

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

**CIVIL DIVISION**

**CIVIL SUIT NO. 527 OF 2010**

COL. TOM. C. K. KIPNG'ETICH.....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT  
AS CONSOLIDATED WITH

**CIVIL SUIT NO. 511 OF 2010**

BRIG. ARTHUR NDONI OWUOR.....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 512 OF 2010**

EDWARD NJOROGE MURIMI.....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 513 OF 2010**

COL. HOSEA ABINYA ODUOR.....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT  
AND

**CIVIL SUIT NO. 514 OF 2010**

JANE WAIRIMU GIKONYO  
(Suing as the legal rep. of the estate of the late)  
COL. GEORGE GIKONYO KABUGI.....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 515 OF 2010**

BRIG. JOSEPH BUKHALA .....PLAINTIFF  
-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 516 OF 2010**

ZEDEKIAH GESORA OGENDI.....PLAINTIFF

-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 517 OF 2010**

MAJOR HERBERT KIPROTICH.....PLAINTIFF

-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

AND

**CIVIL SUIT NO. 519 OF 2010**

CHARLES KIIRU MUHIA.....PLAINTIFF

-VERSUS-

THE STANDARD LIMITED.....DEFENDANT

**JUDGMENT**

**Pleadings**

1. **Col. Tom C. K. Kipng'etich** - (the plaintiff in Nairobi Milimani HCCC No. 527 of 2010) by way of a plaint dated **04/11/2010** and **Brig. Arthur Ndoni Owuor** - (the plaintiff in Nairobi Milimani HCCC No. 511 of 2010), **Edward Njoroge Murimi** - (the plaintiff in Nairobi Milimani HCCC No. 512 of 2010), Col. Hosea Abinya Oduor - (the plaintiff in Nairobi Milimani **HCCC No. 513 of 2010**), Col. George Gikonyo Kabugi - (the plaintiff in Nairobi Milimani **HCCC No. 514 of 2010**), Brig. Joseph Bukhala - (the plaintiff in Nairobi Milimani **HCCC No. 515 of 2010**), Zedekiah Gesora Ogendi - (the plaintiff in Nairobi Milimani **HCCC No. 516 of 2010**), Major Herbert Kiprotich - (the plaintiff in Nairobi Milimani **HCCC No. 517 of 2010**) and Charles Kiiru Muhia - (the

plaintiff in Nairobi Milimani **HCCC No. 519 of 2010**) by way of a complaints all dated 02/11/2010 (hereafter the respective Plaintiffs) sued The Standard Limited (hereafter the Defendant) for alleged defamation and respectively sought judgment against it by way of-;

- a) *General Damages*
- b) *Damages on the footing of aggravated or exemplary damages.*
- c) *A permanent injunction to restrain the Defendant by itself, its respective servants or agents or howsoever from publishing, printing, circulating, or distributing allegations that the Plaintiffs are corrupt or have abused office as government officers to confer benefits to themselves or others, have flouted the procuring law and rules in the processing or award of the tenders or a tender by the department of defence.*
- d) *Costs.*
- e) *Interest on (a), (b) & (d) above.*
- f) *Any other relief or reliefs that this Court may deem just to grant.*

2. The Plaintiffs respectively aver that the Defendant published, printed, circulated and or caused to be printed, published and circulated a publication on 25/10/2010 captioned **“Shs. 1.6 Billion Tender Scandal Rocks DoD”** a publication on 26/10/2010 captioned **“Panic in DoD**

***as Kianga Steps Aside***” and a publication on 27/10/2010 captioned ***“Military chiefs too, must be accountable”*** that were entirely false and a total fabrication. That by reason of the aforesaid publication of the said words, the respective Plaintiffs claim to have been seriously injured in their character, credit reputation and have been brought into public scandal, odium and contempt. It was further averred that the statements were published maliciously for which the Plaintiffs claim damages.

3. The Defendant filed a statement of defence to the Plaintiffs respective suits denying the key averments alleged therein meanwhile averred that the said publications were fair reporting, 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 military equipment-armored personnel carriers by the Department of Defence which is part of the Government thus involving a matter of profound public interest as the said procurement related to the use of public funds for and on behalf of the people of Kenya.
4. It warrants mentioning at this juncture that the suits formed part of a series of matters, alongside **Nairobi Milimani HCCC No. 518 of 2010**, in which, the aforementioned suit was selected as the test suit on the question of liability where

after the resultant finding on a liability would invariably apply to the other matters in the series.

5. Consequently, the test suit was heard and determined. And by way of a judgment rendered by Aburili, J. on 30/11/2015, the Defendant was found wholly liable for defamation. The finding on liability as against the Defendant with respect to the impugned defamatory publications thus negates the need for this Court to set out ad verbum the essence of the impugned articles in this judgment.
6. Later, vide a ruling in Nairobi Milimani **HCCC No. 527 of 2010 rendered on 09/10/2020**, Serгон, J. allowed the Defendant's application seeking consolidation of the instant suit alongside other suits in the series, aimed towards the expeditious assessment and or determination of awardable damages in the respective suits.
7. Thereafter, the respective Plaintiffs tendered their evidence by testifying in support of the averments in their respective pleadings.

### **Plaintiffs Case and Evidence**

8. **Col. Tom C. K. Kipng'etich - Nairobi Milimani HCCC No. 527 of 2010**, testified as PW1. He began by stating that he had since retired from military service and proceeded to adopt the contents of his witness statement dated 10/07/2019 as part of his evidence in chief meanwhile

adduced into evidence the documents appearing in his list of documents dated 16/09/2019, supplementary list of documents dated 23/04/2021 and further list of documents as evidence before the Court.

9. On cross examination, he stated that as at date of the impugned publication he was serving as a Colonel in the Army and retired in 2013 while holding the same rank. He went on to state that the impugned publication circulated within the Republic of Kenya and beyond Kenya.
10. Referring to his list of documents he stated that there was a publication by the Ministry of Defence clarifying that the impugned publication was incorrect. It was his evidence that he had served for four (4) months and subsequently one (1) month as an Aide-de-camp for the late President Moi and President Kibaki respectively. He went on to state that after retirement, his social standing and reputation had been at issue given that the impugned publication tainted his reputation and integrity as an officer mentioned in the said scandal. He added that he had since applied for various engagements however was unsuccessful, and suspected that was occasioned by the impugned article. He concluded by stating that since retiring he has participated in media interviews and spoke of the good career he had as a military officer.

11. In re-examination, he stated that his media interview in the United Kingdom was televised on Citizen TV, in respect of his service as an Aide-de-camp for the late President Moi. In summation, he stated the Defendant's continued with their publication despite demand whereas he retired upon attaining the age of 53 years.
12. **Major Herbert Kiprotich - Nairobi Milimani HCCC No. 517 of 2010**, testified as PW2. He began by identifying himself as a LT. Col. thereafter adopted his witness statement dated 03/12/2029 as part of his evidence in chief meanwhile, adduced into evidence the bundle of documents appearing in his list of documents of even date as evidence.
13. He went on to state that prior to the publication he was a military officer and served in several missions on behalf of Kenya; that after the impugned publications, his reputation was affected negatively. He went on to state that during his period of service, he had interacted with other officers from other countries and within the republic, but after the publication, they dropped communication. That his career progression and work were negatively affected and that the officers he worked with started perceiving him in a different light.
14. He asserted that, had it not been for the article he would have been promoted to the highest attainable rank in the military or as an engineer within the engineer's board or association. That he cannot regain his reputation meanwhile

he had to explain himself to his colleagues and community. He concluded by stating that he is a devout Christian and thus urged the Court to compensate him for the reputational damage he sustained.

15. **Under cross-examination**, PW2 testified that as at publication he was serving as a Major in a committee within the military. He went on to state that after the impugned publication he did not continue to serve in the said committee however he was not demoted meanwhile is still in active service at a higher rank of Lt Colonel.
16. **In re-examination**, it was his evidence that at the time he was serving on a negotiation committee for specific contracts and that the said publication affected his career despite being promoted one rank higher. He stated that some of his peers are full Colonels and Brigadiers whereas once one's name is tarnished it can affect their career progression in the military service.
17. **Col. Hosea Abinya Oduor - Nairobi Milimani HCCC No. 513 of 2010**, testified as **PW3**. He began by stating that prior to the publication he had been deployed in service both locally and internationally, to wit, on the latter he was sent to train pilots in India, United Kingdom (Scotland) & Bangladesh. He proceeded to adopt his witness statement dated 11/12/2019 as part of his evidence in chief and adduced into evidence the bundle of documents appearing in his list of

documents dated 31/10/2019. It was his evidence that at the time of publication he was serving as the Base Commander at Moi Air Base Eastleigh with the duty of providing transport for senior government officials and international visitors. Upon publication he received a call from a colleague in Uganda, insinuating that he visits him with a few dollars, meaning that the publication spread and was consumed outside of Kenya.

18. He stated that the impugned articles affected his career given that despite completing his training at the Kenya Defence Forces (KDF) College he was redeployed to the same role as Airforce Base Commander thereafter his career stagnated. However he served in Juba until his retirement in 2014. That his junior colleagues in the service were promoted ahead of him meanwhile his family was affected by the publication given its malicious nature as some people took it as truth. He thus urged the Court to award him damages.
19. **On cross-examination**, he stated that at publication he was serving as a Colonel whereafter he did not receive any promotion. He repeated that he retired in 2014 however stated that not all Colonels ascend to the rank of Brigadier. Upon completion of his training, his chances of promotion from the rank of Colonel to Brigadier were high nevertheless, he retired.

20. **Edward Njoroge Murimi - Nairobi Milimani HCCC No. 512 of 2010**, testified as **PW4**. He began by stating that as at publication he was serving as the Principal Accounts Controller at the Armed Forces Headquarter thereafter proceeded to adopt his witness statement dated 30/09/2019 as part of his evidence in chief meanwhile adduced into evidence the bundle of documents appearing in his list of documents dated 03/12/2019. It was his evidence that his role at the time appertained dealing with the Central Bank of Kenya and that after publication he received concerns from his seniors at the National Treasury, the Ministry of Defence and Banks he dealt with. That due to the impugned publication he cannot regain his reputation.
21. **Under cross-examination**, he stated that at the time he was serving as a civil servant in Job Group 4, never ascended to a higher Job Group and eventually retired while serving in the same Job Group. In re-examination, stated that there were many more Job Groups higher than the one he retired at.
22. **Charles Kiiru Muhia - Nairobi Milimani HCCC No. 519 of 2010**, testified as **PW5**. He began by stating that as at publication he was serving as the Chief Finance Officer at the Armed Forces thereafter he proceeded to adopt his witness statement dated 24/09/2019 as part of his evidence in chief meanwhile adduced into evidence the bundle of documents

appearing in his list of documents dated 15/10/2019. The gist of his evidence was that at time he was serving in the contract negotiation committee at the Department of Defence and that as a result of the publication he was viewed negatively by the general public meanwhile the impugned article equally affected his family. He stated that the impugned publication affected his reputation therefore urged the Court to award him damages.

23. **On cross examination**, he stated prior to publication he enjoyed a good reputation as Chief Finance Officer having equally served in several committees, school boards and having been a patron of his primary school. After the article, he was called from abroad with deadlines on procurements whereas at the family and church level, the article caused him stress. It was his evidence further that he was promoted from Job Group R to S and would be retiring in the same cadre. In re-examination, he stated above Job Group S there is T and that he was in the same Job Group for over thirty (30) years meanwhile the Department of Defence did not launch any investigation on the publication.
24. **Zedekiah Gesora Ogendi - Nairobi Milimani HCCC No. 516 of 2010**, testified as **PW6**. He began by stating that as at publication he was serving as the Chief Procurement Officer at the Armed Forces thereafter he proceeded to adopt his witness statement dated 23/09/2019 as part of his evidence in chief meanwhile adduced into evidence the

bundle of documents appearing in his list of documents dated 24/10/2019. It was his evidence that as at publication he was the head of procurement, a church elder and member of various school boards meanwhile having travelled widely, he had colleagues through Africa. That after the publication he was branded a thief, to wit, he could not reclaim his reputation, even in retirement. That his parents, children and close friends inquired as to the truth of the publication and thus urged the Court to award him damages.

25. **Under cross examination**, he confirmed having been promoted through Job Groups M, P and eventually T, which is the ceiling in procurement. He confirmed having not been subjected to any disciplinary proceedings meanwhile retired on accord of his age. In re-examination, he took issue with the impugned article, meanwhile iterating that no disciplinary action was instigated against him due to the publication.
26. **Brig. Arthur Ndoni Owuor - Nairobi Milimani HCCC No. 511 of 2010**, testified as **PW7**. He began by stating that prior to the publication he was serving as a Brigadier with the Kenya Navy and Chief of Logistics at the Kenya Defense Forces (KDF). He proceeded to adopt his witness statement dated 17/10/2019 as part of his evidence in chief and adduced into evidence the bundle of documents appearing in his list of documents dated 18/10/2019.

27. It was his evidence that he joined the military as a Cadet and rose through the ranks having trained within organizations in the United Kingdom and attained a Masters Degree from the United States. He stated that the publication affected his reputation both professionally and personally. That at the time he had teenage children who faced a lot of questions from their peers and that it was painful explaining to them the impugned publication.
28. He further stated that at work, both his juniors and peers had questions concerning the publication and viewed him in disbelief. He went on to state that he was equally a trainer at the Kenya Defence College, to wit, some of his trainees who were foreigners called to inquire about the publication. He concluded by stating that as at publication he was serving in his 9th years as a Brigadier and as a consequence of the publication he eventually resigned, because in his view, he never thought a promotion would be attainable.
29. **Under cross examination**, he stated that he resigned in 2011 there were no disciplinary actions on accord of the publication. That his resignation was voluntary meanwhile at the time there were approximately 30 Brigadiers in service. He stated that a Brigadier may be second in seniority in the Navy whereas it was not a matter of course that he would have been promoted.

30. **In re-examination**, he stated that the publication affected his chances of promotion. He further stated that he would not have been demoted if he did not resign meanwhile promotions were quite competitive.
31. **Brig. Joseph Bukhala - Nairobi Milimani HCCC No. 515 of 2010**, testified as PW8. He began by stating that prior to the publication he was serving as a Brigadier with the Kenya Army and Chief of Programme reporting directly to the Chief of Defense Forces (CDF). He proceeded to adopt his witness statement dated 02/08/2017 as part of his evidence in chief and adduced into evidence the bundle of documents appearing in his list of documents dated 02/09/2019. It was his evidence that his office was specially tasked with modernizing the military therefore the only Brigadier allocated a budget to the tune of 56 Billion on account of his reputation.
32. The publication affected his reputation as it was difficult to face his fellow Brigadiers. He went on to state that upon publication he was called by the Chief of Defense Forces (CDF) and told to go home and later charged before the Army Command and officially reprimanded. He further stated that he was the defence attaché in London meanwhile covered the entirety of Europe.
33. During his time of service he interacted with senior military and government officials around the world and trained

foreign countries. After the publication, the latter stopped communicating with him. It was his evidence that he envisioned himself being promoted to Major-General prior to the publication however the same did not happen. In conclusion, he stated that since retiring, his morale was affected, was often questioned by friends and family as to what transpired and has been unable to secure a job, all due to the impugned publication.

34. Under cross-examination, he iterated that upon publication he was told to go home and was later reprimanded after he appeared as an accused before Army Command. That he was reprimanded because of the publication given that the documents in question were military secrets however when the same leaked, whether true or not, was a serious offence. He stated that he was neither demoted nor sacked however he retired due to age. When one is asked to leave service an investigation ensues that may either result in a reprimand or sacking. In re-examination, he maintained that he retired due to his age, meanwhile there was opportunity to be promoted save for the impugned publication.
35. **Jane Wairimu Gikonyo - Nairobi Milimani HCCC No. 514 of 2010**, testified as PW9. She began adopting her witness statement dated 10/02/2024 as part of her evidence in chief and adduced into evidence the bundle of documents appearing in her of documents of even date. It was her evidence that the late **Col. George Gikonyo Kabugi** was

her husband and that at the time of publication was serving as a Col. in the Kenya Army as a Deputy Commander Armor however later retired as a Brigadier in 2016. That the impugned publication affected their lives as a family given that at the time of publication they were constructing a house in Nakuru whereas there was a suspicion by people that they were using money obtained through corruption. She stated that the Defendant did not offer an apology in respect of the impugned publication.

36. **Under cross examination**, she confirmed not having called any witnesses to shore up her evidence in chief. That her late husband was not subjected to any disciplinary proceedings or demoted. She confirmed that he was later promoted to Brigadier and later retired due to his age. After retirement her late husband was able to secure employment as security for Kenya Airports Authority (KAA) and later received the Presidential commendation award of Elder of the Burning Spear (EBS). In re-examination, she stated that her late husband had worked for close to thirty-two years (32) in the military.

### **Defendants Case and Evidence**

37. On behalf of the Defendants, **Kamau Muthoni**, testified as **DW1**. He identified himself as a reporter with the Defendant thereafter proceeded to adopt his witness statement dated 25/03/2025 as part of his evidence in chief. The gist of his

testimony was that there was no ill motive or malice with respect to the publication whereas the Defendant pulled down all the offending publications that are the subject of the suits, from its website. That the respective Plaintiffs did not issue any demand or notice of intention to sue therefore are not entitled to aggravated and or exemplary damages.

38. **Under cross examination**, he confirmed that the Defendant did not publish an apology despite the finding of liability in the test suit.

#### **Plaintiffs Submissions**

39. Having taken the liberty of reviewing the respective Plaintiffs submissions, the Court notes that the arguments advanced by counsel concerning awards of general, aggravated and exemplary damages were similar save for some of the respective final awards in respect of each Plaintiff. Therefore, I propose to concomitantly address the Plaintiffs submissions to avert any unwarranted repetition.
40. Addressing the Court on the award of general damages, counsel placed reliance on the decisions in **John v MGM LTD (1997) QB 586, Jeff Otieno & 2 others Group vsssss Martin Ng'ang'a [2019] KECA 41 (KLR), Standard Limited v G.N. Kagia T/A Kagia & Company Advocates [2010] KECA 505 (KLR), Gicheru v Morton & Another (2005) 2KLR 332, Nation Media Group Ltd, Mutegi Njau & Bob Kioko v John Joseph Kamotho, Charles Githii**

**Kamotho, James Kamotho & David Kamotho [2010] KECA 360 (KLR), Mohammed Mahmoud Jabane vs High Shine Butty Tongoi [1986] KLR, P N Mashru Limited v Omar Mwakoro Makenge [2018] KEHC 8442 (KLR), Machira v Mwangi & another [2001] KEHC 822 (KLR) and Daniel Musinga t/a Musinga & Co. Advocates v National Nation Newspapers Ltd [2005] KEHC 3185 (KLR)** to posit that the award under the said head ought to factor the respective Plaintiffs careers, their status, built reputation and inflation.

41. Under the aforesaid head, counsel urged the Court to award the Plaintiff in **Nairobi Milimani HCCC No. 527 of 2010** Kshs. 15,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 511 of 2010** Kshs. 15,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 512 of 2010** Kshs. 12,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 513 of 2010** Kshs. 15,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 514 of 2010** Kshs. 15,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 515 of 2010** Kshs. 20,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 517 of 2010** Kshs. 13,000,000/-, and the Plaintiff in **Nairobi Milimani HCCC No. 511 of 2010** Kshs. 12,000,000/-.
42. On the award of aggravated damages, counsel cited the decisions in **Machira v Mwangi & another [2001] KEHC 822 (KLR)** and **Mansion v Associated Newspapers LTD**

**(1965) 2 ALL ER 954** to posit that due to the Defendant's conduct being high handed, malicious, insulting and aggressive the Court ought to award under the said head as sought. Counsel urged the Court to award the Plaintiff in **Nairobi Milimani HCCC No. 527 of 2010** Kshs. 10,000,000/-, the Plaintiff in Nairobi Milimani HCCC No. 511 of 2010 Kshs. 10,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 512 of 2010** Kshs. 8,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 513 of 2010** Kshs. 10,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 514 of 2010** Kshs. 10,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 515 of 2010** Kshs. 15,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 517 of 2010** Kshs. 10,000,000/-, and the Plaintiff in **Nairobi Milimani HCCC No. 511 of 2010** Kshs. 8,000,000/-

43. With respect to the award on exemplary damages, it was argued that the Defendant had engaged in and committed serious breaches as against the respective Plaintiffs of which can only be assuaged by an award of exemplary damages. That despite issuance of interlocutory injunctive orders, the Defendant continued to publish the defamatory material for over seven (7) years therefore the Court ought to award under this header to deter the Defendant from disobeying Court orders. The **English decisions in John v MGM Limited [1993] QB 586 (supra), Brooks vs Benard [1964] 1 All ER, Bryne v Deane [1937] 2 All ER, 204**

**and Godfrey v Demon Internet Ltd (Moorland J) [1999] 4 All ER, 342** were called to aid in the latter regard.

44. Under the aforesaid head, counsel urged the Court to award the Plaintiff in **Nairobi Milimani HCCC No. 527 of 2010** Kshs. 20,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 511 of 2010** Kshs. 20,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 512 of 2010** Kshs. 18,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 513 of 2010** Kshs. 30,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 514 of 2010** Kshs. 30,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 515 of 2010** Kshs. 30,000,000/-, the Plaintiff in **Nairobi Milimani HCCC No. 517 of 2010** Kshs. 23,000,000/-, and the Plaintiff in **Nairobi Milimani HCCC No. 511 of 2010** Kshs. 18,000,000/-.
45. Lastly, it necessitates mentioning that counsel failed and or opted not to file submissions in **Nairobi Milimani HCCC No. 516 of 2010** despite being accorded ample opportunity to do so.

#### **Defendants Submissions**

46. Correspondingly, having reviewed the Defendant's submissions in the respective suits, the Court equally notes that the arguments advanced by counsel concerning the respective awards cut across board. Therefore, likewise to the Plaintiffs submission, I propose to concurrently address the gist of the Defendant's submissions.

47. Counsel for the Defendant anchored his submissions on Section 16A of the Defamation Act, the decision in **Gatangi v Kungutia [2022] KEHC 10596 (KLR)**, **David Kiprugut & another v Peter Okebe Pango CA 68/2004** and **Standard Ltd V GN Kagia t/a Kagia &co Advocates, CA 15/2003** to contend that an award on damages in a defamation claim is discretionary whereas this Court is obligated to compensate using comparable awards in order to propagate certainty and predictability of the awards.
48. Submitting on the head of general damages, counsel urged the Court to consider the extent of reputational damage and comparable cases whereas the respective Plaintiffs were neither politicians nor lawyers meanwhile were not well-known individuals in the storm of the Kenyan public scene. Counsel further took issue with the respective Plaintiffs submissions under the said head meanwhile urged the Court to award general damages in the respective suits in the sum of Kshs. 2,000,000/- as being sufficient.
49. The decisions in **Benard Bifwoli v Simon Wetundu & 2 others (2008) eKLR**, **Lawrence Nginyo Kariuki v Wangethi Mwangi & another [2009] KEHC 4159 (KLR)**, **Gitau v Mbugua [2024] KEHC 15751 (KLR)**, **Nation Media Group Limited v Njuru alias Joseph Muya [2023] KEHC 26363 (KLR)** and **Paul Muli & Stella Kanini**

**Mutisya t/a Stepal Dressmaking and Design v Nation Media Group Limited [2017] KEHC** were called to aid.

50. Concerning the award on aggravated and exemplary damages, while calling to aid the decision in **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR**, counsel argued that the respective Plaintiffs are bound by their pleadings given that they sought alternate awards under the said head and cannot now seek to claim under both heads. In the alternative, while citing the decisions in **Mugane v Radio Africa Limited & another [2024] KEHC 2 (KLR)**, **Nation Media Group Limited v Njuru (supra)**, **Gitau v Mbugua (supra)**, **Ken Odondi & 2 others v James Okoth Omburah T/A Okoth Omburah & Company Advocates [2013] eKLR**, **Mwangi Kiunjuri v Wangethi Mwangi & 2 others [2016] eKLR**, counsel implored upon the Court to award reasonable and comparable damages under the head of aggravated or exemplary damages. In conclusion, counsel urged the Court to be persuaded by the Defendant's submissions and authorities relied upon in assessing the appropriate amount of damages to be awarded to the respective Plaintiffs.

### **Analysis and Determination**

51. The Court has carefully considered the respective parties' pleadings, the evidence adduced by respective witnesses, and the parties' written submissions. As earlier noted and at

the risk of repetition, the question of liability was since settled in the test suit in **Nairobi Milimani HCCC No. 518 of 2010**. Therefore, what the Court has been called to determine vide the instant proceedings is assessment of awardable damages.

**Issues for determination:-**

- a. *What are the awardable damages in respect of each of the Plaintiffs in the consolidated suits?*

**What are the awardable damages in respect of each of the Plaintiffs suit?**

52. As rightly submitted by the Defendant, it is well trodden, in defamation proceedings, an award of damages is a matter of judicial discretion. In **C A M v Royal Media Services Limited [2013] KECA 178 (KLR)**, the Court of Appeal stated that:-

*“No case is like the other. In the exercise of discretion to award damages for defamation, the court has wide latitude. The factors for consideration in the exercise of that discretion as enumerated in many decisions including the guidelines in Jones v Pollard (1997) EMLR 233-243 include 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; 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;*

*matters tending to mitigate damages for example, publication of an apology; matters tending to reduce damages; vindication of the Plaintiff's reputation past and future."*

53. In the case of **Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR**, Mativo J. (as he then was) cited the case of **John v MG Ltd (1996) 1 ALL E.R.** the English Court of Appeal held: -

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

*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."*

54. Here, it is not in doubt that the publication touched on both the Plaintiffs integrity, honour and reputation by demeaning them before right thinking members of the society. Notably, as at the date of publication, PW1, PW2, PW3, PW7, PW8 and

PW9's late husband were high-ranking officers actively serving within the military service whereas PW4, PW5 and PW6 were employed within the armed services. Further, it is not in dispute that the impugned publication potentially had the effect of wide reach among readers of the "The Standard". Meanwhile, it would seem that the Defendant has of todate not tendered an apology to the Plaintiffs yet the imputation created by the article must have affected the Plaintiffs reputation nevertheless.

55. In the instant suits, the respective Plaintiffs sought varied amounts as general damages and in support of the proposed awards relied on rather dated decisions in **Machira v Mwangi (supra)** and **Daniel Musinga t/a Musinga & Co. Advocates (supra)** meanwhile the awards sought appeared to be on the higher side. The Defendant's retort was premised on a more recent decision in **Gitau v Mbugua (supra)**, that each of the Plaintiffs ought to be awarded damages in the sum of Kshs. 2,000,000/-.
56. With above in reserve, in **Nation Media Group v Chiguzo [2022] KECA 765 (KLR)**, the Court of Appeal cited with approval the decision in **Nation Newspapers Limited vs. Daniel Musinga T/A Musinga & Co Advocates Civil Appeal No. 120 of 2008**, wherein the Court appreciated that while all people are equal before the law, injury suffered in the case of defamation is not the same for all persons and

“the status of a particular person affects the extent of the injury suffered.”

57. It went on to quote the English case of **John vs. MGM LTD (1997) QB 586** wherein it was stated that-

*“In assessing damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the Plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.”*

58. Further I gather from the law on defamation within our jurisdiction, the necessity of calling a third party who knew the Plaintiffs and had read the impugned article, to wit, the effect of reading that article was that their standing and reputation had been lowered, as a person or in their profession, as a result of the defamatory publication. Here I draw guidance from the decision in **Selina Patani & another v Dhiranji V. Patani [2019] KECA 480 (KLR)** wherein it was observed that-;

*26. The other issue for our consideration is whether the Judge erred in finding it was imperative to call a third party to prove the appellants claim for defamation. In*

*principle, defamation is actionable per se. This does not mean the ingredients of the tort must not be proved. It simply means you must prove the elements of the tort of defamation; what need not be proved is the damage suffered. If no damage is proved, a claimant may be entitled to nominal damages. In this case, the legal issue is whether the appellants proved there was publication to a third party and injury or damage suffered to their reputation.*

*27. The evidence on record is the testimony by the 2nd appellant that her boss read the letter. The alleged boss was never called to testify. No other third party was called to testify as to the publication and injury to reputation. As to whether the appellants character and reputation was destroyed, there is no evidence on record from a third party stating that as a result of reading the impugned letter, the appellants reputation and standing in society was injured. It is in this context that we agree with the learned Judge that a person's own view about his/her reputation is not material in a claim for defamation; there must be evidence from a third party to the effect that the standing and reputation of the claimant has been lowered as a result of the defamatory publication. In the absence of third party evidence, we find no error of law on the part of*

*the Judge in arriving at the determination that the appellants did not prove their claim for defamation.*

59. Evidently, in the instant matters neither of the Plaintiffs called a witness concerning the reputational injury occasioned by the impugned publication. That said, notwithstanding the finding of liability in the test suit that the defamatory article was of and or concerned the Plaintiffs, I believe it was reasonably necessary for the respective Plaintiffs to demonstrate reputational injury.
60. Nevertheless, it is not in dispute as earlier noted, that PW1, PW2, PW3, PW7, PW8 and PW9's late husband were officers of high rank actively serving within the military service, whereas PW4, PW5 and PW6 were employed within the armed services, to wit, the impugned publication must have caused them some injury. To the foregoing end this Court is only inclined to award nominal damages in the sum of Kshs. 500,000/- for each of the Plaintiffs as being justified, in the circumstances.
61. On the award of aggravated or exemplary damages, I agree with the Defendant, that the Plaintiffs are bound by their respective pleading and award as sought in the respective suit were not separate of each other but alternate of each other. That said, concerning exemplary damages, in the case of **Mansion v Associated Newspapers LTD (1965) 2 ALL**

**ER 954 at 957** the English court stated that exemplary damages may be awarded: -

*“In a case in which a newspaper quite deliberately published a statement which it either knows to be false or which it publishes recklessly, carelessly, whether it be true or false.”*

62. The gravitas of the contents of the publication herein called for prior verification of facts by the Defendant, or comment by the Plaintiffs, if any. The failure by the Defendant to verify and or justify the facts resulted in injury to the respective Plaintiff’s reputation.
- 63.** The Plaintiffs, PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 are **each awarded Exemplary damages assessed at Kshs. 1,000,000/- (One Million) and Nominal damages of kshs. 500,000/=- (five hundred thousand)**. No award of damages is awarded to PW9, Jane Wairimu Gikonya as her late husband, Col. George Gikonyo Kabugi died before the suit was finalized as provided at **Section (1) of the Law Reform Act, Cap 26, Laws of Kenya.**
64. Having awarded exemplary damages, the Court will decline to award aggravated damages, there being no basis laid to warrant such an award.
65. The Plaintiffs also sought a permanent injunction to restrain the Defendant by itself, its respective servants or agents or howsoever from publishing, printing, circulating, or

distributing allegations that the Plaintiffs are corrupt or have abused office as government officers to confer benefits to themselves or others, have flouted the procuring law and rules in the processing or award of the tenders or a tender by the department of defence. However, the Court notes that the defamatory statements were published close to fifteen (15) years ago, and it is unlikely that the defamation will be repeated. Furthermore, granting such an injunction would unjustifiably infringe on the Defendants' constitutional right to freedom of expression. Therefore, the request for a permanent injunction is denied.

**Final Disposition.**

**66. Accordingly, the court enters judgment in favour of the plaintiffs against the Defendant as hereunder:**

**a. Liability 100% against the Defendant.**

**b. Quantum of damages-**

1. Brigadier Joseph Bukhala Kshs.

1,500,000/=

2. Brigadier Arthur Ndoni Owuor Kshs.

1,500,000/=

3. Colonel Tom C.KKipngetich Kshs.

1,500,000/=

4. Colonel Hosea Abinya Oduor Kshs.

1,500,000/=

5. Major Herbert Kiprotich Kshs.

1,500,000/=

6. Edward Njoroge Murimi	Kshs.
1,500,000/=	
7. Charles Kiiru Muhia	Kshs.
1,500,000/=	
8. Zedekiah Gesora Ogendi	Kshs.
1,500.000/=	
9. Jane Wairimu Gikonyo	NIL

**67. The above awards shall attract interest at Court rates from the date of this judgment until full settlement.**

**68. Finally, on costs, applying my mind to the provision of Section 27 of the Civil Procedure Act, I award costs of the suit in favour of the Plaintiffs save for Jane Wairimu Gikonyo, to be borne by the Defendant.**

**Orders accordingly.**

**Delivered Dated and Signed at Nairobi this 9<sup>th</sup> Day of October, 2025.**

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**JANET MULWA.**

**JUDGE**