



**Kimwele & 3 others v Muriuki & another (Civil Case
E130 of 2021) [2025] KEMC 129 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEMC 129 (KLR)

**REPUBLIC OF KENYA
IN THE VIHIGA LAW COURTS
CIVIL CASE E130 OF 2021
JA AGONDA, SPM
MAY 6, 2025**

BETWEEN

**PAMELA KIMWELE 1ST PLAINTIFF
KENNETH KESEKO 2ND PLAINTIFF
PAUL MBUNI 3RD PLAINTIFF
AMOS KUTWA 4TH PLAINTIFF**

AND

**LINCOLN NJOGU MURIUKI 1ST DEFENDANT
ROYAL MEDIA SERVICES LIMITED 2ND DEFENDANT**

JUDGMENT

1. By the way of plaint dated 10th August, 2021, the plaintiff sued the defendants claiming an unqualified apology and retraction of similar prominence as the defamatory statements, general damages for libel, aggravated and exemplary damages, damages for psychological and emotional distress, costs of this suit together with interest on (c), (d) and (e) above and any such other or further relief as this court may deem appropriate.
2. On its part the defendant entered appearance and filed defence dated 5th September, 2022 in which it denied virtually all the averments made by the plaintiffs in the plaint save for descriptive nature of the parties. In particular took an issue with the fact that the defendant having broadcast or published the story, words, broad cast and statements. The defendants stated that the publication was in good faith, in public interest and without malice and not intended to injure the character of the plaintiffs. The defendants contended that the publication is privileged and a fair comment on a matter of public interest and will rely on the defences of privilege and a fair comment on a matter of public interest. The defendant stated that under Articles 33 and 34 of *the Constitution*, the public is entitled



to know and to have information that shocks and disturbs their conscience about major events and occurrences in our country and the defendants were entitled to the freedom to impart such information to the public in a democracy like ours. The defendants will also rely on common law and statutory defence of truth or justification. The defendants stated that they are permitted to discuss pending cases whenever the matter is of public interest. That there are judicial proceedings that touches the plaintiffs against Governor of Vihiga County and County Government of Vihiga. The defendants stated that the publication contained insufficient reference to the plaintiffs that could sustain an action for defamation. The defendants stated that the plaintiffs do not have any cause of action . That the publication was made in contempt of court as alleged orders of stay were issued by the High Court and this court lacked jurisdiction. That the defendant never made any demand for apology or right of reply made to them by the plaintiffs before filing of this suit. The defendants prayed for the suit be dismissed with costs.

3. The plaintiff filed a reply to the defence dated 5th January, 2022 in which he merely reiterated the averments made in the amended plaint and denied the particulars imputed on the part by putting the defendant in the strictest proof thereof.
4. After the pre-trial conference on 31st August, 2023 and this matter was subsequently set down for hearing on 3rd October, 2024 and 27th February, 2025 where the plaintiffs' and the defendants' cases were heard and closed.
5. Paul Jiseve Mbuni testified as Pw1 and adopted his statement dated 28th August, 2024 as his evidence in chief.
6. In cross examination, the publication was on 25th June, 2021 in Kiswahili language that he was removed from office due to corruption. A fact he vehemently denied. He averred in his 30 working years, he was never accused of any corrupt malpractices. He stated that he was removed from office but the High Court reinstated him for wrongful dismissal. It held that all the proceedings at the County Assembly was null and void. He was removed from office 10 days after the High Court's decision. The broadcast dented his reputation with his friends and professional colleagues. After televised news/publication, he received many phone calls from his colleagues. He stated that he still holds the consultancy position and matter of governance is great public importance.
7. In re examination, he stated that the High Court judgment revealed that the County Government went against the law by removing him and his workmates from office illegally as per its decision.
8. Pamela Kimwele testified as Pw2 and adopted her statement dated 28th August, 2024 as her evidence in chief. She also filed and relied on her list of documents dated 12th September, 2024 "PEXh.1" to "PEXh.5." It was her evidence that she is a businesswoman in Mbale town.
9. In cross examination, she confirmed that she had filed a previous statement dated 10th August, 2021 filed by Gitobu Manyara advocate. She stated that there was one newscast and publication dated 25th June, 2021 that her family, friends and colleagues called her it. She watched the repeat televised news on 26th June, 2021 that carried similar contents. Due to the said publication, she was removed from office together with his colleagues without be given an opportunity to be heard or to defend themselves. She said that the four (4) grounds of her removal was sent to her as per paragraph 10-12 of defendants' bundle. She confirmed that there was a motion tabled to remove her from office as paragraph 3 in page 12 of the defendants' bundle. She stated that the Assembly was proceeding with the removal despite there being several court orders restraining them to do so. That on 25th July, 2022 she was called by a journalist from Star Newspaper regarding court orders as per Judicial Review No.11 of 2021, Kisumu High Court. After the Employment court directed that it lacked jurisdiction. She was not served



- with any demand letter. She averred that the judgment by Judge P.J. Otieno stated that there was no contempt of court by the respondent as it was not proved with sufficient evidence. She stated that the Governor never knew about the existence of the court orders. That she listened to the radio broadcast and recorded it as per certificate of electronic documents “PEXh.4.” That her serial number was not included. She stated that the publication brought shame, loss of professional colleagues, friends and her father was affected and her husband a professor with a lot of networks was affected. The publication caused her shame and anguish. She wished the Royal Media would have approached her to hear her side of story before publishing the defamatory statement. She ascertained that County Government operation was of public interest. She stressed that she was a proponent of good governance.
10. In re examination, she stated that she would rely on her statement dated 28th August 2024. That the publication was dated 25th June, 2021. The publication by Star Newspaper indicated the existence of court orders.
 11. Kenneth Elivuna Keseko testified as Pw3 and adopted his statement dated 28th August, 2024 as his evidence in chief. It was his evidence that he was a businessman in Mbale, Vihiga.
 12. In cross examination, he confirmed that there was motion before County Government as per page 16 of the defendant’s bundles. He stated that the motion for removal from office and the court orders were in existence. There were three (3) grounds of his removal that were not approved. He was called on the night of 25th June, 2021 by his several friends trying to find out if he had been removed from office. He listened to the newscast on 26th June, 2021, he heard his name being mentioned that he was sacked due to corruption allegations. These were proceedings pending at the County Assembly. CEE wrote to the Governor who removed them from office. The Employment case was dismissed for lack of jurisdiction and they were referred to the High Court. The High Court did not find that there was contempt of court by the defendants. The Governor did not know the existence of court orders. He stated that he suffered damages, his reputation was dented being termed as being a corrupt person and he lost his customers being an engineer and the publication injured his reputation with his peers. There was no element of corruption proved on his part.
 13. Dr. Amos Kutwa Kutwa testified as Pw4 adopted his statement dated 28th August, 2024 as his evidence in chief. He is a trained doctor and public health specialist and adopted his statement dated 28th August, 2024 as his evidence in chief.
 14. In cross examination, he confirmed that page 16 of the defendants’ bundles, there was motion for his removal from the office. Page 15 paragraph 2 showed the grounds for his removal that were not proved and his incompetency. He stated that letter dated 15th June, 2021 was concocted and he never attended any meeting as alleged. He averred that they filed a suit in Kisumu to quash decision of County Assembly where the court found that there was no contempt by the Governor as per High Court’s decision that the Governor was not aware of the court order. He stated that he was a doctor of longstanding working with WHO and international organizations. That the publication dated 25th June, 2021 injured his reputation. The newspaper article was published after he was removed from office.
 15. In re examination, he stated that the employment case filed through an application in Kisumu was dismissed or referred to High Court to ascertain the constitutionality of their validity of being in office.
 16. Purity Mwamuyu testified as Pw5 adopted her statement dated 28th August, 2024 as her evidence in chief. She stated that she is a marketer and an agronomist.
 17. In cross examination, she confirmed that she signed her statement while in America. She knew Pamela Kimwele for almost 40 years. She listened to newscast in Citizen radio at 7p.m. on 25th June, 2021. It



was after main news that the matter was aired. She heard Pauline Kimwele's name being mentioned. She wondered if it was the same person she knew. They were college mates and worked in the same field. She was disturbed and shocked and immediately gave her a call and she shared what had happened. She was upset as the presenter did not call her and her colleagues to verify the information before aired by Royal Media. She was called by another friend who alerted her to listen to repeat news the following day i.e on 26th June, 2021.

20. John Omiti Muturi testified as Pw6 and adopted his statement dated 12th September, 2024 as his evidence in chief.
21. In cross examination, he stated that he knew Paul Mbuni since they were in university as student leaders. He was an upright man who shunned corruption. He heard newscast by Radio Citizen on 25th June, 2021 aired after the main news regarding corruption at Vihiga County. It was only after Paul Mbuni informed him of the County proceedings. A repeat newscast was aired on 26th June, 2021. He stated that Paul Mbuni was shocked and promised to explore all means possible to exonerate himself. He was happy with the High Court's decision.
22. Nelson Keyonzo Andira testified as Pw7 and adopted his statement dated 28th August, 2024 as his evidence in chief. He was a retiree, a consultant and a writer.
23. In cross examination, he stated that he knew Pamela Kimwele. He heard the newscast in the radio on 25th June, 2021 whose contents mentioned her as a corrupt person. He came to know of the impeachment proceedings after the publication. She was angry, depressed and in anguish. After her explanation, he believed her story as he knew her since she was a young girl.
24. Dr. Seth Wetoyi Adam testified as Pw8 is a part time lecturer at Jaramogi University and adopted his statement dated 12th September, 2024 as his evidence in chief.
25. In cross examination, he knew Engineer Kenneth Keseko since 1982 when they are students at University of Nairobi, they were great friends. He heard the newscast on 25th June, 2021. He was not aware of the impeachment proceedings but knew after the publication. He heard about the plaintiffs having been dismissed on corruption allegations. He told him that they were not in good terms with the Governor and that is how the matter had been tabled at the County Assembly. That he had been struggling with his business by taking loans and he believed what he had told him.
26. Paul Caleb Obura Obwatinya testified as Pw9 an advocate of the High of Kenya and adopted his statement dated 28th August, 2024 as his evidence in chief.
27. In cross examination, he knew Amos Kutwa 4th defendant since 1986 when he was an intern in medical hospital. He stated that the publication was on 25th June, 2021 and repeated newscast was on 26th June, 2021. He was aware of the impeachment proceedings and when he was removed from office. There was a court order in existence during impeachment. He did not believe the publication against him. He called 4th defendant who told him it was a scandal and he told him his side of story and he believed his story and that was the close of the plaintiff's case.
28. On the other hand, the defence called one witness. Lincoln Njogu testified as Dw1 a trained journalist and adopted his statement dated 10th August, 2021 as his evidence in chief. He also filed his list of documents of even date "DExh.1" to "DExh.4."
29. In cross examination, he stated that Citizen radio had wide coverage nationally and internationally. He stated that his publication of 25th June, 2021 was about good governance. It was a prima time segment that was aired on 25th June, 2021. He averred that he had other programme on Tuesday known as



'Kikao.' He ascertained that he published and aired broadcast on 25th June, 2021 and 26th June, 2021 was on corruption. He stated that it was not necessary for him to call the plaintiffs and he never called them and that was the close of the defence case.

Issues & Determination.

30. I have carefully evaluated the evidence on record. I have also given due considerations to the written submissions filed by the counsel for the parties together with all the case laws relied upon. I have now to decide whether or not the plaintiffs have proved their case on a balance of probability against the defendants. The plaintiffs claimed that the publication by the defendants dated 25th February, 2021 was defamatory as it indicated that they were impeached/sacked by Vihiga County Government for corruption allegations without verifying the fact from the plaintiffs and went ahead to air newscast without their consents.
31. In an action for defamation two elements are involved; the defamatory nature of the words complained of and the award of damages if the claim is proved. As a general rule the defamation law protects a person's reputation, recognises in every man and woman a right to have the estimation in which he or she stands in the opinion of others unaffected by false statements to his or her discredit and it affords redress against those will violate this basic tenet by speaking defamatory falsehoods. This is the essence of Article 33 of *the Constitution* of Kenya, which guarantees every person the right to freedom of expression while at the same time requires every person to respect the rights and reputation of others.
32. Whether or not a statement is defamatory will depend on how the words are understood by the ordinary man. Once the meaning of the words is determined, the next test is to ascertain whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense.
33. On the basis of this evidence, the issues for determination are as follows:-
 1. Whether the article dated 25th February, 2021 was published by the defendant.
 2. Whether the contents of the newscast made the plaintiffs suffered any damages as a result of the publication.
 3. Whether the newscast or publication and the representation of the plaintiffs as were corrupt as County Government employees.
 4. Whether the defence of public interest, justification and privilege was available to the defendant.
 5. What the plaintiffs are entitled to damages and if so, the quantum thereof.
 6. Who should meet the costs of the suit.
34. The plaintiffs stated that the newscast of 25th February, 2021 in Radio Citizen after the main news was defamatory and that it referred to them as corrupt, fraudulent and un-ethical; and that the defendants were malicious in publishing the said newscast. The defendants denied the claim and argued that the publication was done in good faith and in the public interest for purpose of good governance. They said that the article was not defamatory as the content therein was true in substance and form as per the impeachment proceedings by the County Government; and that it was an accurate report that necessitated fair comment on matters of public interest since the public has a right to know the issues of good governance at the County Government.



35. At the hearing, the four plaintiffs called five witnesses who testified in support of their case while the 2nd defendant called one witness. In 1st plaintiff's testimony Pw2, she stated that there was the publication dated 25th February, 2021 that claimed that she was impeached together with 2nd, 3rd and 4th plaintiffs due to corruption allegations and had a newscast in Radio Citizen. With a repeated newscast on 26th June, 2021 was in bad faith and with malice that only their names were mentioned by the defendants yet there was no connection between them and the alleged corruption allegations at the County Government as they were never prosecuted in a court of law or charged with any criminal offence in relation to the said allegations four years down being the employees of the said Vihiga County Government. The plaintiffs did not have any connection with corruption allegations that was being perpetuated in the said County Government. They further stated that, their employments were terminated and this affected their source of livelihood, their businesses in Mbale and their profession work slowed down and they could not get new opportunities in their various fields, they lost some of their friends and colleagues and relatives did not want to associate with them because of the newscast/article of 25th February, 2021.
36. The common law of defamation protects every person from harm to their reputation by false and derogatory remarks of their person. The same protection is anchored in *the constitution* under Article 33 (1) (a) as read with clause (3) thereof of *the constitution*. The essence of a defamatory statement is its tendency to injure the reputation of another person. Its, however, upon the plaintiffs to show or establish how they were exposed to public hatred, contempt or ridicule or that the words had caused them to be shunned or avoided by certain people. The plaintiffs have also to prove the actual words complained of and it is not sufficient to show that the defendants made a defamatory statement.
37. What constitute definition of defamatory statement was well articulated by the court of appeal in the case of *Musikari Kombo-vs-Royal Media Services Limited* [2018] eKLR in which the court referring to its own decision in *SMW-vs-ZWM* [2015] eKLR stated as follows:
- A statement is defamatory of the person of which it is published if it tends to lower him/her in the estimation of right thinking members of the society generally or if it exposes him/her to public hatred,, contempt or ridicule or if it causes him to be shunned or avoided.
38. The plaintiffs' oral evidence was fortified by Pw5 who resides in America. She knew Pw1 way back in college and worked in the same field. She was listening to a newscast at Radio Citizen at 7.00pm on 25th June, 2021. She heard Pw1's name being mentioned. She was disturbed and shocked. She decided to call Pw1, she shared her part of the story on what had transpired. She was upset as the presenter did not call her and her colleagues to verify the information before being aired by Royal Media. Pw2's testimony was corroborated by Pw7 who knew about the impeachment proceedings after the said publication. He contacted Pw2 who was angry, depressed and in anguish. After she explained what had happened, he believed her story as he knew as since she was a young girl. Further, 2nd plaintiff's testimony was supported by Pw8 who knew him since 1982 while they were at University of Nairobi as students. He stated that he was not aware of the impeachment proceedings and only learnt of the same after the news publication in Radio Citizen. Pw3 averred that as per impeachment proceedings there were four grounds for removal from office. He stated that the said grounds were never approved. He was called by numerous friends who tried to find out why her was removed from the office. Pw4's testimony was ascertained by Pw9 who stated that he knew 4th plaintiff since 1986 when he was an intern at the medical hospital. On the other hand, 1st defendant stated that the impeachment proceedings were for good governance and never called any of the plaintiffs to find out the exact position of the said proceedings to shed light on their part of story. Though the plaintiffs were not contacted before publication of such sensitive information. Based on the evidence by the plaintiffs and



their witnesses, I find that the defendants injured the reputation and character of the 1st, 2nd, 3rd and 4th defendants.

39. On the second issue, whether the defendants published the articles complained of. It is apparent that though the defendant impeachment proceedings, he did not call any member of County Government to verify the contents of the impeachment or whether the information emanated from their offices and the Speaker of the County Government would have been called shed more light what transpired by producing the records or reports or grounds it relied upon as the basis of its publication. In the absence of such crucial evidence in support of the 1st defendant Dw1' averments, the defendant's pleadings remain unsupported and hence cannot stand. It is clear to me that the article/newscast was reckless and in the circumstances of this case was actuated by malice. The defendants selectively published the plaintiffs as one of the person involved in the fraud at Vihiga County Government. In conclusion, I find no merit in the defendant's defence. The published article contained offensive remarks that were defamatory and aimed at tarnishing the plaintiffs' character and reputation. The defendants failed to discharge the burden of proving that the article carried truthful and factual statements and that the documents on which the offending article was based on and did not become part of evidence on record as they did not produce as exhibit at the trial by the defendant but did not call the representative from the County Government. The article was made carelessly and maliciously against the plaintiffs as they were neither factual not verified on their authenticity by the County Government before being published as the plaintiffs stated that they were not called before the 1st defendant's published the article.
40. In their plaint, the plaintiffs had complained about article dated 25th February, 2021 which was newscast in the Radio Citizen. I have carefully considered the defence filed herein, the defendants admitted having published the articles complained of but denies that the contents thereof were defamatory. They also denied there was malice on their part and avers that the same were published after independent verification of sources of the same but no County Government personnel. The question therefore that this court should determine is whether by publishing the articles, there was malice on the part of the defendants and whether before the said publication, they carried out due diligence to verify the same as they claimed in the defence. The court will also consider whether the defence mounted by the defendants are available to them in this case, considering the circumstances under which the publications were made and the evidence on record.
41. As to whether the publications are defamatory, the relevant provisions of Article 19(1) and 28 of *the Constitution*. Article 19(1) guarantees that the bill of rights is an integral part of Kenya's democratic state while Article 28 states that inherent dignity and right should be respected and protected. He contended that, the court as the custodian of the bill of rights is entitled to intervene where the facts disclose a need to do so.
42. The plaintiffs further submitted that at the time the article was published, there were legal suits pending in various court awaiting determination. The plaintiffs averred that they had their families, their friends and colleagues called them to enquire about the article dated 25th February, 2021 as well as their friends and colleagues Pw5, Pw6, Pw7 and Pw8. He averred that the publication which was on newscast media was not just extensive but worldwide as the same was in social media of international circulation. That the publication portrayed the plaintiffs as dishonest and unethical persons who fleece the funds met to assist the people of Vihiga County.
43. The plaintiffs argued that the defamation has exposed them to ridicule because any member of the public who comes across them are likely to incite other members of the public to harass, intimidate them. That the plaintiffs' movements have been curtailed to minimize their exposure which have



affected their businesses, employment and despite the seriousness of the publication, the defendants have never apologized.

44. It was further submitted that the case is peculiar in that it is not their stand in the society which is in issue but the exposure in the society and has urged the court to consider the permanency of the libel and its effect. According to them, the defendants were not just reckless but there was also a deliberate publication in that the plaintiffs were the only corrupt officials at Vihiga County Government. They contended that the real issues raised in the impeachment proceedings were not broadcasted by the defendants but in their place the plaintiffs' name were mentioned in the news article. The publication was presented in a sensational manner to increase the sale of the news broadcast.
45. The defendants in their defence stated that the publications were not defamatory in that they did not have any relation with the plaintiffs apart from the article that appeared on 25th February, 2021 and the plaintiff was not given chance to clarify the contents of the article and his identity as per the photograph published therein was tainted or tarnished.
46. The court has looked at the article complained of in court during the hearing of the case. The newscast was about the plaintiffs' impeachment proceedings. They were alleged to have been corrupt County officials in the course of their employment. In addition, their names were mentioned in the newscast in the Radio Citizen and what the defendants stated was due to public demand.
47. In the electronic evidence, the names of the plaintiffs were categorically mentioned in the radio broadcast. At the hearing, they confirmed there was impeachment motion that was table at the County Assembly. But they were not given an opportunity to defend themselves. Hence, they were condemned unheard. The plaintiffs produced documents to prove that the publication was orchestrated by the defendants. All the plaintiffs also have families, relatives and colleagues. At the time the article was published, they were still battling it out in various courts as they considered the proceedings to be illegal, null and void. This was supported by the evidence of Pw1 Pw4, Pw5, Pw6, Pw7 and Pw8 who were independent witnesses. The newscast at Radio Citizen of 25th June, 2021 and a repeated version of 26th June, 2021 were confirmed by the independent witnesses herein.
48. Though the defendant contended that the publication touched on the plaintiff's official functions at the County Government and that the story has no relation with their alleged corruption practices, my considered view is that the articles have to be read in context. In relation to the publication of 25th June, 2021, the names of the plaintiffs were published in a manner to suggest that they were corrupt officers of County Government and that would be the view any reasonable man listening to the newscast would hold and therefore, the defendants' contention that in the impeachment motion the plaintiffs' names were mentioned but the purported corruption malpractices were not proved against them and not any of them was arrested by EACC or charged in a court of law to date. In my view, the broadcasting of the names of the plaintiffs' in the publication made all the difference to the story and it made it sensational to the listeners.
49. Though the defendants would like the court to belief that the publication was not defamatory of the plaintiffs, this court finds otherwise. The publication linked the plaintiffs to the impeachment on the ground of corruption malpractices at the County Government. This lowered them in the estimation of right thinking members of the society generally and it exposed them to hatred, contempt and/or ridicule and it caused them to be shunned or avoided by people. This is borne out in the evidence of Pw5, Pw6, Pw7, Pw8 and Pw9.
50. On the third issue, as to whether there was malice on the part of the defendants, it is trite law that malice can be express or it can be inferred from the circumstances of the case. The defendants in their



defence pleaded that the words in the publication amounted to fair comment on a matter of public interest, that the words were published in good faith and were accompanied with assertions of truth and fair comment backed by privilege.

51. Section 15 of the *Defamation Act* provides that;

In any action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved”.

52. I cite the case of *Spiller & Another-vs-Joseph & Other* [2010] UKSC 53, where it was held that a defence of fair comment can be available;

First, the comment must be on a matter of public interest. Second, the comment must be recognizable as comment, distinct from an imputation of fact. Third, the comment must be based on facts, which are true or protected by privilege. Fourth, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded. Fifth, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views.”

53. The plaintiffs stated that any reasonable person listening to the newscast got the impression that the plaintiffs are criminals who squandered funds met for the masses at Vihiga County. The plaintiffs testified that they suffered great embarrassment, humiliation, anguish, and emotional as well as mental stress and their businesses/ work was diversely affected as their clients/customers, business partners shied away from conducting any business with them as their names were tainted or tarnished. It is therefore the finding of this court that the publications were false and they injured the Plaintiffs’ character and reputation. The plaintiffs have not been given any business opportunities as earlier on which means that they are men of good reputation and good moral character.

54. I wish to rely on the code of conduct for practice of journalism in Kenya which places a responsibility on journalists and the media enterprises to write accurate and unbiased stories on matters of public interest. They have an obligation towards their audience to report and publish stories that are factually correct and fair as envisaged under the code of conduct. The same code provides that a person subject to the code shall not publish a story that falls short of factual accuracy and fairness.

55. This requirement was espoused in the case of *Daily Nation-vs-Mukundi & Another* (1975)EA 311 where the court of appeal for Eastern Africa held thus;

When the defendant publisher accepted an item for publication, it had the right and indeed the duty to see whether such item contains seditious or libelous matters, and if it fails in that duty, it always publishes at its own risk” and that suggested recklessness on the defendant’s part”

56. By way of defence, the defendants contended that due diligence was carried out for the verification of the said publication and therefore, the publication of the same was based on independent verification and the same was not malicious. It is important to note that the defendants offer evidence in this matter but it was not convincing and never met the threshold of freedom of media as required by law. Thus, the defendants infringed on their privilege rights.



57. The plaintiffs relied on the particulars of malice as set out in their plaint. The court had a chance to peruse the article in the course of the proceedings. This was confirmed by the plaintiffs in their evidence when the publication was aired on 25th June, 2021 and a repeat publication was on 26th June, 2021. If the defendants had taken their time and sought for the plaintiffs' views before publication. They would have given them reliable evidence, they could have had a reason to believe that there were other motives behind the removal of 1st, 2nd, 3rd and 4th defendants.
58. Going by the evidence adduced by the plaintiffs, the only irresistible conclusion that this court can make is that the circumstances under which the defendants obtained the impeachment proceedings regarding corruption allegations against the plaintiffs were suspicious. They were under duty to verify if indeed the grounds stated for impeachment were true or not and what was the views of the plaintiffs on the same.
59. The defendants called Dw1 who gave his testimony regarding the impeachment proceedings as to how they obtained the proceedings and who availed the same to them. It is common knowledge that the issue of impeachment of County officials has been and still remains a very sensitive issue and the defendants ought to have taken that fact into account and exercise due diligence before broadcasting it in the radio. In fact and to say the least, they needed to be very cautious before broadcasting the articles. No evidence of such caution was adduced before the court. The defendants failed to make proper enquires of the facts. It was important in this case for the defendants to adduce evidence and show the court that it was not reckless, negligent and that there was no ignorance of material facts on their part. From the foregoing, it is my considered view that there was malice on the part of the defendants as can be inferred from the circumstances of this case.
60. The defence of qualified privilege is mostly associated with public interest. The essence of this defence is that the person making a statement has a duty to do so and that the person who hears or reads the statement has a corresponding interest in doing so. It is my view that the journalists should adhere to the code of conduct for the practice of journalism in Kenya and contended that a journalist should write a fair, accurate and an unbiased story on a matter of public interest. That they have an obligation towards their audience, to report and publish stories that are factually accurate and fair as envisaged in Section 8 of the Code of Ethics.
61. I have carefully considered the evidence on record and in my view, the defendants did not offer any evidence to bring their allegations within the purview of these guidelines. I do agree with the defendants that the matter of corruption is one of public interest but it ought to have considered the seriousness of the allegation and the corresponding harm to the plaintiffs and the sources of information whether liable or not. I wish to note that corruption malpractices have been going on and there was no urgency in the defendants publishing the story without first ascertaining the truth. The article does not qualify as privilege as stipulated under Section 7 of the [Defamation Act](#) as read with Clause 7(d) of the schedule. Though the publication related to a matter which concerned the public. The defendants having failed to produce the documentary evidence it relied on to publish the article on 25th June, 2021. The article deliberately distorted or exaggerated the true situation as reported. The article insinuated that the plaintiffs were impeached as they were corrupt County officials which was not the case taking into account the plaintiffs' testimonies together with their five witnesses.
62. On the fourth issue, I note that in compensation in defamation cases is awardable not for damaged reputation but as a way of vindication of the plaintiffs to the public and as a consolation to them for



a wrong done. On damages, the court in the case of Brigadier Arthur Ndong Owuor vs. the Standard Limited Nairobi HCCC No. 511 of 2011 where the court stated;

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

63. In awarding damages, this court draws considerable support in the guidelines in the case of Jones-vs-Pollard [1997] EMLR 233-243 where factors in libel actions were enumerated as *the objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition; the subjective effect on the plaintiff's feelings not only from the prominence itself but from the defendant's conduct thereafter both up to and including the trial itself; matters tending to mitigate damages, such as the publication of an apology; matters tending to reduce damages and vindication of the plaintiff's reputation past and future.*

64. I am cognizant of the fact that an award of damages should not enrich a party but restore the said party to the position he was before the alleged injury. I cite the case of Johns vs. MGN Limited (1966) 1A11 ER 35 where the court held;

In assessing the appropriate damages for injury to the reputation the most important factor is the gravity of the libel, the more closely it touches the Plaintiff's personal integrity, professional reputation, honor, courage and loyalty the more serious it is likely to be."

65. I find the authority of Martha Karua-vs-Standard Limited & Another [2006] eKLR is more applicable in this case. The only difference being that the plaintiffs' status in this case was not the same as that of the plaintiffs herein who are Kenyan working within Vihiga County and earn a living and had invested their businesses in Kenya that had been adversely affected with the article herein. The court also considers the gravity and the sensitivity of the corruption is an issue that the international community has a lot of interest in. The court also take into account that the publication was done on the print and the social media which means the circulation was far and wide. Taking into account those circumstances, the court awards each plaintiff Kshs. 2,000,000/- as general damages.

66. On punitive damages, these may be awarded in situations where the defendants' misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiffs should receive by way of compensation. Their aim is not to compensate the plaintiffs but rather to punish the defendants. They are in the nature of a fine which is meant to act as a deterrent to the defendants and to others from acting in this manner.

67. On this aspect, the plaintiffs submitted and rightly so, that the defendants did not offer any apology and/or retracted the publications. The gravity of the defamation and the defendants' conduct after the publication. The defendants did not issue a press statement clarifying the position but, that notwithstanding, the defendants went ahead and thus further publishing the defamatory material. The court finds that this is a case deserving an award of punitive damages which this court awards at Kshs. 1,000,000/=. The plaintiff is also awarded the costs of the suit. General and punitive damages to earn interest from the date of this judgment.

68. On damages for psychological and mental torture and anguish, I am of the view that any reasonable person listening the radio newscast, one got the impression that the plaintiffs were criminal. The plaintiffs testified that he suffered great embarrassment, humiliation, anguish, and emotional as well as mental stress and the plaintiffs' work and businesses were adversely affected. I find that the documentary and the subsequent articles were false and they injured their character and reputation.



The plaintiffs were professionals in their different fields which means that they were a woman and men of good reputation and good moral character. The defendants an obligation towards their audience to report and publish stories that are factually correct and fair as envisaged under the code of conduct. I hold that there was no sufficient evidence to support the alleged corruption. The 1st defendant did not carry out his own independent investigation upon the instructions of the 2nd defendant and as a result the plaintiffs were subjected to untold suffering. I cite the case of Civil Suit No. 578 of 2012 Joseph Wamoto Karani-vs-C. Dorman Limited & Another where the Honourable Lady Justice Aburili held that:-

Taking into account all the circumstances of this case.... I award the plaintiff a global sum of KShs. 2,000,000/= general damages for malicious prosecution.”

69. Thus, it was incumbent upon the defendants to carry out due diligence by getting both versions of the story before airing newscast regarding the corruption malpractice by the plaintiffs who were Senior County employees at the County Government. I award Kshs.1,000,000/=.
70. On the whole therefore I find that the plaintiff has proved his case on balance of probability. I hereby do enter judgment for the plaintiff as against the defendants, and as there was prove that the alleged losses were occasioned by the said publication, each plaintiff is awarded general damages of Kshs.2,000,000/=; general and punitive damages Kshs.1,000,000/= and damages for psychological and mental torture and anguish Kshs.1,000,000/=. The plaintiff is awarded the costs of the suit and interest thereon from the date of this judgment until payment in full.

Orders accordingly.’

DATED, SIGNED AND DELIVERED IN THE OPEN COURT THIS 06TH DAY OF MAY, 2025.

J.A.AGONDA

PRINCIPAL MAGISTRATE

On: 06.05.2025

Before: J.A.Agonda PM

C/A:Busuku

Parties: -

Plaintiffs: Mr. Malenya

Defendants: Mr. Munyori

Court: Judgment read out in the open court.

Munyori: I do pray for 30 days stay

Malenya: No objection

Court: Defendants granted (30) days stay of execution

