

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E001 OF 2021

NEWTON KIFUSO SALIM.....

.....**PLAINTIFF**

=VERSUS=

STEPHEN NJUMWA SALEKA.....1ST

DEFENDANT

JAVAN MWADIME alias KIDASI CHAMBEO.....2ND

DEFENDANT

ANGUO FM LIMITED.....3RD

DEFENDANT

JUDGMENT

1. The Plaintiff in this case, **NEWTON KIFUSO SALIM** (hereafter referred to as the Plaintiff) has sued the three Defendants **STEPHEN NJUMWA SALEKA, JAVAN MWADIME alias KIDASI CHAMBEO** and **ANGUO FM LIMITED** seeking the following remedies:

(i) A declaration that the Plaintiff is entitled to the protection of his reputation.

(ii) A declaration that the Defendants' broadcasts are defamatory.

(iii) An order that the Defendants do retract and withdraw the offending broadcasts and render unqualified apology in terms acceptable to the Plaintiff to be broadcast by the Defendants in the same prominence as the offending utterances.

(iv) General damages for slander.

(v) Exemplary damages for defamation.

(vi) Aggravated damages for defamation.

(vii) Costs of the suit.

(viii) Interest in (iv), (v), (vi) and (vii) above at court rates from the date of filing the suit until payment in full.

2. The Plaintiff averred in the plaint dated 11th March 2021 that on 6th January 2021, the 1st Defendant while attending a radio interview session hosted by the 2nd Defendant at the 3rd Defendant's radio station, made statements referring to the Plaintiff in the Swahili and Taita languages to wit;

"Mimi najua Kifuso kuna mbolea ilipelekwa Maghimbinyi ya Milioni moja. Baadae Contractor alipeleka lorry ngapi.....mbili. Supplier alipeleka lorry mbili. Kilichotokea baadae Kifuso oenda ukakusanya magome ghake laki wunyanya ukakumbiria mfukonyi. Na mbolea haikupelekwa Ngolia. That's why Ngolia

hakuna kitu anaweza ongea. Hata nenda enja mbolea wandu wa Ngolia wedeshinika. Oduka magome ghake ukaenda nagho ha?yes alitafuta supplier akamwambia we nipatie pesa”

3. These utterances are translated to the English language to mean;

“I understand that there was manure worth one million which was taken to Maghimbinyi. Later the supplier delivered two lorries only. Afterwards Kifuso followed the supplier and pocketed eight hundred thousand shillings and the manure was not delivered in Ngolia. That is why he can’t say anything in Ngolia. He collects his money. He went to the supplier and asked for the money...”

4. In the said conversation, the 1st Defendant further stated,

“...ndio mimi nasema huyu kijana wacha dimghalishe kwawo Mbale. Si eti ni nini wacha dimghalishe kwawo hao....Mbale. Kama mwana wacha kwa weke awuye, dam’waghia mbuwa, dam’wonyera andu waghaa na uwoke kudijboka chongo. Hiyo haiwezi kuwa. Mae nuo djibaa malagho. Si omoni. Kwauwo omoni acha dimghalishe uende kwawo na udisighe Wawumingu dipange malagho ghamzedu.”

5. These utterances are translated to the English language to mean,

“...that’s why I say let’s take this guy to his parental home, Mbale. If a kid comes to his uncles, given a piece of land and a place to build and later becomes rebellious, that can’t happen. His mother can tell us something. Not him. So let us take him back to his parental home and leave us.”

6. The Plaintiff avers that the statements were publicly broadcasted in the 3rd Defendant’s mainstream and social media platforms and the 1st Defendant’s social media pages with a reach of a substantive number of listeners and viewers.
7. The Plaintiff contends that the malicious intent of the utterances so broadcasted is palpable in the fact that they are not factual and there was no effort by the Defendants to ascertain the facts before the broadcast was made. The impugned utterances contained factual inaccuracies and falsehoods calculated towards defaming the Plaintiff.
8. The Defendants broadcasted and/or caused to be broadcasted the defamatory words knowing the same to be false and/or failing to establish the truthfulness of the words in the said broadcast.
9. The Plaintiff avers that the defamatory utterances were broadcasted by the Defendants with the sole object of discrediting, embarrassing and lowering his character, reputation, and standing as the Member

of County Assembly for Wumingu Kishushe Constituency and Lawyer.

10. The Plaintiff avers that the defamatory words about him in the broadcasts were communicated by the Defendants to third parties through broadcast and social media in such a manner that conveyed defamatory imputation about the Plaintiff.

11. The Plaintiff avers that the words contained in the Defendant's broadcast in the natural and ordinary meaning were intended, calculated contrived and designed to mean and were in fact:

- (a) The Plaintiff is a rebel;
- (b) The Plaintiff is a foreigner;
- (c) The Plaintiff is a corrupt and incompetent leader;
- (d) The Plaintiff embezzled KES 800,000 from public coffers
- (e) The Plaintiff compromised the supplier and demanded for money
- (f) The Plaintiff is a mean and insensitive to the public needs
- (g) The Plaintiff misappropriated public funds; and
- (h) The Plaintiff deserves no respect.

12. Arising from the foregoing, the Plaintiff states that the Defendants communicated the defamatory words in the impugned broadcasts to third parties directly and/or from the facts above, it can be inferred that the defamatory words were brought to the attention of the third person(s).

13. As a consequence of this, the Plaintiff has been brought to public hatred, ridicule, contempt, odium and will be or has been disgraced, humiliated, subjected to untold embarrassment and ostracized.
14. The Plaintiff avers that both within and outside the Taita Taveta County jurisdiction he enjoyed extremely high esteem and respect from the public generally and from other political leaders, legal practitioners and even law students.
15. The Plaintiff further avers that the said broadcasts were reckless and malicious and extreme, designed to inflict monumental reputational damage on the Plaintiff.
16. The Plaintiff's claim against the Defendants is for general and aggravated damages for slander and/defamation arising from the foregoing averments.
17. Immediately after the broadcast of the defamatory statements, the Plaintiff avers that he began receiving telephone calls from political leaders, members of his family, electorates, acquaintances and the legal fraternity questioning him on the same.
18. The Plaintiff states that the defamatory words in the impugned broadcast about him were made and broadcasted by the Defendants maliciously, negligently and in bad faith. The Plaintiff will rely on the following facts and matters in support of his claim that the said publication constitutes malicious libel.

PARTICULARS OF MALICE AND BAD FAITH

(a) The Defendants broadcasted words about the Plaintiff that were both false and defamatory;

(b) The Defendants broadcasted the utterances about the Plaintiff recklessly;

(c) The Defendants broadcasted untrue words, without considering or caring whether the words were true or not;

(d) The Defendants broadcasted the utterances without an honest belief in their truth;

(e) The Defendants in broadcasting the defamatory words about the Plaintiff, purposely abstained from inquiring into the facts or from availing themselves of means of information at hand when the slightest inquiry would reveal that the imputations were groundless;

(f) The Defendants never bothered to seek an explanation on any of the issues raised in the broadcasts from the Plaintiffs;

(g) The Defendants did not attempt to investigate the matter nor find out facts;

(h) The abusive and defamatory words were published when the Defendants knew or ought to have known that they were false;

19. The Plaintiff claims exemplary damages for libel based on among others the foregoing averments. Besides, the Plaintiff avers that the impugned utterances were broadcasted in a sensational and scandalizing manner and that despite the demand for retraction and

apology to the Plaintiff, the Defendants have refused to accede to the said demand.

20. The Plaintiff avers that the defamatory words as publicly made by the Defendants herein as it relates to the Plaintiff could not have been made by a fair person, no matter how prejudiced, however, exaggerated and obstinate unless the same was actuated by malice on the part of the Defendants.
21. Despite the demand for an apology and an unequivocal public retraction being sought of the Defendants, the Defendant has declined and/or refused to retract the impugned broadcast or render an apology.
22. The Defendants filed their statements of defence denying the Plaintiff's claim.
23. The case proceeded by viva voce evidence. The Plaintiff testified as PW1 and adopted his statement as his evidence in chief.
24. In his statement, the Plaintiff identified himself as the duly elected Member of County Assembly for Wumingu/Kishushe Ward and a member of several key committees in the Taita Taveta County Assembly at that time.

25. He stated that he holds a Diploma in Laws and a Bachelor of Laws degree and is a prospective candidate for the Advocates Training Programme.
26. He alleged that on 6th January 2021, the 1st Defendant, during a radio interview on the 3rd Defendant's station, made false and defamatory statements about him in Swahili and the Taita language.
27. The Plaintiff provided a translation, asserting that the 1st Defendant accused him of embezzling Ksh 800,000 intended for a manure delivery project in Ngolia and of being a corrupt and rebellious leader who should be sent back to his parental home.
28. These utterances were broadcast on mainstream and social media platforms to a wide audience.
29. The Plaintiff contended that the statements were made with malicious intent, contained factual inaccuracies, and were broadcast without any effort to verify their truth.
30. He believed the Defendants' sole objective was to discredit, embarrass, and lower his reputation as an MCA and a lawyer.
31. The broadcasted words were designed to portray him as a corrupt, incompetent, rebellious, and foreign leader who misappropriated public funds and deserved no respect.
32. As a consequence, the Plaintiff claimed he was brought into public hatred, ridicule, and contempt. He reported receiving numerous

telephone calls indicating that the public's estimation of him had been tremendously lowered.

33. Having previously enjoyed high esteem and respect within and outside Taita Taveta County, he believed the defamation suit was merited and ought to be allowed. He affirmed that the facts in his statement were true.

34. The Plaintiff called **GEDLIAH MNYASA MWAKURU** as PW2.

35. PW2 adopted his statement dated 3rd June 2022 as his evidence in chief. He testified that he is an adult of sound mind, a resident and registered voter of Wumingu Kishushe Ward, and works as an Administrative Assistant in the local MCA's office.

36. He stated that he was aware of a live interview aired on Anguo FM and its Facebook page on January 6th, 2021, in which the defendant, Stephen Njumwa Saleka, made defamatory statements about the Plaintiff. PW2, who understands both Kiswahili and Taita, explained that the defendant had accused the Plaintiff (referred to as "Kifuso") of corruptly pocketing Ksh 800,000 from a public fertilizer supply deal meant for the Ngolia area, resulting in the fertilizer not being delivered.

37. Furthermore, PW2 testified that the defendant made derogatory statements suggesting the Plaintiff was a rebellious and ungrateful

outsider who should be sent back to his ancestral home in Mbale and not be trusted by the people of Wumingu.

38. PW2 stated that he heard these utterances himself and that as a result, his opinion of the Plaintiff drastically deteriorated. He began to view the Plaintiff as corrupt, a rebel, and undeserving of respect. He also confessed that he observed these negative sentiments being shared by other members of the public who visited his office.

39. PW2 said in cross-examination that upon publication of the defamatory statements people started to say that the Plaintiff had eaten government money.

40. PW2 said as a result of the publications in the interview, he viewed the Plaintiff as a corrupt leader.

41. The 1st Defendant **STEPHEN NJUMWA SALEKA** testified as DW1. He adopted his written statement dated 3rd May 2023 as his evidence in chief.

42. DW1 stated in the said statement he admitted only to the formal descriptions of the parties and his own address. He also conceded to the contents of paragraphs 8, 9, and 10 of the Plaintiff.

43. However, he categorically denied the core allegations of defamation. He stated that he never made the utterances attributed to him, that the Plaintiff's interpretation was wrong and exaggerated, and that he did not defame the Plaintiff as alleged.

44. He specifically denied owning or managing any social media account from which the defamatory statements could have originated and asserted that he had no control over broadcast or social media content.
45. The Defendant further claimed to be a complete stranger to the events and allegations detailed in the majority of the Plaintiff's paragraphs, including the particulars of malice and bad faith, and put the Plaintiff to strict proof on all these points. He also denied ever being served with a demand letter.
46. Finally, without prejudice to his blanket denials, he added that even if he had mentioned the Plaintiff, he never intended to defame him and that the statements in question were not defamatory in nature. He concluded by characterizing the lawsuit as an attempt to intimidate him and instill political fear to prevent him from standing for what is right and lawful.
47. The 2nd Defendant, **JAVAN MWADIME** testified as DW2. He adopted his statement dated 18th October 2023 as his evidence in chief.
48. In his testimony, DW2 identified himself as a journalist with over a decade of experience at Anguo FM Limited, the 3rd Defendant, and stated he was authorized to speak on its behalf.
49. He explained that he hosts the weekday "Kwaela Kwalangala" morning show, during which the station interviews various guests,

including politicians. He affirmed that the 3rd Defendant strictly adheres to the Code of Conduct for Journalism and media ethics in its operations.

50. DW2 emphasized a key practice of the station: it explicitly states that the views of guests do not reflect its own position, both during interviews and through a standard disclaimer broadcast at the end.

51. Regarding the case, he recalled hosting the 1st Defendant on a live show, over which he said he had no control regarding what the guest would say. He further stated that he never made any malicious or defamatory remarks about the Plaintiff himself.

52. In an effort to be fair, DW2 recounted that during the interview, they attempted to contact the Plaintiff to get his side of the story but were unsuccessful.

53. Consequently, they proceeded to air their usual disclaimer. He stressed that the 1st Defendant's comments were solely that individual's views and not those of himself or the radio station.

54. Additionally, DW2 expressed that he was unaware of the broadcast causing any public hatred, ridicule, or contempt towards the Plaintiff, a point he supported by noting the Plaintiff's subsequent re-election as an MCA and his current role as minority leader.

55. He also stated that the Plaintiff had not identified any listeners who found the broadcast defamatory. For these reasons, he prayed for

the Plaintiff's claim against the 2nd and 3rd Defendants to be dismissed with costs.

56. The parties filed written submissions in this case as follows:-

57. The Plaintiff submitted that this case is a defamation suit arising from a live radio broadcast on Anguo FM. The Plaintiff, Newton Kifuso Salim, a then-Member of County Assembly and law student, alleges that the 1st Defendant, Stephen Njumwa Saleka, made false and damaging statements about him during an interview hosted by the 2nd Defendant, Javan Mwadime.

58. The 3rd Defendant, Anguo FM Limited, is the radio station that published the broadcast.

59. The core of the Plaintiff's case is that the 1st Defendant's utterances, spoken in Swahili and Taita, falsely accused him of corruptly pocketing Kshs. 800,000 from a fertilizer supply deal—an activity he, as an MCA, is legally barred from engaging in.

60. A second set of comments suggested he was an outsider who should be politically ostracized and "taken back to his parental home."

61. The Plaintiff contends these statements were neither factual nor truthful, and they caused him to be ridiculed, shunned, and politically damaged, evidenced by a poor electoral performance in the referenced area during the 2022 elections.

62. The Plaintiff argues that the defamatory nature of the statements is clear, as they were designed to lower his esteem in the community, expose him to hatred and contempt, and injure his professional and political standing.
63. He asserts that the elements of defamation are satisfied: the statements were defamatory, they directly referred to him by name and position, and they were published to a wide audience across the Coast region via the radio broadcast.
64. The Plaintiff further submits that the Defendants acted with malice. This is inferred from the failure to verify the allegations with him before the broadcast, the disproportionate and unjustifiable language used, and their refusal to retract the statements or offer an apology after being formally demanded to do so.
65. The 3rd Defendant's claim of having broadcast a disclaimer is challenged due to a lack of evidence, and no proof was offered that the Plaintiff was contacted for comment.
66. Consequently, the Plaintiff seeks several reliefs from the Court. These include a court order compelling the Defendants to retract the broadcast and issue an unqualified apology with the same prominence as the original statements.
67. He also seeks an award of Kshs. 4,000,000 in general damages for the slander, Kshs. 1,000,000 in exemplary damages to punish the Defendants for their reckless conduct, and Kshs. 1,000,000 in

aggravated damages due to the Defendants' continued defiance and lack of remorse.

68. Finally, he seeks the costs of the suit and interest. The Plaintiff contends that such an award is justified by precedent and is necessary to compensate him for the harm suffered and to deter public officers and media houses from similar conduct in the future.

69. The 1st Defendant submits that the Plaintiff's case for defamation must fail because it is built on a complete lack of credible evidence. The Plaintiff has catastrophically failed to meet the legal burden of proof required for defamation.

70. The cornerstone of the claim—the alleged defamatory broadcast itself—was never proven, as the Plaintiff failed to produce the crucial audio or video recording of the radio interview or any corroborating evidence from social media, despite listing it. Without this primary evidence, the Court cannot verify the words were ever spoken, their specific content, or their context.

71. Furthermore, the Plaintiff failed to definitively prove that the name "Kifuso" referred exclusively to him, and the translations provided were not certified, making them unreliable. Even if the words were published, the Plaintiff's own evidence demonstrates that his reputation was not harmed, as he was subsequently admitted as an advocate, re-elected as an MCA, appointed Minority Leader, and maintained his position as a Diocesan Chancellor.

72. This successful trajectory is incompatible with a claim of reputational damage. The Plaintiff also provided no evidence of malice on the part of the 1st Defendant or any proof of the special financial loss required for a slander case.
73. Consequently, the 1st Defendant prays for the suit to be dismissed in its entirety with costs awarded to him.
74. The 2nd and 3rd Defendants (Javan Mwadime and Anguo FM Limited) argued that the defamation suit against them should be dismissed with costs. Their core position is that they did not publish the alleged defamatory statements and are protected by legal defenses.
75. The Defendants establish that the 3rd Defendant is a radio station bound by the Code of Conduct in the Media Council Act. They explain that the 1st Defendant was invited as a guest to discuss county affairs, a common practice in a democratic society that fosters accountability.
76. Crucially, they state that the station consistently runs a disclaimer before, during, and after such interviews, clarifying that the views expressed are the guest's alone and do not reflect those of the station or its presenter.
77. They deny publishing the alleged statements on any social media platforms, asserting that the 3rd Defendant operates only as a radio station.

78. Even if the words were spoken, the Defendants argue they are protected by the defenses of fair reportage and qualified privilege under Sections 6, 7, and 8 of the Defamation Act, which extend to wireless broadcasting.

79. This privilege is absolute for fair reports of judicial proceedings and qualified for reports on matters of public interest, such as county governance, unless malice is proven.

80. Furthermore, the Defendants contend they complied with Section 7A of the Defamation Act and the Media Council Act by offering the Plaintiff a right of reply to the broadcast, which he declined.

81. They argue that the Plaintiff's subsequent election as a Member of the County Assembly demonstrates that his reputation was not harmed as alleged. Finally, they submit that the Plaintiff has failed to prove the essential elements of his case, including publication by these Defendants and the actual damage to his reputation, and is therefore not entitled to any of the requested damages.

82. They conclude that allowing this suit would have a chilling effect on freedom of expression and the important role of media in facilitating public discourse.

83. I have carefully considered the evidence adduced in this case together with the submissions filed by the parties.

84. It is the duty of the Plaintiff to prove his case to the required standard in civil cases which is on a balance of probabilities.

85. The court has carefully considered the pleadings, the viva voce evidence adduced by the Plaintiff and the Defendants, and the written submissions filed by the parties.

86. The issues for determination in this case are as follows;

(i) Whether the Plaintiff has proved his case to the required standard.

(ii) Whether the Plaintiff is entitled to the remedies he is seeking against the defendants.

(iii) Whether the defendants have a valid defence against the Plaintiff's case.

(iv) Who pays the costs of this suit?

87. The central issue for determination is whether the Plaintiff, Newton Kifuso Salim, has discharged the legal burden of proving his claim for defamation against the three Defendants on a balance of probabilities.

88. The Plaintiff's case rests entirely on the allegation that specific, defamatory words were spoken by the 1st Defendant and published to the public via a broadcast on the 3rd Defendant's radio station.

89. For a claim in defamation to succeed, a Plaintiff must prove three essential elements: first, that the matter complained of was published by the defendant to a third party; second, that the matter

referred to the Plaintiff; and third, that the matter was defamatory in its character.

90. A preliminary but crucial point of law must be addressed. The Plaintiff has pleaded his case as one for "general damages for slander."

91. The alleged defamatory statements were not made in a transient form but were disseminated to the public through the medium of radio.

92. Section 2 of the Defamation Act, Cap. 36 of the Laws of Kenya, explicitly includes broadcasting through wireless telegraphy within the definition of "publication" for the purposes of libel.

93. Consequently, this action is one for libel, not slander. This distinction is significant, as libel is actionable per se, meaning the Plaintiff is not required to prove special damage.

94. However, it does not absolve him of the burden of proving the foundational fact of publication itself.

95. The cornerstone of the Plaintiff's claim is the alleged broadcast. The Plaintiff, however, catastrophically failed to produce the single most important piece of evidence: the audio or video recording of the radio interview.

96. This failure is fatal to his case. While the Plaintiff and his witness, PW2, gave oral testimony about the content of the statements, this is secondary evidence of the publication.

97. The best and primary evidence of the words spoken, their tone, their context, and the very fact of their broadcast was the recording itself, which the Plaintiff listed but failed to tender.
98. The Defendants, particularly the 2nd and 3rd, did not admit to the publication of the specific defamatory words.
99. The 2nd Defendant's (DW2) testimony that he hosted the 1st Defendant and attempted to contact the Plaintiff for a right of reply falls short of an admission that the precise, defamatory utterances as pleaded were made.
100. It merely confirms that an interview occurred and that a general practice was followed. It does not corroborate the specific, verbatim allegations of corruption and embezzlement that form the substance of this suit.
101. Without the primary evidence, the court is left with uncorroborated oral testimony about the content of a broadcast against the Defendants' denial.
102. In such a circumstance, the court cannot safely make a finding that the alleged words were published as pleaded.
103. The Courts have consistently emphasized the importance of proving defamatory words with a high degree of precision.
104. In the absence of the recording, the court cannot verify the accuracy of the Plaintiff's translation, the context in which the

words were spoken, or indeed, whether the name "Kifuso" was used in the defamatory manner alleged.

105. The failure to produce this crucial evidence creates an insurmountable evidential gap.

106. In light of this fatal evidential deficiency, the court need not make definitive findings on the other elements of the tort, such as whether the words were defamatory or whether the defenses of qualified privilege apply.

107. A claim for defamation cannot be built upon a foundation of missing primary evidence. The Plaintiff has therefore failed to discharge the burden of proof on a balance of probabilities.

108. Consequently, the Plaintiff's suit against all three Defendants is hereby dismissed.

109. On the issue of remedies, had the Plaintiff successfully discharged the burden of proving his case on liability, the court would have been required to assess the quantum of damages. The Plaintiff sought general, aggravated, and exemplary damages.

110. In that event, general damages would have been warranted to compensate him for the injury to his feelings and reputation.

111. Considering the gravity of the allegations of corruption and embezzlement, and the widespread platform of a radio broadcast, an award of KSh. 2,500,000 in general damages would have been

deemed appropriate to signify the court's condemnation of such unfounded attacks on a person's character.

112. However, even if liability been established, the claims for aggravated and exemplary damages would not have been sustained.

113. The Plaintiff did not lead sufficient evidence to demonstrate the high-handedness, insulting manner, or calculated malice required to justify an award of aggravated damages.

114. The Plaintiff's suit is accordingly dismissed for reasons that the Plaintiff did not produce the audio or video recording of the radio interview.

115. On the issue of costs, for reasons that the Plaintiff would have succeeded in his claim had he produced the crucial primary evidence, each party to bear its own costs of this suit.

116. It is so ordered.

Dated, signed and delivered this 15th day of October 2025 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for the Plaintiff

.....for the Defendants

ORIGINAL