



**Mugane v Radio Africa Limited & another (Civil Case
E3154 of 2023) [2024] KEMC 2 (KLR) (1 March 2024) (Judgment)**

Neutral citation: [2024] KEMC 2 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL CASE E3154 OF 2023
RL MUSIEGA, SRM
MARCH 1, 2024**

BETWEEN

CHARLES MUGANE PLAINTIFF

AND

RADIO AFRICA LIMITED 1ST DEFENDANT

PENINAH WAMBUI 2ND DEFENDANT

JUDGMENT

1. The plaintiff approached this court vide a plaint dated 13th of July 2023 seeking for a judgment against the defendants jointly and severally for;
 - a. General damages
 - b. Aggravated or exemplary damages
 - c. An order directing the Defendants to offer a public apology to the plaintiff on terms acceptable to the plaintiff
 - d. Costs of the suit
 - e. Interests on (a) and (b) above at court rates from the date of filing the suit till payment in full and
 - f. Any such further relief this court may deem fit to award.
2. The plaintiff is an Advocate of the High Court of Kenya practicing as the Managing Partner at Mugane Law LLP. The facts of his case are that on 14th of March 2023, the defendants published or caused to be published on the online version of the 'Mpasho News' an article titled '3rd rate Kampala trained' Ahmed Nasir Shades Fatxo's lawyer" the subtitle of the article being, "Fatxo is being represented by lawyer Charles Mugane"



3. The plaintiff averred that the impugned article was published to the general public on [https://mpasho.co.ke/entertainment/2023-03-14-3rd-rate-kampala-trained-ahmed-nasir-shades fatxos-lawyer/](https://mpasho.co.ke/entertainment/2023-03-14-3rd-rate-kampala-trained-ahmed-nasir-shades-fatxos-lawyer/)
4. further averred that the said article was also posted on the 1st defendant's Facebook Page <https://www.facebook.com/MpashoNews/posts/6927894347237353/> which information was meant for consumption by the general public. The plaintiff further averred that the publication went on to sensationally report that City Lawyer Ahmed Nasir termed DJ Fatxo's Lawyer as a 3rd grade representative with the article contending that DJ Fatxo was the one doing most of the talking despite the severity of the case against him and therefore the use of the words 'Fatxo is represented by Charles Mugane just after the sensational headline, sought to maliciously draw a relationship between the tweet dated 12th of March 2023 and the person of the plaintiff. The tweet was made by the City Lawyer Ahmed Nasir via @ahmednasirlaw and it read; "I really don't get those calling for dialogue between President@WilliamsRuto and Hon @RailaOdinga. What will they talk about... the weather? Arsenal winning the Premier League? A young lady using the 'P' word against JAKAKIMBA? Or DJ Fatxo and his 3rd rate Kampala trained lawyer?//
5. The plaintiff termed the publication by the defendants as malicious as the defendants knew too well that the plaintiff's name had not featured anywhere whatsoever in the subject tweet and therefore he was not the one referred to by the subject tweet. The plaintiff further averred that the defendants ought to have established from the author of the tweet (@ahmednasirlaw) who the '3rd rate Kampala trained lawyer' was, but failed to do so, an act that portrayed lazy practice of journalism on the part of the defendants. It was also with malicious intent that the defendants failed to establish that the plaintiff was not trained in Kampala or any other law school in the Republic of Uganda. The plaintiff further averred that, it was also with malicious intent that the defendants failed to establish that he was not the Fatxo's lawyer at the time of the said tweet that.
6. The plaintiff therefore averred that the words contained in the publication by the defendants were scandalizing and were made out of Malevolence and spite to his professional practice as an advocate of the High Court of Kenya and with sole intention to defame the him knowing very well the same were false and therefore its publication was malicious and/or reckless and it was intended to ruin his professional reputation. Maintaining that the words were defamatory, the plaintiff averred that the same were understood in their ordinary meaning that was unprofessional, incompetent and/or ill-trained and incapable of rendering sound professional services and that the he was incapable of providing adequate legal representation whatsoever. It is on that foot that the plaintiff claims general damages for libel against the defendants. The plaintiff in paragraph 21 of the plaint averred that the defendants remained unapologetic about the defamatory material relating to him even after being aware of its falsity.
7. The defendants thorough a joint statement of defense dated 27th of July 2027, denied the contents and the particulars of the plaint maintaining that they are strangers to the same putting the plaintiff to strict prove to the contrary. The defendants further averred that, the contents of the article published on 14th of March 2023 were true in substance and in fact, made in good faith and without malice and it was on account of a matter that was highly in the public interest for the reasons as particularized at paragraph 7a-h of the defense. In that regard, the defendants averred that the plaintiff's suit discloses no reasonable cause of action and it is therefore scandalous, frivolous and vexatious and an abuse of the court's process. The defendants prayed to the court to dismiss the suit with costs.
8. In response to the defendants' statement of defense, the plaintiff reiterated the contents of the plaint. In paragraph 4 of the response to the defense, the plaintiff averred that there had never been a criminal case



against DJ Fatxo but the investigations into the death of one Geoffrey Mwathi and therefore it cannot be said that he represented the DJ. The plaintiff further averred that he once appeared on Inooro TV when he was acting for the DJ during the investigations but the instructions were terminated and he stopped acting for him.

9. At the hearing of the case Pw1 was Charles Mugane, the plaintiff in this suit. He adopted his witness statement dated 13/7/2023 as his evidence in chief and to relied on the documents filed in court as per the list dated 13/7/2023 as the exhibits in the case. Throughout the oral testimony, he reiterated the contents and the particulars of the plaint. He further told the court that he attained his LLB from African Nazarene University then proceeded to the Kenya School of Law for Advocate Training Program. He was then admitted to the Bar 6 years ago and he is now an advocate of the High Court of Kenya with 6 years post admission experience and practicing as the Managing Partner at Mugane Law LLP. He further testified that he is also a professional mediator. He maintained that by the time the tweet was posted, he had stopped representing DJ Fatxo and by then the DJ had already engaged services of another advocate. He told the court that the tweet by @ahmednasirlaw was therefore not referring to him as the defendants tried to portray.
10. During cross examination, the plaintiff confirmed and clarified that he was previously acting for the DJ but during the press conference on 12/3/2023, DJ Fatxo had engaged other lawyers who were with him at the press conference where he indicated that he had engaged services of other Advocates including Mr. Ndegwa Njiru. He denied that the impugned article was pulled down stating that the publication was still running up Facebook on the 1st defendant's page. He further stated that the letter dated 30th of June 2023 by the defendants indicated that there was no need to publish a correction on the article as the same had already been pulled down. The plaintiff maintained that the article was still running up on all social media pages and that no apology was ever tendered.
11. Pw2 was Job Awuor; he adopted his witness statement dated 13/6/2023 as his evidence in chief. He also to relied on the plaintiff's bundle of documents as per the list dated 13/6/2013, as the exhibits in the case. He testified that he is an advocate of the High Court of Kenya and in private practice. He averred that the plaintiff was a personal friend to him and a colleague in the profession having known him as from 2015. He told the court that the impugned publication about the plaintiff was unfair and inaccurate; he holds the plaintiff in high regard and therefore the publication caused an injury to his reputation.
12. During the defense hearing the defendants called Dw1 Peninah Wambui Njoki, the 2nd defendant in this case. She adopted her witness statement dated 18/8/2023 as her evidence in chief. She also produced documents filed in court as per the list dated 27/7/2023 as the exhibits in the case. She testified and confirmed that she had worked for the 1st defendant from 2018 in the position of a lifestyle journalist. She admitted that she was the author of the contested article. She confirmed that as journalists, they were regulated by the media council code of conduct that requires an article to be factually correct. She denied that the article in question and which she had authored was inaccurate or factually incorrect but said she was not aware that the plaintiff was not the lawyer representing DJ Fatxo at the time. She testified that she was not aware that a client could with draw instructions, and therefore she still held onto the fact that the plaintiff was acting for the DJ based on the interview she had earlier conducted with the plaintiff. She further confirmed that she did not do due diligence on the matter before publishing the article. She testified that she did not understand the true meaning of the words before publishing the article maintaining that the plaintiff was not mentioned in the tweet. She further admitted that the publication was in the Facebook page and it was accessible by anyone worldwide. She confirmed that followers of the defendant's Facebook page reacted towards the publication via emojis which could be interpreted to mean laughter. She further confirmed that vide



the letter dated 30/6/2023, she expressed her wish to write an apology out of goodwill but the apology was not tendered. She further testified that following the demand from the plaintiff, the article was pulled down.

13. At the close of the case, parties filed written submission. In his written submissions dated 24th of January 2023, the plaintiff proposed an award of damages relying on Kenneth Okoki Dindi -Vs. - Standard Limited [2015] eKLR where the court awarded Kshs. 6,000,000 in damages for defamation of a Senior Advocate. He further relied on the Civil Appeal No. 142 of 2019: Radio Africa Limited T/A The Star Newspaper -Vs. - Moses Bifwoli Makari [2020] eKLR where the High Court sitting on appeal refused to disturb an award of Kshs. 6,000,000 in general damages for libel. The plaintiff further cited the case of Miguna Miguna v The Standard Newspapers Ltd and Another [2017] eKLR, where the Court of Appeal upheld the award of ksh. 5,000,000 general damages and awarded the appellant a further sum of Kshs 1,000,000 aggravated damages.
14. In their written submissions dated 30th of January 2024, the defendants maintained that the plaintiff did not prove a case for defamation and therefore he is not entitled to the remedies as sought. In denying the remedies sought by the plaintiff, they relied on a number of decided cases including Dr. Richard S. Kimanzi v Nation Newspapers Limited (2011) eKLR, where it was held that; regarding damages, libel is actionable per se. But quantum will normally depend on the actual harm done to the plaintiff by the libel... But I have noted that immediately upon retirement the Plaintiff went into private practice and business. By his own words, both were doing well and were successful businesses. He has complained that he was unable to get “contracts” on account of defamation but he proffered no evidence on this.” The defendants also cited the case of Benard Bifwoli v Simon Wetundu & 2 others (2008) eKLR in support of his case among other decided cases that I have duly considered.

Analysis and Determination

15. This is a claim for general damages and aggravated or exemplary damages for defamation. Ultimately, this court will have to determine:
 - i. Whether the impugned article was published by the defendants.
 - ii. Whether or not the statements published on the impugned article were directed to the plaintiff?
 - iii. Whether the statement was defamatory and if so, whether the plaintiff was subjected to humiliation, ridicule and embarrassment and injury to his reputation as a legal practitioner.
 - iv. Whether or not the Plaintiff has met the threshold for the award of the prayers sought in the Plaintiff?
16. It is not in dispute that the defendant herein was the author of the impugned article that was alleged to have defamed the plaintiff. All the parties and their witnesses confirmed so during the hearing. To that extent, I find that the act of publication of the impugned article by the defendants has been sufficiently proved.
17. As to whether the article referred to the plaintiff, the same can be deduced from the clear and unequivocal use of the plaintiff's name after the Title of the Article; ‘3rd rate Kampala trained’ Ahmed Nasir Shades Fatxo’s lawyer” the subtitle of the article was, “Fatxo is being represented by lawyer Charles Mugane” The article mentions him and the defendants admitted that they published the article referring to the plaintiff. This fact has been duly proved.
18. But were the published words defamatory of the plaintiff?



19. For the tort of defamation by way of libel as is in this case to succeed, the following elements must be proved by the claimant:
1. The libel must be published by the defendant
 2. The published words must refer to the claimant i.e. identify him
 3. The statement as published must be false and defamatory of the plaintiff
 4. It must be published i.e. communicated to at least one person other than the claimant. See Winfield and Jolowicz on Tort: 16th Edition 2002 pg. 159 and 162.
 5. That the publication was malicious.
20. It is clear that the article was published after a tweet by @ahmednasirlaw terming the advocate representing Dj Faxto on the investigations that were ongoing regarding the murder of one, Geoffrey Mwathi, as 3rd rate Kampala trained Lawyer. The plaintiff contended that by the time the tweet was posted, he had ceased from acting for the DJ and therefore the defendant ought to have done due diligence as a media personality before publishing the article. The plaintiff contended that the ordinary meaning of the article was that he was not properly trained as an advocate and therefore incompetent in his services. The 2nd defendant refuted the assertions stating that she though the words were usual jargons used in court by advocates. It was also not in dispute that the same publication was posted on Facebook pages of the 1st defendant and reacted to, by their followers. The 2nd defendant testified in court that there was an attempt to make an apology vide the letter dated 30/6/2023 following the demand from the plaintiff, but it did not happen. The defendant further told the court that the article was later pulled down but the plaintiff refuted the assertions contending that the same was still running and circulating on the Facebook pages of the defendants.
21. In *Wycliffe A. Swanya v Toyota East Africa Ltd & another* [2009] eKLR the Court of Appeal observed that:
- “For the purpose of deciding a case of defamation, the Court is called upon to consider the essentials of the tort generally and to see whether these essentials have been established or proved. It is common ground that in a suit founded on defamation the plaintiff must prove:-
- (i) That the matter of which the plaintiff complains is defamatory in character.
 - (ii) That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed.
 - (iii) That it was published maliciously.”
22. Applying these principles to the facts of the present case in resolving the issues as framed by the plaintiff, it is the plaintiff's contention that the article was defamatory, false, reckless and malicious. It is admitted by the defendants that the words complained of were published by them. However, the defendants have disputed the allegation and contention by the plaintiff that the published article was about the plaintiff and or that the published words were false and defamatory in character. In the defendants' view, the words complained of were incapable of bearing the meaning that the publication allegedly bore, according to the plaintiff. However, the 2nd defendant told the court that she was not aware that the plaintiff had ceased acting for DJ Faxto, by the time the article was published.



23. I commence from the position that the court in deciding defamation cases must balance the provisions of Articles 33, 34 and 35 of *the Constitution*, dealing with freedoms of expression and media and the individual's right to access information on the one hand and Article 28 in respect of the inherent dignity of every person which dignity must be respected and protected. On the right to access information and the freedom of expression, Lord Denning MR stated in *Fraser v Evans & others* (1969) All ER 6:
- “There are some things which are of such public concern that newspapers, the press and indeed everyone is entitled to make known the truth and to make their comment in it. This is an integral part of the right of speech and expression. It must not be whistled away.”
24. Lord Coleridge, CJ in *Bernard & another v Perriman* (1891-4) ALL E.R 965 had previously stated that:
- “The right of speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue there is no wrong committed.”
25. Speaking about a person's right to protection of reputation and character, William Shakespeare said:
- “Lago: Good name in a man or woman, dear my Lord, is the immediate jewel of their souls. Who steals my purse steals trash; 'tis something, nothing; 'Twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him; And makes me poor indeed.”(Othello Act 3 Scene 3,155-161).
26. Freedom of the media is guaranteed by Article 34 of *the Constitution* which states:
- “Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33(2).”
27. Under Article 33(2) specified above, as well as Article 33(3) of *the Constitution*, every person has the right to freedom of expression which does not extend to, among others, propaganda for war, incitement to violence, hate speech or advocacy of hatred that- constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination specified or contemplated in Article 27(4) and that in the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.
28. Having considered the above, and the defendant having admitted authoring the impugned article and having admitted that she did not do due diligence as to the correct facts of the content of the article, it is my considered view and finding that she went against the Media Council Code of Conduct, a fact that she admitted during the hearing. The defendant during the hearing further told the court that she thought the phrase used in the tweet was a language used by advocates in court. I will therefore agree with the plaintiff, that the words used in their natural and ordinary meaning by the author, portrayed the plaintiff as a person who is less educated and incapable of handling issues of his clients competently in as far as legal services are concerned. From the testimony of the 2nd defendant who testified as Dw2, the facebook followers of the 1st defendant reacted towards the publication on the Facebook page by way of an emoji indicating laughter. It is my considered view that this ought to have made the defendant aware that the publication accessible to many to the detriment of the plaintiff. I therefore have no doubt in my mind that the said words in the article separately and taken as a whole implied that the plaintiff is a 'half-baked lawyer' and his education and knowledge of law was questionable. The plaintiff called one witness, a colleague in the profession who testified as Pw2. He testified that the plaintiff was a



friend and a colleague since 2015 and he was known for hard work and impeccable reputation in the legal profession.

29. Therefore, taking into consideration the position of the plaintiff as an active practicing advocate and the Managing Partner at Mugane Law LLP and a professional mediator, there is no doubt whatsoever that his standing in society he may have clients who viewed him differently after the publication, he was indeed lowered by the defamatory words.
30. It must be noted that reputation is an integral and important part of the dignity of the individual and once besmirched by an unfounded allegation, a reputation can be damaged permanent, especially if there is no opportunity to vindicate one's reputation. See *Nation Media Group Ltd & 2 others v John Joseph Kamotho & 3 others* [2010] eKLR.
31. Those words by the defendants, I find could not amount to fair public comment in the public interest. I find no justification for the defendants to describe what happened as lack of knowledge that the plaintiff was not the advocate representing DJ Fatxo at the time of the publication and that the words used were in the language used by the Advocates in court. The 2nd Defendant had the responsibility, as a professional, to do due diligence and learn the correct and true facts of the matters before committing the same to publication. The defendant therefore did not lead any evidence to justify her publication and the allegations that she was not up to date with the status of the DJ's legal representation should not be made by a professional journalist who does their work diligently. Equally the assertions that the article had already been pulled down from the Facebook pages of the 1st defendant are unsupported and remain unproved.
32. While this court does appreciate that the defendants are entitled to deny that the publication was false, or defamatory of the plaintiff, the question is, can a reasonable man or woman, a right thinking member of the society generally accept that those words are not defamatory of the plaintiff? I do not think so. On the contrary, a reasonable right thinking member of the society will easily pronounce those statements defamatory of the person of whom the statement was published. There is no doubt that those statements as published injured the reputation of the plaintiff herein, lowering him in the estimation of right thinking members of society generally.
33. In my view the plaintiff has established that the publication made on 14th of March 2023 was defamatory in its natural and ordinary meaning.

Was the publication actuated by malice?

34. It has come out throughout the case as admitted by the 2nd defendant that she did not take any steps to check the veracity of the information published. She maintained that she relied on the interview she had done days before with the plaintiff and she therefore believed that he was still the advocate representing Dj Fatxo. In my view the contents of the publication were unconfirmed and untrue which is evidence of malice. I agree with the court's holding in *Phineas Nyagah V Gitobu Imanyara* (2013) eKLR where Odunga J held that:-

“Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice. Malice may also be inferred from the relations between the parties.....The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”

35. Having said the above, I find that the language used by the 2nd defendant in the publication and her failure to inquire into the facts, are a clear manifestation of malice on their part against the plaintiff.



Whether the plaintiff is entitled to an award of damages and if so, how much?

36. I hold the view that an award of damages is a matter of judicial discretion by the court. The Court of Appeal in *C A M v Royal Media Services Limited* Civil Appeal No. 283 of 2005 [2013] eKLR 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.

37. In the case of *Standard Media V Kagia and Co.* Advocates the court took the view that in situations where the author or publisher of libel could have with due diligence verified the libelous story or in other words, where the author or publisher was reckless or negligent, these factors should be taken into account in assessing the level of damages. The court also stated that the level of damages awarded should be such as to act as deterrence and to instill a sense of responsibility on the part of the authors and the publishers of libel and that personal rights, freedoms and values should never be sacrificed at the altar of profiteering by authors and publishers.

38. A successful plaintiff in a defamation action is entitled to recover the general compensatory damages of such sum as will compensate him for the wrong he has suffered. The award must compensate him for damages to his reputation.

39. Section 16A of the *Defamation Act* Cap 36 Laws of Kenya provides for the same it states:

“In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just.....”

40. Also the Court of Appeal in the case of *Johnson Evan Gicheru V Andrew Morton & Another* [2005] eKLR stated that in an action of libel the trial court in assessing damages is entitled to look at the whole conduct of the defendant from the time libel was published down to the time the verdict is given. It may consider what his conduct has been before action, after action, and in court during the trial. In the said case the learned Judges of Appeal quoted with approval the checklist of compensable factors in *Jones v Pollard* [1997] eMLR 233, 234 which I apply in this case. The checklist was enumerated as follows:-

1. The objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published, and any repetition.
2. The subjective effect on the plaintiff’s feelings not only from the prominence itself but from the defendant’s conducts thereafter both up to and including the trial itself.
3. Matters tending to mitigate damages, such as the publication of an apology
4. Matters tending to reduce damages
5. Vindication of the plaintiff’s reputation past and future



41. In applying the above principles in the present case, I find that the defendants' conduct before, during and after the trial of the case is one which will aggravate the damages to be awarded. The defendants after publishing the offensive article, made no apology even after establishing the truth of the matter, saw no need to make corrections. They did not find the reason to apologize because as she stated, the article had allegedly been pulled down but the same was still doing rounds in social media as indicated by the plaintiff.
42. It was therefore expected that the defendants would have offered an apology or a correction over the apparent incorrect information published of and concerning the plaintiff which was false and made a negative impression that, the plaintiff was not a Kenyan trained advocate and that he was not competent, yet the true fact of the matter is that the plaintiff is a graduate of Africa Nazarene University and holds a post graduate diploma from the Kenya School of Law as proved through production of exhibits.
43. The defendants were, in my humble view, by their conduct malicious in publishing the article concerning the plaintiff which exposed him in his personal and professional standing and character to public ridicule, contempt and embarrassment and continue to cause him damage. The words published by the defendants on 14th of March 2023 were effectual in the country and the rest of the world via the Facebook. The plaintiff is a lawyer/advocate of the High Court of Kenya and therefore no doubt his reputation and standing in the society was lowered by the defendants' publication, in the perception of right-thinking people or even ordinary members of the society.
44. It is for those reasons that I find that the plaintiff qualifies for an award of damages.
45. In *David Kiprugut & another v Peter Okebe Pango* CA 68/2004 the Court of Appeal stated that in assessment of damages, comparable injuries shall, as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases. In *Standard Ltd V GN Kagia t/a Kagia &co Advocates* , CA 115/2003 the Court of Appeal also stated that there is need in having regard to comparable even in terms of the standing of the libeled person because both the law and the level of awards must of necessity continue to be certain and predictable.
46. I have considered the list of authorities cited by the plaintiff in the submissions in his proposal for award of damages and indeed the proposal was on the higher side based on the fact that the plaintiff is only 6 years in legal practice. Therefore I have gone further and personally researched on the authorities below;
47. In 2013, Ougo J in *Patrick Nyoike V People Limited* [2013] eKLR awarded the plaintiff Kshs.4,000,000 general damages and Kshs.100,000/= as aggravated damages for published article on 5th August 2009 in the publication known as "Pyramid scheme owners revealed."
48. In *Ken Odondi & 2 Others V James Okoth Omburah T/a Okoth Omburah & Company Advocates* [2013] eKLR the Court of Appeal awarded the appellant Ksh 4,000,000/= general damages for libel and the award of Ksh. 500,000/= aggravated damages.
49. In the instant case and taking into account the facts and circumstances of this case as well as the principles of law discussed herein relying on decided cases, as well as doing the best I can, the right compensation to the plaintiff is Ksh3,000,000/= as general damages and Ksh 1,000,000/= as aggravated damages and I proceed to award him.
50. The plaintiff also prayed for a public apology. I would have ordered that the defendants do, in equal measure of the size of the publication, give a public apology to the plaintiff on their online version of the 'Mpasho News' and the Facebook page of the 1st defendant with equal prominence that they gave



to the impugned article within Seven (7) days from the date of this judgment. However, relying on *Abdi Mohamed Farah v Nairobi Star Publication Ltd & another* [2015] eKLR the period between 14th of March 2023 and 1st of March 2024, the date of delivery of this judgment, is close to one year which is so long that to order an apology would have no effect on the damage to the plaintiff's reputation in this digital world. Accordingly, I award the plaintiff Ksh. 500,000/= damages in lieu of an apology. My decision has also been bolstered by *Samuel Ndung'u Mukunya v Nation Media Group Limited & another* [2015] eKLR. This is in line with the plaintiff's prayer in his plaint dated 13th of July 2023 for "any other relief that this court may deem fit."

51. I have in awarding this sum considered that the defendants did not republish that defamatory story concerning the plaintiff in any of their subsequent publications.
52. Consequently, judgment is entered in favor of the plaintiff against the defendants jointly and severally for;
 - i. General damages..... Ksh.3,000,000.00
 - ii. Aggravated damages..... Ksh.1,000,000.00
 - iii. Damages in lieu of an apology.....Ksh.500,000.00
 - iv. Interests on the above from the date hereof.
 - v. Costs of the suit awarded to the plaintiff.

Ordered accordingly

DELIVERED DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF MARCH.2024

RAWLINGS LILUMA

SENIOR RESIDENT MAGISTRATE

In the presence of:

Court Assistant

..... For the Plaintiff

..... for the Defendant

