



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NUMBER 445 OF 2012**

**HON. BISHOP MARGARET WANJIRU KARIUKI. .... PLAINTIFF**

**VERSUS**

**THE NAIROBI STAR PUBLICATIONS LIMITED. .... DEFENDANT**

**J U D G M E N T**

In a plaint filed in the High Court of Kenya at Nairobi on the 10<sup>th</sup> September, 2012 the Plaintiff Hon. Bishop Dr. Margaret Wanjiru Kariuki MP sued the Defendant, the Nairobi Star Publications limited, the cause of action being founded on a publication carried out by the Defendant in their Newspaper Edition of 16<sup>th</sup> day of September, 2011 wherein the allegations were made concerning the Plaintiff.

The Plaintiff in paragraph 4 of the Plaint pleaded that on the said date, the Defendant without any justifiable cause or provocation, published and/or caused to be published and disseminated, of concerning and about the Plaintiff through the said sensational Star Newspaper in the front page a libelous and malicious article titled: -

***“Bishop Wanjiru Banned from doing weddings”*** which article she alleges was highly defamatory of her repute, personality, credibility and standing in the society. The alleged defamatory article is set out hereinbelow.

***“Bishop Margaret Wanjiru, the Housing Assistant Minister has been banned from conducting marriages, The Kenya Gazettee Notice dated September, 9<sup>th</sup> signed by the Senior Deputy Registrar of Marriages, FSM Ng’ang’a withdrew Wanjiru’s licence with immediate effect. Wanjiru the MP for Starehe, is also the Presiding Bishop of Jesus is Alive Ministries which is part of the Redeemed Gospel Churches of Kenya “Notice is given that in exercise of the powers conferred by Section 6 (1) of the African Christian Marriage and Divorce Act, the Ministers named in the Schedule hereto have had their licences to celebrate marriage under the provision of the said Act cancelled, said the notice.***

***The decision will affect thousands of Wanjiru’s followers who jampack the JIAM Church and offices on Haile Selassie Highway, Nairobi, every Sunday. Other church ministers whose licences have been canceled are Rev. Perminus Kinyua, Rev. Julius Kigunda and Rev. Joseph Kamau Njorooge of Christian Church International. The registrar also banned Pastor Job Njugi of Vision and Hope Revival Centre, Rev. Joseph Boro of Nairobi Community Centre, Rev. Robert Wafula of Jesus Worship Sanctuary, Rev. Paul Mulatya Makula of Age Community Ministry Kenya, Rev. Gabriel Wanjohi Waweru of the Christian Church International from***

***solemnizing marriages.”***

Wanjiru is known for her catchphrase ***”The Glory is here”*** she told the star that the notice in the Kenya Gazettee was ***”procedural”*** and did not mean she cannot conduct marriages.

She said she had been authorized to marry couples and her status has changed. I was then registered a pastor under the Redeemed Gospel Churches but now I am an ordinate Bishop of the Jesus is Alive Ministries, ***”She told the Star yesterday. Wanjiru explained that she could not be registered both a pastor Margaret Wanjiru of Redeemed Gospel church, and Bishop Margaret Wanjiru of JIAM and had to choose one between them.”***

Senior Counsel Paul Muite said it was ***”Strange”*** that such action would be taken by the registrar. He explained that it is the responsibility of the church to seek registration or ordinate clergy with authority to solemnize marriages. ***”The only time someone can be deregistered is if the recommending church is not registered: or the individual has not been ordained or has been excommunicated by the church,*** Muite said.”

Wanjiru was ordained by Bishop Arthur Kitonga when he was the head of the Redeemed Gospel Churches, Kitonga who has since retired was yesterday not available for comment.

However, a church Bishop who cannot be identified because he is not authorized to make an official statement said of Wanjiru, ***”She first applied for the licence under the Redeemed Gospel Churches many years back and she was granted.”***

Now, for her to claim that the reason her licence has been cancelled is just because she has applied for a new one is rather peculiar, she simply could have updated her status since she now runs her own church.

Bishop Wanjiru’s JIAM is described on her website as one of the fastest growing churches in Africa.

The Plaintiff avers that the aforesaid publication was not only false, malicious and defamatory but the same was contemptuous, disparaging and ill motivated, and the Defendant in so publishing the same, was actuated by extreme malice, contempt, spite and the publication was calculated to injure, discredit, humiliate and destroy the Plaintiff’s personal image. The Plaintiff enumerated the various ways the said publication had injured the Plaintiff’s reputation. In paragraph 6 of the Plaintiff, it sets out what the words meant or were understood to mean by way of innuendo which I will not reproduce here.

The Plaintiff further pleaded that, before the publication of the said libelous material, she in her capacity as Member of Parliament for Starehe Constituency and the Bishop of JIAM Ministries, enjoyed extremely high esteem and respect from her constituents, followers and flock of the Christian Fraternity and her colleagues in the 10<sup>th</sup> Parliament of the Republic of Kenya. Further, by reason of the said defamatory article, the Plaintiff’s reputation has been brought into question and lowered in the estimation of the right thinking members of the society and her congregation who have shunned and avoided the Plaintiff since.

The Defendant filed a statement of defence on 12<sup>th</sup> April, 2013 wherein it has admitted publishing the article complained of and admits the contents of the plaintiff in so far as it is consistent with the exact wording of the article. The Defendant denies that the allegations in the article are injurious of the Plaintiff’s reputation and avers that the article contains statements of opinion that were based on facts and therefore justified in the circumstances.

The Defendant further avers the words complained of consist of statements of fact, are true in substance and fact and in so far as they consist of expressions of opinion on a matter of public interest it avers that the article was published on the basis of factual information, available to the public.

The Defendant in paragraph 5 sets out the particulars of facts under Order 2 rule 7 of the Civil Procedure Act which were that: -

- a) It is a fact that the Registrar of Marriages vide Kenya Gazette Notice Number 10875 dated 30<sup>th</sup> August, 2011 published in the September 9, 2011 issue cancelled the Plaintiff's licence to celebrate marriages under the African Christian Marriage and Divorce Act.
- b) It is a fact from the notice dated 30<sup>th</sup> August, 2011 the Plaintiff could not celebrate marriages.
- c) It is a fact that in the Kenya Gazette notice Number 10875 dated 30<sup>th</sup> August, 2011 published in September 9 issue, other licences apart from the Plaintiff's were also cancelled.
- d) It is a fact that once the licence has been canceled the holder of the cancelled licence cannot celebrate marriages without a licence.

And on the particulars of fair comment, the Defendant avers that it is a fair comment that the cancellation of the Plaintiff's licence was bound to affect the Plaintiff's followers. In whole, the Defendant avers that the article were incapable of communicating to its general readership the importations or innuendos alleged by the Plaintiff.

The Defendant further avers that consequent to the publication of the Article complained of, it published a second article on 27<sup>th</sup> September, stating that the Plaintiff had been reinstated by the Registrar of Marriages to celebrate marriages.

When the matter was finally heard, the Plaintiff testified as PW 1 and called one witness in support of her case while the Defendant called one witness. The Plaintiff adopted her statement filed in court on 10<sup>th</sup> August, 2012 and relied on the list of documents filed the same day with the statement. Her evidence reiterates the contents of the plaint filed herein. She told the court that the impression created by the article was that she is either a conwoman, has no integrity, is not ordained or has been ex-communicated from the Ministry or she has been deregistered.

According to her, the actual position was that until 9<sup>th</sup> September, 2011, she was a holder of marriage licence issued to her under the Redeemed Gospel Church as a Pastor, which duly authorized her to celebrate marriages under the African Christian Marriage and Divorce Act. That she sought to have the licence changed to reflect the fact that she was now a Bishop and member of JIAM and procedurally, the Registrar of Marriages had to first cancel the licence under the Redeemed Gospel Church before immediately issuing one to her under JIAM.

That by a gazette Notice No. 10875 published on the 9<sup>th</sup> September, 2011, the Senior Deputy Registrar of Marriages acceded to her request and cancelled the said licence issued to her under Redeemed Gospel Church as Pastor Margaret Wanjiru Kariuki and on the 13<sup>th</sup> September, 2011, the Senior Deputy Registrar General issued her with a replacement licence under Jesus is Alive Ministries as a Bishop Margaret Wanjiru Kariuki since her status had changed.

That on or about the 16<sup>th</sup> September, during the subsistence of the marriage licence dated the 13<sup>th</sup> September, 2011, the Defendant without any justification, cause or provocation published and/or caused to be published and disseminated of, concerning and about her and through the main headline of its star Newspaper, the words complained of in the article.

It was her evidence that the cancellation of the said licence was done at her request and instance so as to retain one licence as Bishop under Jesus is Alive Ministries. That the publication has caused her and her family, friends, peers and congregation extreme and grave suffering, embarrassment, ridicule, hatred, pain and agony.

The Plaintiff called one witness namely Rev. Danson Kanga who testified as PW 2. He is a resident Pastor of Jesus is Alive Ministries whose duties are to oversee administration work, run the church programmes and counseling. It was his evidence that when he read the article, it affected him negatively since they work together with the Plaintiff. To him it was a big shock as he never expected such a thing to

be mentioned. The article made him think that the Plaintiff was not an honest person or that what she was doing was not right and that she did not deserve to be called a Bishop if she had been banned from officiating ceremonies like weddings. According to him, the Ministry was affected in that people began to raise questions and the number of weddings they used to have, reduced drastically and even a good number of people left the church.

On its part, the Defendant called one witness in support of its case, One Paul Ilado who testified as DW 1. He is a journalist by profession employed by the Star Newspaper as the group Political Editor. He adopted his statement dated 12<sup>th</sup> April, 2013 as part of his evidence in chief. In addition to the statement he also relied on the list of documents filed in Court. In summary, he admitted that the Defendant published the article complained of by the Plaintiff but before doing so, they contacted some people whose names were mentioned in the Kenya gazette to confirm if their licences had been cancelled and the Plaintiff herein was among the people that they contacted. It was his further evidence that the article was published following an official Kenya gazette which had been published on the 9<sup>th</sup> September, 2011 Notice Number 10875 which was talking about cancellation of licences which contained names of several people and the Plaintiff happened to be one of them. He told the court that they reported what was in the Kenya Gazette. According to him he is not aware of anything defamatory in the article and that they gave the Plaintiff a chance to respond and her response was carried in the story. He averred that they did not add anything else, rather than what was contained in the Kenya Gazette and that they did not have a problem with the Plaintiff as a person. That the notice was published on the 6<sup>th</sup> September, 2011 and the Defendant published the story on the 16<sup>th</sup> September, 2011 by which time, there was only one Kenya Gazette Notice Number 10874 but later on, after two weeks they got another notice published on 23<sup>rd</sup> September, 2011 which reinstated the Plaintiff's licence. That immediately they got the Kenya Gazette of 23<sup>rd</sup> September, 2011 they reported the new facts on 27<sup>th</sup> September, 2011 title "***Bishop Wanjiru gets Marriages Nod***". He testified that by the time they published the 2<sup>nd</sup> story, they had not received any demand notice from the Plaintiff and therefore, it was not based on a demand. The demand letter was received on 28<sup>th</sup> September, 2011. He told the court that there was no need for an apology because upon the receipt of the second Kenya Gazette they published its contents which in his view were fair. He urged the court to dismiss the case with costs.

Parties filed their respective submissions to which they annexed list of authorities which I have duly considered.

The Defendant filed statement of agreed issues on the 10<sup>th</sup> February, 2013 which identifies the following issues: -

- a) Whether the publication sued upon is defamatory of the Plaintiff as alleged in paragraphs 5 and 6 of the Plaint.
- b) Whether the words complained of were published negligently, carelessly and maliciously.
- c) Whether the defence of fair comment is available to the Defendant.
- d) Whether the Plaintiff has suffered any loss and damage or injury known in law as a result of the publication.
- e) Whether the Plaintiff is entitled to any reliefs sought.
- f) Who is to bear the costs of the suit?

What then is defamation?

In the English Case of **Scott Vs Sampson (1882) QBD 491** at page 503, Dave J defined the word '**defamation**' as

***“A false statement about a man to his discredit”***

The leading English monograph of Gatlley on the subject of defamation defines it as thus: -

***“Any imputation which may tend to lower the Plaintiff in the estimation of 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.”***

Another authority often cited as definitive on defamation is that of **Thomas Vs C.B.C (1981) 4 WWR 289** as follows: -

***“The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. A defamatory imputation is one 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 profession, or to injure his financial credit. The standard of opinion is that of 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 it; conversely untruth alone does not render an imputation defamatory.”***

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 together with Clause (3) thereof both of which provides as follows: -

***“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 **John Edward Vs Standard Limited** as follows: -

- 1) The statement must be defamatory.
- 2) The statement must refer to the Plaintiff.
- 3) The statement must have been published by the Defendant.
- 4) The statement must be false.

The case of **J Kudwoli Vs Eureka Educational and Teaching Consultants & 2 Others**, HCCC No. 126 of 1990 also sets out the same elements of the Tort of Defamation (both libel and slander) and in addition to the ones set out above and in cases of slander, subject to certain exceptions, the Plaintiff has to prove any special damage that he/she has suffered. These elements are substantially in tandem with the issues for determination by the court and which I hereby proceed to consider.

From the evidence on record, it is not in dispute that the article complained of was published by the

Defendants and that it referred to the Plaintiff. In fact, it mentions the Plaintiff by name. The other issues are whether the words in the article are defamatory, false and malicious.

In considering whether words are defamatory, I make reference to the case of **Richard Otieno Kwach Vs the Standard Limited & David Makali** Nairobi HCCA No. 1099 of 2004 where Visram J observed: -

***“Words are defamatory if they involve a reflection upon the personal character or official reputation of the Plaintiff.”***

On the other hand, malice can be inferred and for it to be inferred, the language of the published article ought to have altered the facts and their meaning and there ought to be animosity. In the persuasive case of **Phineas Nyagah Vs Gitobu Imanyara (2013) eKLR**, Odunga J held that: -

***“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... malice may also be inferred from the relations between the parties....***

***The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”***

I have carefully considered the evidence on record and the submissions by the parties herein. The Plaintiff alleges that she was defamed while the Defendant has raised various defences in support of its case which include that of fair comment and justification. According to the Defendant the article of 16<sup>th</sup> September, 2011 contained facts as set out in the gazette Notice 10874.

The Plaintiff's main issue with the article was that the Defendant used the word **“banned”**, while the gazette notice used the word **“cancelled”** which in her view have a different meaning and from this, malice can be inferred and that the cancellation of her licence as a Pastor under the Redeemed Gospel Church was at her insistence so that she could retain a single licence under Jesus is Alive Ministries. That the Defendant published the article when the Plaintiff was already the holder of a marriage licence under the Jesus is Alive Ministries and even though she explained the true position to the Defendants, they not only published the sensational article but also went a step further by contradicting the Plaintiff's explanation. She also averred that the article contained in the Nairobi Star of the 27<sup>th</sup> September, 2011 was a small heading and it did not receive same prominence as the article published on the 16<sup>th</sup> September, 2011.

In their defence the Defendants have raised the defences of justification and that the publication was a matter of public concern and therefore privileged. It is trite law that a defamatory statement is presumed false unless the Defendant can prove its truth. Defamation law puts the burden of proving the truth of alleged defamatory statements on the Defendant rather than the Plaintiff.

The Defendants have also relied on the defence of fair comment which is closely related to that of justification. In considering the defence of fair comment, the court considers whether the statement was a view that a reasonable person could have held. In support of the two defences, the Defendants avers that the article was published on the basis of factual information available to the public which in this case was the Notice in the Kenya Gazette of 9<sup>th</sup> September, 2011 gazette Notice Number 10874, in which the Registrar of marriages cancelled the Plaintiff's licence to celebrate marriages under the African Christian Marriage and Divorce Act.

The Defendants relied on Section 6 of the African Christian Marriage and Divorce Act which provides thus: -

***1) The minister may licence any minister to celebrate marriages under this act and may at anytime cancel such licence and notice of the granting or cancellation of such licences shall be published in the gazette.***

**2) Notwithstanding any provision to the contrary in the marriage Act, no Minister shall celebrate any marriage under this act unless licenced by the Minister under Subsection (1) of this Section.**

As rightly argued by the Defendants, it is clear from the above provisions that the law forbids a person without a licence from celebrating any marriage under the Act. As such, someone whose licence has been cancelled is prohibited from celebrating a marriage. The legal effect of the cancellation is that the Plaintiff could not celebrate marriages because the law prohibited her from doing so and therefore, in view of the contents of the notice and the law under which the word “**ban**” was used, in my view it was proper. In the concise Oxford English Dictionary, the word ban is defined as “**officially or legally prohibit... an official or legal prohibition.**”

On the other hand, the word cancel means “**decide that (a planned event) will not take place.**” In my view the two words bear a similar meaning and especially in the context in which the word “**ban**” was used and in the circumstances of the case herein. The bottom line was that at the material time of the gazette notice, the Plaintiff could not legally celebrate marriages until a new licence was issued to her. However, the Plaintiff was later issued with a licence dated the 13<sup>th</sup> September, 2011 hardly five days after the earlier one was cancelled.

The article, the subject matter of the suit herein was published on the 16<sup>th</sup> September, 2011 by which time the Plaintiff had a valid licence. It is, therefore, clear that by the time the article was published the Plaintiff was a holder of a valid licence and could celebrate marriages under the marriage Act yet the Defendants went ahead and wrote the article oblivious of the damage it could cause to the Plaintiff’s reputation. The Defendants cannot, therefore, rely on the defence of justification because as at 16<sup>th</sup> September, 2011, it was not a fact that the Plaintiff did not hold a valid licence and therefore the article as published was false.

The next issue for consideration is whether there was malice on the part of the Defendant. For the Plaintiff to succeed, the claim of malice has to be proved. On the other hand, malice can be inferred and for malice to be inferred the language of the published article ought to have altered the facts and their meaning and there ought to be animosity. In the persuasive case of **Phineas Nyaga Vs Gitobu Imanyara (2013) eKLR** the learned Justice 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... malice may also be inferred from the relations between the parties....**

**The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”**

The evidence available to the court is that the Defendants contacted the Plaintiff before writing the article and she gave her side of the story which they have captured in the article but they omitted to include the fact that she had been issued with another licence on 13<sup>th</sup> September, 2011. The Defendants did not challenge that licence in any way. The Plaintiff in her evidence testified that she informed the Defendants before they wrote the article. According to Paul Ilado who testified as DW 1, by the time the article was published there was only one gazette notice number 10874 but two weeks later, they got another notice published on the 23<sup>rd</sup> September, 2011 which reinstated the Plaintiff’s licence. This second gazette notice was not produced in evidence in the absence of which the court can only go by the evidence available which is that by 16<sup>th</sup> September, 2011 the Plaintiff had a valid licence dated 13<sup>th</sup> September, 2011 and which she produced as an exhibit. It is my considered view that there was malice on the part of the Defendants in publishing the article which did not reflect the true state of affairs as at 16<sup>th</sup> September, 2011.

**Was the article defamatory of the Plaintiff?**

At the material time, the Plaintiff was a Bishop running a Christian Ministry under the name of Jesus is

Alive Ministries, a Member of Parliament for Starehe Constituency and an Assistant Minister in the Government of the Republic of Kenya. It was her evidence that following the publication of the article, some people who had booked marriages cancelled and the article also made some people leave the church. It also made her Deputy Pastors doubt her ability because if you are banned from officiating marriages, it means you have been ex-communicated. That evidence was supported by PW 2 Danson Kanga who by then was a Resident Pastor of Jesus is Alive Ministries. The article, no doubt, was defamatory and the Plaintiff suffered damage to her reputation as a result of its publication having noted the positions she held as an Assistant Minister and as a Bishop with Jesus is Alive Ministries. Some people left the church and it made her Deputy Pastors doubt her ability and she was forced to stand on the pulpit to explain to her congregation that the position was not what had appeared in the article.

Up to his point, I think I have said enough to justify my finding that the article dated 16<sup>th</sup> September, 2011 was defamatory of the Plaintiff and I do not, therefore, hesitate to find that indeed it was.

On the issue of damages, I find the following passage by Winderyer J in the case of **Vein Vs John Rairax & Sons Pty Limited, 117 C.L.R. 115,150** 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 solatium 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 of 2011**: -

*“Once a reputation is lost, in my view, monetary damages might not be an 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”*

In awarding damages, this court draws considerable support in the guidelines 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 subjective effect on 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. Vindication of the plaintiff’s reputation past and future.*

Still on assessment of damages, Tunoi JA (as he then was) in Civil Appeal No. 314 of 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 his submissions on damages, the Plaintiff has suggested a sum of Ksh.10,000,00/- and has relied on the case of **John Patrick Wachira Vs Wangethi Mwangi & Nation Daily Newspapers** and that of **Eric Gor Sunguh Vs George Odinga Oraro, Civil Appeal No. 226 of 2011.**

On their part, the Defendants have suggested a figure of Ksh.2,000,000/- and have sought reliance on the case of **Musikari Kombo Vs Royal Media Services Ltd (2014) eKLR** and that of **Sankala Ole Kantai Vs Nyamudi Ocheing Nyamudi & Another (2012) eKLR** .

This court has carefully read and considered the submissions by the respective parties with regard to the issue of quantum of damages. It has also considered the circumstances of this case and in particular the fact that as at 9<sup>th</sup> September, 2011, Plaintiff's licence had been cancelled vide Kenya Gazette Notice Number 10874 until 13 September, 2011 when she was issued with another one and the only mistake that the Defendants did was to publish the article before ascertaining the fact of the Plaintiff having been issued with another licence.

The Plaintiff has claimed exemplary damages in addition to general damages. Unfortunately, none of the parties herein addressed the court on this issue. In the English case of **John Vs MGN Ltd (1996) 2 ALL E.R. 35**, the court had this to say on exemplary damages: -

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

The Plaintiff in her demand letter dated 28<sup>th</sup> September, 2011 demanded an apology from the Defendants but they refused and/or failed to apologize. The Defendant's only witness Paul Ilado in his evidence was adamant that there was no need of an apology. His reasoning was that the first story was quoted from the Kenya Gazette and when they received the second Kenya Gazette they published its contents which in his view were fair and hence no need for an apology. In my view that continued instance on a flurry defence of justification and failure to apologize entitles the Plaintiff to exemplary damages.

In view of the foregoing, this court finds that the Plaintiff is entitled to both general and exemplary damages and I enter judgment in her favour as follows: -

**a) General Damages: - Kenya Shillings Two Million (Ksh.2,000,000/-)**

**b) Exemplary Damages: Kenya Shillings One Million (Ksh.1,000,000/-)**

**c) An order that the Defendant makes a full and unqualified apology and such apology to be given the modest possible circulation and publication, in the three leading Newspapers namely: - The Standard, The Daily Nation and the Star Publications Limited.**

**d) A permanent injunction is hereby issued restraining the Defendant either by itself, its servants, agents and/or other persons acting under the direction of the Defendant from publishing or causing to be published words defamatory of the Plaintiff with regard to the subject matter of the article herein.**

**e) Costs of the suit shall be borne by the Defendant.**

Dated, signed and delivered at Nairobi this 15<sup>th</sup> day of September, 2016.

.....

**L NJUGUNA**

**JUDGE**

*In the presence of*

..... *For the Plaintiff*

..... *For the Defendant*