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Civil Case 110 of 2010

**IBRAHIM  
J. ONYINKWA**

**DENIS O.  
ONYINKWA**

**EVALYNE B. ONYINKWA t/a ONYINKWA & CO. ADVOCATES :::::::::::::::::::::  
PLAINTIFFS**

**=VERSUS=**

**THE STANDARD LIMITED :::::::::::::::::::::  
DEFENDANT**

**JUDGMENT**

In a plaint filed on 25<sup>th</sup> August, 2010, the plaintiffs who are father, son and daughter respectively and are advocates of the High Court of Kenya pleaded in paragraphs 3,5,6,7,8,9,10 and 11 as follows:-

**“4. On or about the 10<sup>th</sup> March, 2010, the defendant printed and published in their daily newspaper “the Standard” on the front page the following article/words and which words referred to the plaintiffs and which words were false, malicious and seriously defamatory of the plaintiffs –**

**MUDAVADI PROBES OVER CEMETRY SAGA**

**'KACC retraces how shs 283 million set aside for new public burial ground for Nairobi looted by lawyers brokers and officials'**

<b><u>BENEFICIARY</u></b>	<b><u>AMOUNT IN KSHS.</u></b>
Newton Osiemo (claimant to be DPM agent)	- 59,000,000/=
Godfrey Majiwa	- 11,000,000/=
Alex Musee	- 8,000,000/=
Dr. Mulwa Nguku	- 8,000,000/=
Mr. H. Chevera	- 8,600,000/=
Mr. B. Miseva	- 1,300,000/=
Mr. Peterson Gichana	- 100,000/=
<b>Onyinkwa &amp; Co. Advocates (William Mayaka)</b>	<b>- 4,000,000/=</b>
Moekings General Contractors (Mr. Paul Ngugi)	- 2,000,000/=
Mary Ngethe (Tender Committee Chairperson)	- 7,500,000/=
Nelson Otido	- 2,000,000/=
Councilor Simba	- 1,000,000/=
Mr. Kotsolleh	- 1,000,000/=
Kanyi Nyambura	- 500,000/=
Mr. I. N. Ngacha	- 500,000/=
Mr. Karisa Iha	- 500,000/=
Davis Osiemo Advocate	- 2,000,000/=

**5. That the aforesaid words in their natural and ordinary meaning and in the context in which they were written and published by the defendant meant and were understood to mean, inter alia, that:-**

- (a) The Lawyers in the Law Firm of *Onyinkwa & Co. Advocates* are Corrupt,**
- (b) The Lawyers in the said firm are thieves and had stolen and benefited from a sum of Kshs 4,000,000/=,**
- (c) The lawyers in the said firm of *Onyinkwa & Co.* are conspirators with other people and have defrauded the people and Government of Kenya**
- (d) The lawyers in the firm of *Onyinkwa & Co. Advocates* are dishonest,**
- (e) The Lawyers in the said firm have committed crimes of forgery,**
- (f) The lawyers in the firm of *Onyinkwa & Co. Advocates* are looters who have looted public funds,**
- (g) The lawyers in *Onyinkwa & Co. Advocates* are Untrustworthy and not fit to practice as advocates of the High Court,**
- (h) The lawyers of *Onyinkwa & Co. Advocates* should be shunned by members of the public, their clients and other prospective clients.**
- (i) The lawyers of *Onyinkwa & Co. Advocates* have committed crimes and offences under the Penal Code to wit theft and fraud,**
- (j) The lawyers and Advocates at *Onyinkwa & Co. Advocates* have committed offences under the Economic Crimes and Prevention of Corruption Act,**
- (k) The Advocates and lawyers in *Onyinkwa & Co. Advocates* have committed crimes under the**

**Advocates Act,**

**(l) An advocate of *Onyinkwa & Co. Advocates (William Nyagaka* no such advocate exists in the firm) stole and benefited from a sum of shs 4,000,000/=,**

**(m) The plaintiffs breached the provisions of the law and the code of conduct governing and regulating their profession as advocates of the High Court of Kenya,**

**(n) The plaintiffs are corrupt, dishonest, looters and unscrupulous person involved in fraudulent activities,**

**(o) The plaintiffs have acquired money irregularly and in violation of the law,**

**(p) The plaintiffs have breached the Client/Advocate trust,**

**(q) The plaintiffs are untrustworthy and not fit to practice as Advocates of the High Court,**

**(r) The plaintiffs should be shunned by members of the public, clients and prospective clients.**

**6. The plaintiffs aver and contend that the said words or statements were malicious, false and calculated to injure the plaintiffs' reputation and cause them pecuniary, professional and moral damage and to prejudice the plaintiffs' legal practice and source of livelihood.**

**7. By reason of the said publication of the said words, the plaintiffs have been seriously injured in their character, credit, reputation and have been brought into public scandal, odium and contempt and have been shunned by their clients, peers, friends, family and other members of the public at large.**

**8. That the plaintiffs aver and contend that the defendant's actions were motivated by ill will and malice and will further rely on the following factors and/or facts for an award of aggravated and/or exemplary damages:-**

**(a) *That the defamatory words were published in a spectacular and sensational manner in the front page of the Standard Newspaper purely for purposes of having and causing maximum impact, loss and damage to the plaintiffs;***

**(b) *That the defendants proceeded and published the said allegations without bothering to either investigate the matter themselves or sufficiently verify the same;***

**(c) *the defendants have failed to apologize and/or retract the said allegations because they are indifferent to the damage caused to the plaintiffs' reputation;***

**(d) *The words published are false;***

**(e) *The words used are violent and scurrilous;***

**(f) *The defendants did not seek clarification from the plaintiffs to give them an opportunity to defend themselves or to respond to the allegations they intended to publish;***

**(i) *The defendants have failed to apologize or correct the erroneous impression created despite demand and clarification of the facts;***

**(j) *The defendants formed and published the conclusion that the plaintiffs are looters;***

**(k) *The defendants knew or ought to have known that the said allegations were untrue;***

**(l) The article was plainly likely to damage the plaintiffs' reputation. Notwithstanding that the defendants could easily have contacted the plaintiffs;**

**(m) In the circumstances, the defendants knew that the defamatory allegations were false or were indifferent to their truth and decided to publish them having calculated that the financial benefit in terms of increased sales outweighed the risk of any damage which might have to be paid to the plaintiffs;**

**9. The plaintiffs aver that the effect of the publication of the aforesaid words and statements has been to diminish the plaintiffs' reputation as respected and established advocates and to expose them to public scandal, ridicule, odium and contempt in the eyes of their clients, peers and all those who know them;**

**10. The plaintiffs shall aver that the defendants fraudulently and unlawfully indicated that the source of their information was from the Kenya Anti Corruption Commission which information they knew was false;**

**11. The plaintiffs further aver that by a letter dated 16/3/2010, the plaintiffs requested for an apology from the defendants but the defendants have neglected and/or refused to apologize, thus rendering this suit necessary."**

The plaintiffs prayed for the following reliefs:-

(a) General damages,

(b) Aggravated and / or exemplary damages;

(c) A permanent injunction restraining the defendant and each of them by themselves, their agents or/servants or otherwise from further printing circulating, distributing, seeking or otherwise publishing such libels of and concerning the plaintiffs;

(d) An order against the defendants to publish an appropriate apology and /or clarification in a prominent part of its newspaper on the front page or as the court may direct and for such number of days as the court may order at the defendant's costs;

(e) Costs;

(f) Interest;

(g) Further or other relief.

On 23<sup>rd</sup> September, 2010, the defendants delivered their written statement of defence in which they admitted being publishers of "**The Standard**" newspaper and also publishing the said article on 10<sup>th</sup> March, 2010. In paragraphs 3,4,5,6,7,8, 10,13,14,16,17 and 18 of the defence, the defendants pleaded as follows:-

*3). The defendant denies falsely, maliciously and/or in any way making any publication defamatory of the plaintiffs individually, or collectively or at all as alleged in paragraph 4 of the plaint in the article carried on 10/03/2010 and avers that the matters contained in the said article related to reporting facts and claims made surrounding the controversial acquisition of land for purposes of a public Cemetery by a public city council which matter was investigated by a public body – the Kenya Anti Corruption Commission.*

*4). Further to paragraph 3 above, the defendant denies that the publication in question was false or malicious and avers that the said words were fair reporting of the matter made in good faith and without malice upon a matter of considerable public interest in so far as the same concerned the controversy in*

the acquisition of land in Athi River by the City Council of Nairobi to be utilized as a public Cemetery which controversy was under investigation by the Kenya Anti Corruption Commission (KACC) as a statutory public entity with the duty to investigate claims of possible corruption and diversion of public funds.

### **Particulars**

(a) KACC conducted inquiries into the acquisition of land LR No. 14759/2 in Mavoko Machakos by the City Council of Nairobi to be utilized as a Public Cemetery for Kshs 283 million;

(b) A preliminary report was issued by the KACC on the controversy surrounding the acquisition of cemetery land in Athi River identifying individuals suspected to have been beneficiaries of the proceeds of the purchase;

(c) That several public officials were implicated in the controversy i.e. Deputy Prime Minister, **Musalia Mudavadi**, Local government Permanent Secretary, **Sammy Kirui**, Nairobi Mayor **Geofrey Majiwa**, Companies as well as other individuals involved in the transaction;

(d) The report named one **William Mayaka** who received Kshs 4,000,000/= out of distribution of the monies received for the cemetery;

(e) The report by KACC indicated an affiliation between the said **William Mayaka** and the firm of **Onyinkwa & Co. Advocates**;

5). The defendants aver that they were under a legal, social and moral duty to publish the findings made by the Commission to the public who had a like duty to receive them more particularly as the article concerned the events taking place concerning public funds and an investigation by the Kenya Anti corruption Commission (KACC) a public entity, in the matter;

6). The defendant avers that in so far as the said article contained words consist details obtained from the report, and the said article reports the details as contained in the report by KACC and the same was reported in public interest in good faith and without malice upon the said facts stated in the report which are matters of considerable public interest.

### **Particulars**

(Under the Provisions of Order 6 Rule 6A (2) of the Civil Procedure Rules),

It is true that:-

(a) The Kenya Anti Corruption Commission (KACC) through its Acting Director **Dr. J.P. Mutonyi**, MBS did issue a report on procurement of cemetery land by the Nairobi City Council in March, 2010;

(b) The report by the KACC set out preliminary findings made by the commission;

(c) The said report contained the names of individuals to whom the funds were disbursed in the sum of Kshs 173,200,000/=;

(d) That at page 8(d) of the report, the names of individuals to whom the funds were disbursed were set out in a table;

(e) That the table at page 9 of the report in its ninth line indicated the law firm of **Onyinkwa & company Advocates** with the name of **William Mayaka** alongside it after which a sum of Kshs 4,000,000/= was indicated;

(f) The report at page 11 sets out that **Mr. William Mayaka** said to be a former Permanent Secretary

*suspected of unlawfully acquiring public property;*

*(g) The said report contained names of individuals purportedly involved in a conspiracy to defraud the government in the sum of Kshs 173,000,000/=;*

*(h) The report contained a funds flow chart indicating the payment of money (in cheque and cash form) from **Odero & Company Advocates** to various individuals, companies and various law firms;*

*(i) The report indicates that Kshs 4,000,000/= was paid out to **Onyinkwa & Company Advocates STD Bank Eldoret**;*

In so far as is applicable, the defendant shall seek to rely upon section 7 of the Defamation Act Cap 36 of the laws of Kenya in relation to the existence and contents of the report by the KACC dated 8.3.2010.

*7). The defendant denies that the words contained in the said article bear or were in their natural and ordinary meaning understood to bear or were capable of bearing or being construed /understood to bear any or all of the meanings set out in paragraph 5 (a) to (r) inclusive of the plaint or any meaning defamatory of the plaintiff at all.*

*8). Further to paragraph 7 herein, the defendant avers that the news reporting contained in the publication of 10.03.2010 did not :-*

*(i) Refer to the plaintiffs in their professional or personal capacities either collectively or individually;*

*(ii) Contain any allegation of forgery against lawyers in the firm of **Onyinkwa & Company Advocates**;*

*(iii) Insinuate that the plaintiffs were the actual recipients of funds allocated;*

*(iv) Comment on any client/advocate concerning the plaintiffs;*

*(v) Comment on the trustworthiness or integrity of the Plaintiffs' individually or collectively as a law firm;*

*(vi) Pass any judgment on the culpability/guilt of the individuals named in the report;*

*10. The defendant denies the averments contained in paragraph 7 and 10 of the plaint and accordingly deny liability in any manner to the plaintiffs and further that the plaintiffs have been injured in their credit and have been reduced in the eyes of right thinking members of society at all;*

*11. the defendant denies that the publication made on 10/3/2010 was motivated by any ill will and/or malice or at all and accordingly, substantially disputes and denies each and every particular set out in paragraph 8(a) to (m) inclusive of the plaint in alleged aggravation of damages;*

*13). In reply to paragraph 10 of the plaint, the defendant denies that the source of information disclosed was false, fraudulent or unlawfully sourced and avers that all the published details were drawn from a formal 15 page report by KACC, a public body charged under statute with the mandate to investigate claims relating to corruption and economic crimes;*

*15). The defendant denies receipt of any letter dated 16/03/2010 referred to in paragraph 11 of the plaint but nevertheless avers that it was not under obligation to apologize in light of what is pleaded herein;*

*16). The defendant avers that with regard to what is pleaded in the foregoing paragraphs, the plaintiffs are not entitled to any order of an apology and the said claim contained in paragraph 12 of the plaint is un-maintainable and impracticable;*

17). *The defendant avers that the plaintiffs are undeserving of any injunctive relief as claimed at paragraph 13 of the plaint as it has not been demonstrated on the threshold standard that there is a reasonable apprehension of re-publication of what is alleged to be defamatory neither is there any indication of such intention attributable to the defendant;*

18). *The defendant avers that it has an inherent constitutional right to the freedom of expression that constitutes the reception and impartation of information and the general public having the right to receive information held by the state in the exercise of the constitutionally acknowledged freedom of the media.*

In the reply filed by the plaintiffs, they reiterated their averments, in the plaint and joined issue with the defendant upon its defence.

The parties framed separate issues for determination by the Court. The plaintiffs identified the following as the issues they wished the court to determine:-

- 1). **Whether or not, the defendant carried an article in its edition of 10.3.2010 concerning the plaintiffs and touching on the purported acquisition of a public cemetery by the City Council of Nairobi;**
- 2). **Whether the words and the allegations published in the said article were false, malicious and defamatory of the plaintiffs;**
- 3). **Whether or not the words published of and concerning the plaintiffs were fair reporting on the matter made in good faith and without malice;**
- 4). **Whether or not the Kenya Anti-Corruption Commission (KACC) prepared and /or availed any report to the defendant containing what was published and /or the particulars set out in paragraphs 4 and 6 of the defendant's defence;**
- 5). **Whether or not the matters contained in the alleged report, if any exists, were in fact true and whether the defendant was or can be under a legal, social and or moral duty to publish any purported finding where the allegations that are published are false;**
- 6). **Whether or not the defendant is under an obligation to verify any information before publishing it and or before seeking clarification from the persons affected by the publication;**
- 7). **Whether or not the defendant is under a legal, social or moral duty to publish a false report and whether publishing a false report is in public interest or is the public under a duty to receive alleged findings which are false in fact;**
- 8). **What was the natural and ordinary meaning of the words published by the defendants and whether or not, the said report referred to the plaintiffs in their professional and or personal capacity;**
- 9). **Whether or not the plaintiffs were defamed, their standing in the eyes of right thinking members of the society lowered, their reputation injured, and their legal prejudiced;**
- 10). **Whether or not the alleged report from KACC, if it indeed exists, was falsely, fraudulently and unlawfully sourced by the defendant;**
- 11). **Whether or not the defendant was enjoined to apologize and whether or not the plaintiffs are entitled to an apology'**
- 12). **What is the effect of the defendants' refusal to apologize to the plaintiffs and its continued insistence on the truth of the publication?**

- 13). **Whether or the plaintiffs are entitled to an injunction as claimed in paragraph 13 of the plaint;**
- 14). **Whether or not the defendant has an inherent constitutional right to freedom of expression and whether that right includes the publication of false and defamatory publications which are injurious to others;**
- 15). **Whether or not the defendant received a demand notice of intention to sue;**
- 16). **Whether or not the plaintiffs are entitled to general, aggravated and or exemplary damages and what is the quantum of such damages;**
- 17). **Who should pay the costs of this suit;**

And the defendant framed the following issues:-

- 1) *Whether or not the publication made on 10.03.2010 was so published falsely and maliciously;*
- 2) *Whether the content of the publication of 10.03.2010 related to a matter of public interest;*
- 3) *Whether the defendant had a legal, social and moral duty to publish to the public matters concerning investigations by the KACC;*
- 4) *Whether or not the report on procurement of cemetery land by Nairobi City Council LR No. 14759/2, Machakos of 8.3.2010 contained references to **William Mayaka Onyinkwa & Company Advocates** in relation to Kshs 4,000,000/=;*
- 5) *Whether or not the plaintiffs have a sustainable claim against the defendant or are entitled to the reliefs sought in the plaint;*
- 6) *What should be the order as to costs?*

The trial commenced before me on 27<sup>th</sup> July, 2011 when the 1<sup>st</sup> plaintiff partly testified in chief. He resumed his testimony on 29<sup>th</sup> October, 2011 and was cross-examined and re-examined. The 2<sup>nd</sup> plaintiff also testified in chief and was stood down for cross-examination which happened on 31<sup>st</sup> October, 2011 when the 3<sup>rd</sup> plaintiff testified and was cross-examined and re-examined. The plaintiff's witnesses **Josephat Kipchirchir Sigilai** (P.W.4) and **Morris Indakwa Buluma** (P.W.4) also testified.

At the trial, the 1<sup>st</sup> plaintiff's case was as follows. He obtained an LL.B Hons. (Upper 2<sup>nd</sup>) degree of the University of East Africa in 1970 where he met the likes of **Yoweri Museveni**, the Ugandan President and his Vice President **Kalegoya**. He was later admitted to North Western University in Chicago in the State of Illinois USA where he obtained his LL.M in 1973. On his return to Kenya, he taught at the University of Nairobi from 1973 to 1974. In 1975, he was admitted to the Roll of Advocates and commenced private practice in 1976. Before joining the Bar, he vied for the Bomachoge Parliamentary seat in the 1974 general Elections. He practices in the entire country in the name and style of **Onyinkwa & Company Advocates** and his firm has a national reputation. Among his corporate clients are K.C.B. – Eldoret, Kitale, Kapsabet, Kakamega, Bungoma and other branches in Western and Rift Valley Provinces; Insurance Companies including Lion of Kenya, Phoenix of East Africa, Fidelity Shield, Corporate, Panafrica and First Assurance. Tea Growing and Manufacturing Companies, the Catholic Church, the Standard Bank, Thabiti Finance Company, Trust Bank, Moi Teaching and Referral Hospital and others. Besides his core business of Legal Advocacy, the 1<sup>st</sup> plaintiff is also a member of many organizations among them, the Catholic Church, Nairobi Hospital Association, Eldoret Club, the Board of Governors of several schools among them, Alliance Boys and Girls High School, Matunda High School, Seregea Secondary School and Kakero High School. As an advocate of the High Court Kenya, he is a member of the Law Society of Kenya and was the inaugural chairman of the North Rift Chapter of the Law Society of Kenya. He is also a leader of Sacred Heart Catholic Church and Chairman of St. Charles

Lwanga group whose membership include the likes of Professor **Irina**, the former Vice Chancellor of Moi University.

He was defamed by a publication dated 10<sup>th</sup> March, 2010, which was carried in the, The **Standard Newspaper** of that date. He produced the Newspaper as P.Exh. 5. The article was headed, “**Mudavadi Probed Over Cemetery Saga.**” The Sub-heading was as follows:-

**“KACC retraces how 283 million set aside for new public burial ground for Nairobi looted by lawyers brokers, and officials.”**

The 1<sup>st</sup> plaintiff contended that the said article alleged that cemetery money had been looted by among others lawyers. He understood looting to mean stealing, plundering, robbing. He further testified that the article mentioned him at page one that a **William Mayaka Onyinkwa** got Kshs 4,000,000/=. He felt offended by the whole publication which stated that he was a beneficiary of looted money to the tune of Kshs. 4,000,000/=. The article also alleged that official documents had been forged and that there had been board room conspiracies and contraction of lawyers to ensure extra money would reach conspirators. The document also suggested conspiracy to commit fraud.

According to the 1<sup>st</sup> Plaintiff, the report was alleged to have been copied to **Raila, Muthaura**, the then head of the Civil Service and Secretary to the Cabinet.

The 1<sup>st</sup> plaintiff further testified that **Mr. Mayaka** was not an advocate of their firm. He was however, his client who intended to buy land in Uasin Gishu district – Eldoret. He was also a former Permanent Secretary in the Government of Kenya and hailed from his home. He had telephoned the 1<sup>st</sup> plaintiff enquiring whether he would deposit the purchase price. He told him to do so and furnished him with the firm’s clients’ account with Standard Bank. **Mr. Mayaka** then deposited Kshs 4,000,000/= into the said account on 24<sup>th</sup> February, 2009. The firm issued **Mr. Mayaka** with the requisite receipt and waited for further instructions.

In the 1<sup>st</sup> plaintiff’s view, the publication of 10<sup>th</sup> March, 2010, was not a fair comment and was highly defamatory. He denied ever being involved in the sale of cemetery plot. He continued that the defendant did not consult him before carrying the article in their said issue. The 1<sup>st</sup> plaintiff was not happy. He accordingly sought an apology from the defendant and retraction of the publication. He produced the letter of demand as P.Ex.7. The defendants responded that they were investigating the matter. The response was produced as P.Exh. 8. The defendant never communicated with him thereafter or at all. The defendant did not also apologize and never talked to the 1<sup>st</sup> plaintiff at all.

The 1<sup>st</sup> plaintiff testified that he suffered damages and anguish. His practice suffered. He received numerous calls from all shades in society and had to explain again and again that the publication was false. Some of those who made enquiries included heads of corporations, churches, friends, colleagues in the profession and ordinary clients. His friends and former classmates in the Diaspora called him to enquire about the publication given that the defendant’s newspaper has international circulation and is on the internet.

The 1<sup>st</sup> plaintiff further testified that the KACC report, relied upon by the defendant, was a leaked report and was merely an interim report pending further investigations. The same was in any event addressed to the Prime Minister of the Republic of Kenya and **Muthaura** and not to the defendant. The 1<sup>st</sup> plaintiff further stated that the report in any event did not relate to looting with respect to his firm and that looting was introduced by the defendant. The makers of the report (KACC), so he testified, took the trouble to verify the matter with him unlike the defendant.

The 1<sup>st</sup> plaintiff took issue with the position taken by the defendant in their defence that his firm was affiliated with their client in the looting which perpetuates the defamation and the defendant’s impunity for which the 1<sup>st</sup> plaintiff sought aggravated and/exemplary damages. He emphasized that the

damage he suffered was professional and his entire firm was accused and thus all partners were affected.

He concluded that the defendants were under an obligation to report the truth and that it was not fair reporting to publish untrue and unfair reports.

In cross-examination, the 1<sup>st</sup> plaintiff testified that the impugned report did not refer to their full names and indicated that it was the firm which had received a benefit and that the plaintiffs were not mentioned by their names. The 1<sup>st</sup> plaintiff further stated that they did not ordinarily enquire the source of their clients funds and they did not do so in this case.

When the 2<sup>nd</sup> plaintiff took the witness stand he confirmed that the testimony of the 1<sup>st</sup> plaintiff was accurate. He accordingly adopted the same. He further stated that he had suffered as enumerated in the plaint. The impugned publication had affected his professional and personal life. After the publication, he received numerous calls from their clients including the chairman Moi Teaching and Referral Hospital's Pension Fund, the Branch Manager KCB, Advocates, members of the bench and friends. He had to explain to all that the publication was false.

The 2<sup>nd</sup> plaintiff had obtained his LLM from the University of Reding J.K. in addition to his LLB which he had obtained from Leicester University. He also held a diploma in legal studies from the College of Law in Yoke in the U.K. His friends abroad made inquiries of the offending publication. The 2<sup>nd</sup> defendant also testified that on the morning the article was carried, he could not venture out of his office because of shame of being associated with the scandal published in the article. He feared that he would probably be attacked. He had grown in Eldoret town and knew many people: teachers, traders, lawyers and others and he could not face them that morning. According to him, the publication suggested that their firm was in the centre of planning preparing the conveyance and the benefits which was not true. Like the 1<sup>st</sup> plaintiff, he sought the reliefs enumerated in the plaint. He concluded that the defendant's motive in publishing the article was to increase sales which event happened as on the morning of the publication, he could not get an issue of the paper. The 2<sup>nd</sup> plaintiff did not however have figures of the sales.

The 3<sup>rd</sup> plaintiff also adopted the evidence of both the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. She confirmed that at the time when she testified she was a partner in the legal partnership with the other plaintiffs and was then running their Nairobi Office. Before joining the partnership she had studied in India where she had obtained a bachelors degree in social laws and an LL.B. She returned to Kenya and was admitted to the Roll of advocates on 28<sup>th</sup> October, 2004.

Besides, the legal practice, she was engaged in other activities including being a member of the sacred Heart of Jesus Cathedral, Mary Help Christians, Nairobi Club, Help Age Group of Kenya, FIDA and Strathmore Group of Schools. As an advocate she was automatically a member of the Law Society of Kenya.

She further testified that when the defendant published the offending article she was conducting a trial on behalf of the firm in Malindi. She received a call from a KACC official accusing their firm of being involved in money laundering which accusation she denied. Subsequently, because of the publication, she took steps to disassociate herself from their firm. She therefore opened a firm in her own names but still did work for **Onyinkwa & Company Advocates**. Several clients, peers, friends and organizations made inquiries about the publication. Some clients even threatened to withdraw instructions because of the publication and potential clients shied away from the firm.

After all the plaintiffs' evidence, **Josephat Kipchirchir Sigilai** (PW4) took the witness stand. He testified that he had been a client of the plaintiffs since 1986 and got concerned when he read the publication in question. He went to the offices of the plaintiffs in Eldoret and enquired of the 1<sup>st</sup> plaintiff about the publication. He was satisfied with his explanation and continued doing business with him to his satisfaction. In his view, it was improper to make the publication which publication was defamatory of the plaintiffs. In cross examination he stated that he did not believe the publication.

**Morris Indakwa Buluma**, testified as PW5. He stated that he had served his pupillage under the 1<sup>st</sup> plaintiff and later worked under him for five years. He had therefore known the plaintiffs very well. He read the publication in question and noted that the plaintiff's firm had been mentioned in the cemetery scandal. He understood the publication to mean that the money was paid to lawyers including the plaintiffs who had not provided services and further that the plaintiffs were deriving a benefit they did not deserve. In his view it was worse that the allegation involved looting of money meant for a cemetery. He enquired of the 1<sup>st</sup> plaintiff about the publication and he denied involvement. He believed him because he could not associate the plaintiffs with such a scandal. He had been a chairman of the North Rift Law Society and also an up country representative in the Law Society of Kenya. He had had no complaints against the plaintiffs while serving in those capacities. PW5 further testified that lawyers survive on their reputation and if it is lost, work is also lost. He also stated that integrity among colleagues is important and would have been affected by such a scandal.

The plaintiffs then closed their case. Although the defendants intended to call a witness from KACC, it never came to pass. In the end, they offered no evidence in defence.

On the conclusion of the evidence, counsel filed written submissions which I have considered. Having outlined the evidence and having considered the submissions, it is now convenient to answer the issues which the parties framed for determination.

Issues numbers 1 and 15 in the issues framed by the plaintiffs can be dealt with summarily. There is no dispute that the defendants carried an article in its edition of 10/03/2010 concerning the plaintiffs and touching on the purported acquisition of a public cemetery by the City Council of Nairobi. The plaintiffs also demonstrated on balance of probability that they served the defendants with a letter of demand before action dated 19<sup>th</sup> March 2010. That letter elicited a response from the defendant in the form of their letter dated 22<sup>nd</sup> March, 2010. The defendant stated that they were investigating the matter and promised to revert to the plaintiffs. The defendants did not indeed frame any issue relating to whether the publication was carried as pleaded by the plaintiffs. They also did not suggest in the issues they framed that the plaintiffs did not serve the letter of demand before action.

In the premises issue numbers 1 and 15 in the issues framed by the plaintiffs are answered in the affirmative. With regard to the rest of the issues, I think the starting point is the article which the defendants carried in their issue of "**The Standard**" on 10<sup>th</sup> March, 2010. The plaintiffs produced the article as PEX 5. The following statements appear at page 1 "**Mudavadi probed over cemetery saga**".

**KACC retraces how shs. 283m set aside for new public burial ground for Nairobi looted by lawyers, brokers and officials**

<u>BENEFICIARY</u>	<u>AMOUNT IN KSHS.</u>
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<b>Godfrey Majiwa</b>	<b>11,000,000.00</b>
<b>Alex Musee</b>	<b>8,000,000.00</b>
<b>Dr. Mulwa Nguku</b>	<b>8,000,000.00</b>
<b>Mr. H. Chavera</b>	<b>8,600,000.00</b>
<b>Mr. B. Misera</b>	<b>1,300,000.00</b>
<b>Mr. Peterson Gichana</b>	<b>100,000.00</b>
<b>Onyinkwa &amp; Company Advocates (William Mayaka)</b>	<b>4,000,000.00</b>

Moekings General Contractors (Mr. Paul Ngugi)	2,000,000.00
Mary Ng’ethe (Tender Committee Chairperson)	7,500,000.00
Nelson Otido	2,000,000.00
Councilor Simba	1,000,000.00
Mr. Katsolleh	1,000,000.00
Kanyi Nyambura	500,000.00
Mr. I.N. Ngacha	500,000.00
Mr. Karisa Iha	500,000.00
Davies Osiemo, Advocate	2,000,000.00

And the following statements appeared at page 8 of the same edition.

**“But what is even more shocking is conspiracy KACC claimed to have unearthed, which includes forgery of official documents board room**

**conspiracies, contraction of lawyers to ensure the ‘extra’ money would reach the conspirators as agreed, without anyone being double crossed, and falsification of valuation reports to pass a swathe of land unsuitable for human graves as superb.”**

The article also had the following paragraphs at the same page 8.

**“The report copied to Raila and Secretary to the Cabinet and Head of Public Service Francis Muthaura gave a detailed flow chart on how the conspiracy to defraud taxpayer was allegedly plotted**

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**The first cheque of 175 million was released on June 30, 2008. Another for Shs. 108 million was released in January, last year. Out of Kshs. 283,200,000/- released by the Government only shs. 110 million was paid to the vendor. There was a clear conspiracy to defraud the Government of 173,200,000/- by various advocates, senior officials of the ministry of local government, treasury, NCC and other intermediaries, reports Mutonyi.”**

The sub-heading of the above article plainly stated **that “KACC Traces 283 m set aside for new public burial ground for Nairobi looted by lawyers, brokers and officers”**. The natural meaning of the sub-heading brooked no doubt. It was that KACC had traced how Kshs 283m set aside for a public burial ground for Nairobi had been looted by lawyers brokers and officials.

The particulars of **“looting”** listed **Onyinkwa & Company Advocates (William Mayaka)** as beneficiaries of Kshs. 4,000,000/-. It did not require a genius to deduce on a plain reading of page 1 of the publication that the parties listed below the above sub-heading were the ones who KACC had identified to have looted Kshs.283 million set aside for a new public burial ground for Nairobi. The natural and ordinary meaning of the publication at page 1 aforesaid was that **M/s Onyinkwa & Company Advocates (William Mayaka)** had been identified by KACC to have looted Kshs. 4,000,000/- of the sum of Kshs. 283 million set aside for the new public burial ground for Nairobi.

The continuation of the said article at page 8 of the edition was not as direct as the first part of the

article at page 1. I may repeat the same here.

**“But what is even more shocking is the conspiracy KACC claimed to have unearthed, which includes forgery of official documents boardroom conspiracies of lawyers to ensure the extra money would reach the conspirators as agreed, without anyone being double crossed, and falsification of valuation reports to pass a swathe of land unsuitable for human graves as superb.”**

The above passage did not name the plaintiffs or their firm. But lawyers are referred to in the passage. However, as the article is one, since it is a continuation of the report appearing at page 1, the inevitable conclusion is that the passage referred to the lawyers who had been identified at page 1. The plaintiff's firm was clearly identified at page 1 as observed above. Any reasonable reader of the article would conclude that among the lawyers referred to at page 8, the plaintiffs' firm was one of them.

The words in the passage meant and were understood to mean that the persons mentioned or referred to in the article had forged official documents; they were engaged in boardroom conspiracies and lawyers had been contracted to ensure the “**extra**” money would reach the conspirators as agreed without anyone being double crossed. The words further meant and were understood to mean that the same persons mentioned had falsified valuation reports to pass a swathe of land unsuitable for human graves as superb.

The following passage has also been referred to above and is pertinent to the further complaints made by the plaintiffs. The passage is part of the same article and appeared at page 8 of the newspaper edition.

**“The first cheque of Kshs. 175million was released on June 30 2008. Another for Kshs. 108 Million was released in January, last year. Out of the 283,200,000 released by Government only Shs. 110million was paid to the vendor. There was a clear conspiracy to defraud the Government of Kshs. 173,200,000/- by various advocates, senior officials at the Ministry of Local Government, Treasury, NCC and other intermediaries”**

This passage did not mention the plaintiffs by name but “**advocates**” are mentioned. It can easily be concluded that the advocates in the passage referred to those identified at the beginning of the article at page one. The words in the passage, in their natural and ordinary meaning, meant and were understood to mean that the persons referred to therein had conspired to defraud the Government of Shs. 173,200,000. Those persons included advocates of whom the plaintiff's firm had been identified, among others.

In the premises, I have no difficulty in finding and holding that the article published by the defendants on 10<sup>th</sup> March, 2010 imputed commission of various criminal offences by the plaintiffs' firm to wit; theft of Kshs. 4,000,000/-, forgery of official documents; falsification of valuation reports, conspiracy to defraud the Government and corruption.

The words in the article further meant or were understood to mean that the plaintiff's firm was dishonest and untrustworthy.

The plaintiffs denied the allegations levelled against them in the article. They admitted receiving Kshs. 4,000,000/- from William Mayaka, one of their old clients, as deposit towards purchase price of land he intended to purchase in Eldoret-Uasin Gishu. That was before the publication was made.

That testimony of the plaintiffs was not really challenged. The plaintiffs therefore, in my view, satisfactorily demonstrated that they received the said sum in their capacity as advocates for William Mayaka. They were not obliged to enquire into how their client had sourced those funds.

The plaintiffs further, in my judgment, satisfactorily demonstrated that they were not involved in any way in the cemetery transaction reported in the publication made by the defendant on 10<sup>th</sup> March, 2012. They were not instructed to carry out any conveyance or valuation in respect of the cemetery land.

They did not also receive the said Kshs. 4,000,000/- as beneficiaries of the proceeds from the sale of cemetery land. They further demonstrated satisfactorily, in my judgment, that they had no knowledge of the cemetery saga before it was published by the defendant in the article in question. They could not therefore have been involved in forgery of official documents, falsification of valuation reports conspiracy to defraud the Government or corruption.

In the premises, I am persuaded that the plaintiffs have demonstrated, on a balance of probability, that the article published by the defendant on 10<sup>th</sup> March, 2010 was false in so far as it related to them.

The defendant did not offer any evidence to contradict the evidence adduced by the plaintiffs. They therefore failed to establish the various defences they had set forth in their written statement of defence. In any event, given my findings that the words complained of by the plaintiffs were false, the defences of fair comment and privilege are not available to the defendant. In any event the defendant's article was based on a report made by KACC which report the defendant failed to produce. I am not therefore surprised that the defendant, in its submissions did not allude to those defences.

With regard to the submissions of the defendant that the offending article did not carry the full names of the plaintiffs, it is my finding that the plaintiffs proved on a balance of probability that they were partners in the firm of **Onyinkwa & Company Advocates**. Reference to **Onyinkwa & Company Advocates** was reference to them. Their witness, **Morris Indakwa Buluma** (PW5), buttressed their evidence that the business of **Onyinkwa & Company Advocates** was carried out by the three partners. In the premises, I find and hold that the plaintiffs did not have to be mentioned by their full names for them to be sued. They were clearly identified by their firm name of **Onyinkwa & Company Advocates**.

In the end I find and hold that the article published by the defendant on 10<sup>th</sup> March, 2010 was clearly defamatory of the plaintiffs. The defendant has no protection in the Constitution. As correctly held by **Ibrahim J**, as he then was in **Allan R.N. Mbugua -Vs- Royal Media Services Limited (ELD HCC NO. 108 of 2003)(UR)**.

**“The Constitution does not give any person including the media to make and publish scandalous and libelous statements which are actuated by ill will and malice and geared toward the destruction of another's name, character and reputation. An individual has the right to his good name, character and reputation and laws of the country must protect him/her.”**

Arising from my above analysis, I can now answer issues Numbers 2, 3, 4 5, 6, 7, 9, 14 framed by the plaintiffs:

The words and allegations published by in the said article were false and defamatory of the plaintiffs.

The words published and concerning the plaintiff were not fair reporting on the matter and were not made in good faith

The Kenya Anti-Corruption Commission's (KACC) alleged report was not produced and the particulars set out in paragraphs 4 and 6 of the defence were not demonstrated. The defendant had no duty, legal, public, social or moral to publish a report which was false and defamatory of the plaintiffs.

The defendants had a duty to verify the information it received.

The plaintiffs were plainly defamed and their standing in the eyes of the right thinking members of the society lowered, their reputations injured and their legal practice prejudiced.

The defendants had a constitutional right to the freedom of the press but that right does not include making false and defamatory publications which are injurious to others.

I turn now to the issue of damages. The 1<sup>st</sup> plaintiff was admitted to the Bar in 1975 and has been in

private legal practice since-a period of 37 years. Before admission he obtained an LLM of North Western University Illinois, USA which came after his LLB of the University of East Africa. He also taught law at the University of Nairobi for one year.

He has practiced law in many fields offering services to various clients including banks, Insurance companies, commercial organizations the Electoral commission of Kenya, churches etc.

Besides general practice, he was the inaugural chairman of the North Rift Chapter of the Law Society of Kenya. He also sits on various boards of schools and other institutions.

He is a member of the Eldoret Club and Kenya Hospital Association.

The 1<sup>st</sup> plaintiff is, in the premises, a very senior member of the society and commands respect of colleagues at the Bar, church and the corporate world. The reputation he has built all those years was at risk, by the defendant's offending publication. I do not propose to quantify damages separately for each of the claims made but will award a global sum. I will nonetheless take into account certain pertinent features of this case. The defendant published the impugned article without caring to verify the statements concerning the plaintiffs with them. Even after publishing the article and being served with the letter of demand before action, the defendant still failed to seek clarification of the matters carried in the impugned article. It instead, in a terse response, merely said they would investigate. That response is significant in two respects. Firstly it suggested that the defendant had published the article even before it had verified the contents thereof. Secondly, the promised investigation does not appear to have materialized at all because the starting point would have been the plaintiffs. Yet the defendant never sought any clarification from them.

Its filed written statement of defence also left no opening for discussion. Yet at the end of the day, the defendant offered no evidence at the trial.

In **Junes -Vs- Pollard [1997] EMLR 233**, the guidelines to be applied while assessing damages were crystallized. That decision has been followed by our courts. See for instance, the **Standard Limited -Vs- Kalamka Limited [Nai. HCCC NO. 1358 OF 1998 B] (UR)**.

The guidelines are 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, 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 upto 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.”**

In assessing damages for the plaintiffs herein, I will bear in mind what the Court of Appeal said in **Gicheru -vrs- Morton & Another**. [2005] 2 KLR 332. The appellant was a former Chief Justice who, in 1990, while serving in the Court of Appeal, chaired the Judicial Commission of Inquiry into the death of Dr. **Robert Ouko**, then Kenya's Foreign Minister. The respondents, after the disbandment of the commission, published a book titled **“Moi – the Making of an African Statesman”**. The book contained defamatory matters concerning the former Chief Justice and he filed a suit at the High Court for damages. He was awarded Kshs 2,000,000/= which the learned Judge considered too low. On appeal, the Court of Appeal enhanced that award to Kshs 6,000,000/=. The Court considered several previous decisions some of which have been relied upon by the plaintiffs herein. The court held *inter alia*, as follows:-

**“ Several High Court cases cited to the Court concerning the quantum of damages in matters of libel did not appear to have a solid juridical grounding and they were not to be taken as persuasive or as guidelines to be followed by trial Courts.”**

The cases discredited included the Biwott twin cases i.e **Nicholas Biwott –vrs- Clays Ltd & Another [2000] 2 EA 334 and Nicholas Biwott –vrs- Dr. Ian West & Another.** In the two cases, a sum of Kshs 30,000,000/= was awarded for defamatory publications against Nicholas Biwott. In **Daniel Musinga t/a Musinga & Co. Advocates, (HCCC No. 102 of 2000) {UR}**, the court awarded the then Advocate, now a High Court Judge, Kshs 10,000,000/= for a published libelous statement in a local daily. In January, 2004, **Lenaola J.** awarded Kshs 17,000,000/= for a libelous publication. **[Obure –vrs- Tom Alwaka & Othrs (HCCC 956 of 2003)(UR).**

Taking the caveat issued by the Court of Appeal in the Gicheru case, I think the appropriate comparable case for purpose of assessing damages herein is that of the **Standard Limited –vrs- G. N. Kagia t/a Kagia & Company Advocates, [Nairobi C.A. No. 115 of 2003](UR).** There, the Court of Appeal awarded the respondent Kshs 3,000,000/= as composite damages for a libelous publication published by the appellant concerning the respondent. The respondent was alleged to have made false claims which publication was found to be untrue. The respondent was an advocate of 30 years standing and the court found that he had demonstrated diminishing clientele and impaired ability to hire assistants. It was also in evidence in that case, that the respondent failed to mitigate his loss because an offer of amends had been made by the appellant.

The 1<sup>st</sup> plaintiff is a far more senior member of the Bar than the respondent in the **Kagia** case above. The 1<sup>st</sup> plaintiff has been in private practice of law for about 37 years. He is the inaugural Chairman of the North Rift Law Society. Among his clients, are financial institutions including Kenya Commercial Bank, Standard Chartered Bank, several Insurance Companies, the Independent Electoral and Boundaries Commission and the Catholic Church. Those institutions demand a very high level of integrity and a good reputation is an invaluable asset. The 1<sup>st</sup> plaintiff also had his graduate and post graduate education out of the country and has kept touch with friends and class mates in the diaspora who made enquiries about the offending article. Given his profile, he compares quite favourable with the best in the legal profession. In the premises, I find and hold that he occupied a station in life and in the profession higher than **G.N. Kagia**.

A further distinguishing feature of this case, and which should count in assessing damages, is the prominence the defendant gave the offending article to its said newspaper. The article was given, not only page one status, but was the leading article of the day. It screamed **“KACC retraces how shs 283 million set aside for new public burial ground for Nairobi looted by lawyers, brokers, and officers”**. Among the beneficiaries listed on the front page was **Onyinkwa & Co. Advocates, (William Mayaka)**. It is not farfetched to think that newspaper editors select leading front page stories with sales in mind and the cemetery saga was Godsend. These features obviously distinguish this case from the **G.N. Kagia** case. For the same reasons, the cases of **Oraro –vrs- Sunguh [HCCC No. 1250 of 2004](UR) and Gicheru -vrs- Morton & Another (Supra)** are distinguishable from this case.

Another distinguishing feature of the **Kagia** case is that the appellants therein sought to mitigate their loss and made an offer of amends to **G.N. Kagia**. That is not the position here. The defendant completely failed to mitigate its loss and made no offer of amends at all even when it became clear that the offending article was not based on fact and was in fact false with respect to the plaintiffs.

In all those premises, and taking into account applicable principles and circumstances of this case, I consider a composite figure of Kshs five million (5,000,000/=) as a reasonable award. I award the 1<sup>st</sup> plaintiff the said sum as a composite award plus costs with interest at court rates from the date of this judgment.

I turn now to assessment of damages for the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs. The 2<sup>nd</sup> plaintiff, **Dennis Onyimbo Onyinkwa** was admitted to the Bar in 2001. He had his graduate and post graduate education

abroad. He obtained an LL.B degree of the University of Leicester England in 1999. In 2004, he was awarded an LL.M degree by the University of Reading of England. In addition to these qualifications, he also undertook post graduate courses in Legal practice, Criminal Litigation, Personal Injury and Medical negligence, Professional conduct, Conveyancing, Employment and accounts .

In his testimony in court, he stated that the offending publication affected him professionally and personally. The morning the publication hit the streets, he could not leave his office as he feared to be attacked. He grew-up in Eldoret and many people; traders, lawyers, and teachers knew him. He also received numerous calls from their clients such as Moi teaching and Referral Hospital, Kenya Commercial bank, Magistrates and colleagues and he had to explain to all of them that the publication was false. He recalled an incident at Maseno Law Courts when a Resident Magistrate told him to his face that **“you are the people who have been mentioned as having taken public money.”** He also recalled receiving calls from abroad where he had studied and from former classmates making enquiries about the article. He added that he is a practicing Catholic and his church was concerned about the publication. He felt humiliated to be associated with a cemetery scandal which in reality was false.

I have already referred to the principles which should guide the court on the amount of damages to be awarded to a party who suffers a libelous publication. Those principles were discussed at length in the **Gicheru** (Supra) case where various awards made to high profile politicians and lawyers were discredited. Those decisions were again discussed in **KTDA Ltd –vrs- Benson Masese [C.A No. 95 of 2008](UR)**. The Court in that case cited with approval the decision of **Windever J. in Uren –vrs- John Fair Fax & Sons. Pty Limited [117 C.L.C.] 115**. At page 150 of that case, the following passage appears:-

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

After discrediting the high awards made to the politicians and lawyers, the Court awarded the respondent , a lawyer Kshs 1,500,000/= as a fair and reasonable *salatium*. That decision was made in 2008 – four years ago. The publication was not also in a newspaper article, but in correspondence with the Advocates Complaints Commission. The circulation was therefore very limited. In this case, as already set out above while discussing the publication in respect of the 1<sup>st</sup> plaintiff, the defendant carried the offending article on its front page of the newspaper. The publication had maximum impact.

In the premises and taking into account all the surrounding circumstances, I think that a composite award of Kshs 2,000,000/= would represent a fair and reasonable *salatium* to the 2<sup>nd</sup> plaintiff. I award that sum to him. The sum will bear interest at court rates from the date of this judgment.

The 3<sup>rd</sup> plaintiff, **Everlyne Bitengo Onyinkwa** testified, *inter alia*, that she holds a B.A. in Social Laws in addition to an LL.B degree - she obtained at the University of Kolhapur. She was then admitted to the Roll of Advocates on 28<sup>th</sup> October, 2004. She has therefore been an advocate for just under 8 years. She further testified that she runs their Nairobi Branch office. In addition to her co-business of legal advocacy, she is a member of the Sacred Heart of Jesus Cathedral. She is also a member of St John’s Catholic Church and the Selesians of Don Bosco. She also belongs to Nairobi club, Help Age Group of Kenya, FIDA and Stratsmore Group of Schools.

She recalled that when the offending article hit the streets in Nairobi, an official of KACC called her when she was conducting a trial in Malindi High Court – enquiring about the allegations in the publication. She denied the allegations but KACC officials were convinced that she was involved in the cemetery saga. Besides KACC, her classmates at the Catholic University, where she is studying for an MBA, made enquires of the scandal. Also concerned were their clients including Lion of Kenya, KCB and an International Agency she was acting for. Even FIDA Chairperson called her about the publication. She had to bear the indignity of explaining again and again that the publication was false. Some clients even asked her to disassociate herself from the firm and to avoid losing clients, she

opened a parallel office in her name but still did work for **Onyinkwa & Co. Advocates**. She recalled an enquiry made of her regarding the same saga by **Maraga J.A.** even as the matter was pending in this Court. She felt embarrassed and lost, potential clients such as Kenya Airways, because of the publication.

Applying the same principles I have applied in respect of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and taking into account all the circumstances, I consider a composite figure of Kshs 2,000,000/= as reasonable. Accordingly, I award the 3<sup>rd</sup> plaintiff the said composite figure of Kshs 2,000,000/= plus costs with interest at court rates from the date of this judgment.

Having found that the allegations published in the offending article were false, and defamatory of the plaintiffs, the plaintiffs have thereby demonstrated that an injunction should issue. They have also demonstrated that they are entitled to an apology. Accordingly, in addition to the awards made herein, I also enter judgment for the plaintiffs in terms of prayers (c) and (d) of the plaint. The apology should only be carried once in one daily edition of the defendant's newspaper. Such apology and clarification be published within thirty (30) days of the date of this judgment.

### **SUMMARY**

#### **Judgment is entered as follows:-**

(A) 1<sup>st</sup> plaintiff Kshs 5,000,000/=

2<sup>nd</sup> plaintiff Kshs 2,000,000/=

3<sup>rd</sup> plaintiff Kshs 2,000,000/=

(B) A permanent injunction in terms of prayer (c) of the plaint

(C) An apology and clarification to be published once in a daily edition of the defendant's newspaper within thirty (30) days of the date of this judgment

(D) Costs of the suit to be borne by the defendant

(E) (i) Interest on awards in 'A' above at court rates from the date of this judgment.

(F) (ii) Interest on costs at court rates from the date of agreement or taxation.

Orders Accordingly.

**DATED SIGNED AND DELIVERED AT ELDORET**

**THIS 11<sup>TH</sup> DAY OF JULY, 2012**

**F. AZANGALALA**  
**JUDGE**

***Read in the presence of:-***

**Mr. Gicheru** for the Plaintiffs and **Mr. Kathili** holding brief for M/s **Ochieng Onyango & Ohaga** for the defendant.

**F. AZANGALALA**  
**JUDGE**  
**11/7/2012.**