CRB and upon enquiring from Hellen why he was listed he was told that anybody having a loan in Kenya is listed as a bad debtor.

It was his further evidence that he applied for a loan from Diamond Bank between August – September, 2013 who refused to advance him the loan on account of this listing at the CRB. He was summoned by the head of risk compliance who informed him that he had been listed as a bad debtor. He was told to regularize the position failing which a disciplinary action would be taken against him. The said communication was via email which was done to his immediate boss one Mr. Suraj Shah the entire human resource and the M.D's office. That his immediate boss questioned him about his credibility and integrity.

It was his evidence that his performance was affected in that he was not promoted yet all the other years he had been promoted. His reputation suffered as his boss started looking at him like a liar. He was even summoned by his father thinking that he had been involved in fraud and he had to explain to him the position. According to him, the defendant was malicious because it forwarded his name without informing him.

On cross-examination, he admitted that his statement filed in court did not made reference to the calls allegedly made between Hellen, Alice and himself. He said he did not question the word instalment on the receipt to read capital reduction because he only noted after he received a call from Alice in December, 2012. He said he never received the letter dated the 5th December, 2012 but admitted that the address used is his. He however, admitted having received the letter dated 20th January, 2013 though it was his evidence that he received it in April. He stated that he applied for a loan knowing that he had been listed.

The defendant called one Jennifer Kajuju Mbaabu as its only witness. She was by then working with the defendant as a manager, collection support and retail clients. She applied that her statement dated 12th July 2016 be adopted as her evidence in chief to which the court obliged. She confirmed the fact that the plaintiff applied for and obtained a loan from the defendant which was to be repaid by monthly installments. It was her evidence from the statement filed in court that the instalments by the plaintiff were not being made regularly.

On the Kshs.80,000/- lump sum paid on the 28th August, 2012 by the plaintiff, it was her evidence that some of it was to clear the arrears due on the 15th July, 2012.

According to her, when the plaintiff made the payment of Kshs.80,000/- on the 28th august, 2012, he specified it as a capital reduction and after clearing the arrears, the balance of Kshs.68.218/- was reflected in the statement of account as principal reduction. That the effect of this was that the monthly payments expected from the plaintiff would remain unchanged but the tenor or length of the repayment would change. It was her further evidence that the plaintiff failed to make the monthly repayments and by a letter dated 5th December,2012 the defendant informed him of the overdue balance and its intention to list the plaintiff with the CRB which it did on the 10th January, 2013 as the loan account was not performing.

That the plaintiff resumed payments of the loan on the 24th January, 2013, but he did not respond to the defendant's letter dated 5th December, 2012 and that of 20th January, 2013. She stated that the report was made pursuant to a statutory obligation, and in making the report the defendant was not malicious and the information was only made available to the two CRB's. That the plaintiff raised a dispute with the defendant as to the treatment of the Kshs.80,000/- on the 4th September, 2013 long after he had cleared the loan. She told the court that there was no one by name Hellen in the section of the defendant dealing with the plaintiff's account. That she made two telephone calls to the plaintiff on the 23rd April,2013 regarding the arrears and he made promises regarding the payments of the arrears which he failed to fulfil.

On cross-examination, it was her evidence that when depositing money, it is the customer who fills the deposit slip and whatever he/she writes down in the slip is what is called the instructions to the bank. That in the slip dated 28th August,2013 when a deposit of Kshs.80,000/= was made, the instructions on installment has been cancelled and in its place written capital reduction. She admitted that it ought to have been counter-signed but it was not. Regarding the letter dated 6th September, 2013, she told the court that it was a misunderstanding.

On re-examination, it was her evidence that it is the customer who fills the transaction form and incase of any complaint, the same should be lodged after the payment has been done if it does not agree with the instructions.

I have carefully considered the pleadings herein, the oral and documentary evidence adduced and the rival

submissions by both parties supported by the list of authorities relied on. Having set out the background of this matter, the parties respective positions and the decided cases which the court has duly considered in details, I now set out to identify the issues for determination, which in my considered view are as follows;

- (1) Whether the statement published by the defendant to the credit reference Bureaus was false and malicious;
- (2) Did the plaintiff suffer any loss/damage to his reputation as a result of the publication.
- (3) Whether the statement to the credit reference Bureaus was defamatory of the plaintiff.
- (4) Did the plaintiff give any instructions to the defendant as to how the lump sum of Kshs.80,000/- was to be treated?
- (5) If the answer to issue number 4 is in the negative, was the defendant justified in treating the payment of Kshs.80,000/= as a reduction to the principal amount?
- (6) Was the plaintiff's Account in arrears as at the time his name was forwarded to the credit reference Bureaus?
- (7) What is the quantum of damages if any, payable to the plaintiff?
- (8) Who is liable to pay costs of the suit?

From the pleadings and the evidence on record, the main cause of action herein is that of defamation. The tort of defamation is defined variously with not one agreed single defamation that fits it all. In the English case of *Scott Vs. Sampson (1882) QBD 491 at page 503, Dare J. Defined the word "defamation" as;*

"A false statement about a man to his discredit"

The leading English monograph of Gately on the subject of defamation defines it as thus;

"Any imputation which may tend to lower the plaintiff in the estimation of the right thinking members of the society generally"

While the well known work of Winfield gives the following definition of defamation.

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

The tort of defamation was well described in the 1979 British Columbia Court of Appeal Decision of *Murphy Vs. Ha March (13DLR 3d 484)* where a member of parliament Judy Ha March wrote about the plaintiff as follows:-

"A brash young radio reporter, named Ed Murphy (heartily detested by most of the press gallery and the members had somehow learnt that Maurice Lamantagne (the then Secretary of State) and a long-time friend and adviser of the Prime Minister had purchased furniture but had not paid for it". In finding that there was actionable libel, the British Columbia Supreme Court in dismissing the appeal wrote;-

"Defamation is where a shameful action is attributed to a man (he stole my purse a shameful character (he is dishonest) a shameful course of action (he lives on avails of prostitution) or a shameful condition (he has small pox). Such words are considered defamatory because they tend to

bring the men named into hatred, contempt and ridicule. The more modern definition of defamation is words tending to lower the plaintiff in the estimation of right thinking members of the society generally.

The common law of defamation protects every person from harm to their reputation by false and derogatory remarks about their person known as defamation. The same protection is also anchored in the constitution under Article 33(1) (a) as read with clause (3) thereof both of which provides;-

“ 33 (1) (a) Every person has a right to freedom of expression, which include freedom to seek, receive or impart information or idea.

Clause (3) provides;-

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

What then are the elements of the tort of defamation? The elements of the tort of defamation were well laid out in the case of J. Kudwoli Vs. Eureka Education and teaching consultants & 2 others HCC No. 126 of 1990.

- (1) The matter to which the plaintiff complains about was published by the defendant.
- (2) The publication concerned or referred to the plaintiff
- (3) That it is defamatory in character.
- (4) That it was published maliciously and;
- (5) That in slander, subject to certain exceptions, that the plaintiff has thereby suffered special damage.

The same elements are also espoused in the case of **Wycliffe A. Swanya Versus Toyota East Africa Limited and Francis Massai Nairobi No. 70 of 2008.**

The essence of a defamatory statement is its tendency to injure the reputation of another person. It is however, upon the plaintiff to show or establish how he was exposed to public hatred contempt or ridicule or that the words had caused him to be shunned or avoided by certain people. See Gatley on libel and slander (8th edition par 31). The plaintiff has to prove the actual words complained of and it is not sufficient to show the defendant made a defamatory statement.

Back to our case, from the evidence on record, it is not in dispute that the defendant published the words complained of and by that is meant, it forwarded the plaintiff's name to Africa Limited and Metropolitan Credit reference Bureaus to the effect that the plaintiff had failed to service his loan facilities and therefore was in arrears for 107 days as at 1st January, 2013.

The circumstances surrounding the alleged defamatory publication were that the plaintiff applied for a loan from the defendant Bank and the same was to be repaid in 54 consecutive months by way of monthly installments of Ksh. Six thousand two hundred and fourteen (Kshs.6214/-) which installments the plaintiff is said to have paid and on the 28th August, 2012, he went ahead and deposited a lump sum of Ksh. Eighty Thousand (Kshs.80,000/-). The cash deposit voucher for the said amount is marked as exhibit -2. This deposit is the bone of contention and it forms the basis of the plaintiff's cause of action in this case.

It has been submitted by the plaintiff that, the instructions he issued to the bank were that the said amount should be treated as installment and he further submitted that, unknown to him, the defendant went ahead and changed the instructions without his consent or inquiry which instructions the defendant changed from installments to capital reduction. This fact of change of instructions affected the plaintiff leading to the case herein.

The plaintiff avers that due to the changed instructions, his loan account fell into arrears and on the 20th January, 2013 the defendant published or caused to be published a statement to the two credit Bureaus (Supra)

It is further submitted that at no time was any letter of notification sent to the plaintiff until an official from the defendant made a telephone call to him informing him of his account status being in default and it is at that point that he took up the matter.

The plaintiff further avers that the defendant never took any steps to rectify the position and as a result of the listing, he was summoned by his employer as his credibility was suspect. An email was produced to that effect dated 24th September, 2013. As a consequence of the matters complained of by the plaintiff, he avers that he lost his employment and he lost his career opportunities.

In its submissions, the defendant has heavily relied on the defences of absolute privilege and justification. It avers that the report was made pursuant to the statutory obligation imposed on the defendant to report non-performing loans and as such the report was not made illegally or wrongfully or without due process or maliciously or with intent to defame or injure the reputation of the plaintiff.

Turning to the issues for determination, on the first issue as to whether the publication to the Bureaus was false and malicious:- It has emerged from the evidence on record that the deposit of Kshs.80,000/- was done on the 28th August, 2012. The cash deposit slip marked as exhibit 2 was manually filed by the plaintiff. He wrote in his handwriting as was the practice when making deposits. A closer look at that voucher reveals that he first wrote installment, then cancelled and wrote capital reduction. On the strength of those instructions, the defendant's employee produced a computer print-out reflecting those instructions as given by the plaintiff in the cash deposit slip. The plaintiff alleges that the instructions were cancelled and he attributes the cancellations to the defendant's employees. Assuming, its true that the instructions were changed as alleged, at what point was this done and why didn't the plaintiff complain to the defendant. Having made an admission that he is the one who filled the cash deposit voucher, he cannot turn round and deny having made the changes and yet he never complained and in any event, why would the defendant's agent change the instructions without the plaintiff's consent?

As rightly submitted by the counsel for the defendant, the plaintiff was working with a bank and had done so far many years and therefore he had a wide experience of the bank operations. He is therefore very familiar with cash deposit slips and the importance of the information printed on the cash deposit slips. With his working background and experience, he knew that the payment was recorded in the defendant's system as capital reduction.

The evidence of DW1 (as captured in her witness statement which was adopted as part of her evidence in chief) reveals that the plaintiff had not kept up to date with the payment of installments since he left employment at the Southern Credit Bank. That the payment of the Kshs.80,000/- made on the 28th August, 2012 was first to clear the arrears of installments for July and August, 2012 and then the balance of Kshs.68,218/- was to be treated as capital reduction. This can be clearly seen in his statement of accounts produced as exhibit DWE 2.

A quick perusal of that statement shows that payments were made late sometimes as late as two months. Assuming for purposes of argument that the plaintiff's instructions were that the lump sum be treated as installments, the balance of Kshs.,68,218/- was enough to cover 10 or 11 monthly installments, which would have taken the plaintiff through to June or July, 2013 but he resumed payments from the 28th January, 2013.

The question that begs for an answer is? If the lump sum payment was for installment, why did the plaintiff resume payment of installments when approached by the defendant's employee and why didn't he protest to the defendant at this time?

It is on record that the plaintiff started receiving calls from the defendant's employees in the month of

December, 2012 and it was as a result of their calls that he resumed payments of installment. The plaintiff has admitted receiving the defendant's letter dated 20th January, 2013 which he says he received in April, 2013. The said letter made reference to a payment on the 28th January 2013 which must have been a mistake or the letter must have been wrongly dated. The defendant's earlier letter dated 5th December, 2012 was sent through the plaintiff's known address and which was the same address used to post the one dated 20th January, 2013. The plaintiff admitted that the address used was his and it was the correct address. DW1 confirmed having printed the said letter.

The plaintiff having failed to pay the installments falling due, the defendant was under a legal obligation to report him to the credit reference Bureau pursuant to section 31 (3) (b) of the Banking Act and regulation 14 (1) of the Banking (Credit Reference Bureau) Regulations, 2008 which were in force until 17th January, 2014 when they were repealed by the Credit Reference Bureau Regulations, 2013. The defendant's act of publishing the plaintiff's information to the two Credit Reference Bureaus was in line with section 31 (2) of the Banking Act which prohibits the publication of any information by a bank except where provided in the Act Section 31 (5) provides that;

“No duty to which.....an institution linked under this Act.....shall be breached by reason of the disclosures in good faith, of any information under sub section (2), to or by, as the case may be;

(c) An institution licenced under this Act.

(d) A credit reference Bureau established under subsection 4.

In the course of the performance of their duties and no action shall be against an institution licenced under this Act.....on account of such disclosure. From the above analysis and in my humble view, I find and hold that the publication by the defendant of the plaintiff's information to the credit reference Bureaus was not malicious or false. The plaintiff deposited the lump sum of Kshs.80,000/- and gave instructions that it be treated as a capital reduction a fact he knew all along and that explains why he resumed payments in the month of January, 2013 after he was telephoned by the defendant's employees. What the defendant did in publishing the information to the credit reference Bureau was within the law and there was no malice on its part and at the material time, the plaintiff's loan account was in arrears.

Was the publication defamatory?

Going by the analysis herein above, the plaintiff's statement of account shows that the plaintiff was not always regular in making monthly payments. This fact was not denied. In fact, it was the plaintiff's evidence that when he left employment with the Southern Credit Bank he did not inform the defendant. The status of the loan account has a lot to tell about his reputation and more so being a bank employee.

In support of his case, the plaintiff seems to have heavily relied on the contents of the letters dated 5th September, 2013 and 6th September, 2013.

The letter dated 5th September, 2013 was by the defendant to the credit reference Bureau which stated;

“We have validated the information again and wish to request deletion of the name from the listing”.

The plaintiff has emphasized that the defendant has admitted not having done a proper validation until they did it again.

The letter dated 6th September, 2013 was worded as follows;

“We have done further verification of details of your account with us. As a result, we have found that we listed you based on the overdue position of your account on the 1st January, 2013. This position did not

however take into consideration your additional pre-payments received on the 28th August, 2012. We apologize for any inconvenience this error may have caused you. In her evidence, DW1 is on record as having told the court that it was an error and misunderstanding and that the plaintiff ought to have complained which he failed to do until he paid the loan in full. It is also noted that though the plaintiff learnt about the publishing of his information to the credit reference Bureaus in January, 2013, he did not raise any complaint with the defendant until in the month of September after he had paid the loan in full which appears to have been an afterthought.

The answer to the issue no.3 is that the publication was not defamatory from the circumstances of the case and it did not damage the plaintiff's reputation.

Did the plaintiff suffer any loss/damage?

The plaintiff alleges that he lost his job and he could not be promoted after his employer learnt of his reference to the credit reference Bureaus: First, it is true that he had defaulted. Secondly, as early as in January, 2013 it was within his knowledge that he had been listed with the credit Bureau, yet he went ahead and applied for a loan having those facts in mind. The loan was applied for in the month of August and he had all the time to pursue until his name was deleted before he could apply for the loan. Further, with the letters dated 5/9/2013 and 6/9/2013, the plaintiff was in a position to offer a concrete explanation to his employer with regard to the circumstances surrounding his listing with the credit Reference Bureaus which he failed to do and to that extent any loss and/or damage he may have suffered could not have been attributed to the defendant.

Up to this point, I think this court has said enough to show that the plaintiff has not proved his case on a balance probability and the same is dismissed. But in the event that I am found to be wrong in my finding, the law obliges me to assess the damages I would have awarded the plaintiff had I entered verdict in his favour.

It is curious that none of the learned counsels addressed me on this issue but all the same I will proceed to consider it as required under the law. On the issue of damages, the following passage by **Winderyer J. in the case of Vein Vs. John Raira X & Sons properly limited 177. C.L.R 115,150** is useful;

“It seems to me, properly speaking a man defamed does not get compensation for his reputation that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways...as vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solation rather than a monetary recompense for harm measurable in money”.

The same position was held by the court in the case of Brigadier **Arthur Ndong Owuor Vs. The Standard Limited, Nairobi HCCC No. 511/2011.**

“Once a reputation is lost in my view, monetary damages might not be adequate compensation. Monetary damages might be a consolation yes, but they will never be an adequate compensation for a lost reputation. In the eyes of the public, once a person's reputation has been damaged it will remain in memory possibly throughout his life”.

Still on assessment of damages, Tunoi JA (as he then was) in **Civil Appeal No.314/2000 (Johnson Evans Gicheru Vs Andrew Morton & Another (2005)eKLR** had this to say;

“In an action of libel the trial court in assessing damages is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time the verdict was given- it may consider what the conduct has been before action and in court during the trial”.

In awarding damages, the court drew considerable support in the guideline in the case of **Jones Vs. Pollard (1997) EMLR 233-243** where a checklist of compensable factors in libel actions were enumerated as follows;

- (1) The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition;
- (2) The subject effect of the plaintiff's feelings not only from the prominence itself, but from the defendant's conduct thereafter both up to and including the trial itself;
- (3) Matters tending to mitigate damages, such as the publication of an apology;
- (4) Matters tending to reduce damages;
- (5) Vindicating of the plaintiff's reputation past and future.

Having come from that background and being guided by the case of **Jared Omonde Kisera t/a Omonde Kisere & Co. Advocates Vs. Ken Omondi, Wachira Waruru & the Standard Limited HCCC No. 160/2001 (unreported)**, where Justice Wambilyanga awarded the plaintiff a sum of Kshs.800,000/- for defamation and that of **Mong'are Gikonyo Gekong'a & Momanyi Advocate Vs. The standard Limited HCCC No. 518/199** where a sum of Kshs.1,000,000/= was awarded, if the plaintiff herein had succeeded I would have awarded him a total of Kshs.1 million as general damages for defamation.

The plaintiff has also sought aggravated and exemplary damages. In regard to this head, I wish to rely on the English court of Appeal decision in the case of **John Vs. MGW Ltd (1996) 2 A11 E.R. 35** where the court of Appeal held;

"The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will, compensate him for the wrong he has suffered. That must compensate him for damages to his reputation hurt and humiliation which the defamatory publication caused.

Exemplary damages on the other hand goes beyond compensation and are meant to "punish" the defendant. Aggravated damages will be ordered against a defendant who acts out of improper motive of where it is attracted by malice, insistence on a flurry defence of justification or failure to apologize."

On aggravated damages, this court does not find any aggravating circumstances that would have persuaded it to award the Plaintiff aggravated damages. There was no evidence showing that the defendant conducted itself in a malicious manner.

On prayer 3 seeking a declaration that the listing of the plaintiff by the defendant to the Credit Reference Bureau is wrongful, illegal, null and void, I grant no damages under this head having already found that the listing was in accordance with the law and the plaintiff's loan account was in arrears.

Under prayer 4, on damages for loss of employment, no evidence of the loss of employment was lead and/or produced. In fact all the evidence tendered surrounded the tort of defamation and therefore, I make no award under this head as well.

All said and done, the plaintiff did not prove his case against the defendant on a balance of probability. The case is dismissed but with no orders as to costs.

Dated, Delivered and Signed at Nairobi this 2nd day of March, 2017.

.....

L. NJUGUNA

JUDGE

In the presence of

.....***for the Plaintiff.***

..... ***for the Defendant.***