REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL APPEAL NO. 187 OF 2020

THE STANDARD GROUP LIMITED T/A KENYA TELEVISION NETWORK .... 1ST APPELLANT

ZUBEIDA KOOME .... 2ND APPELLANT

NOAH OTIENO .... 3RD APPELLANT

VERSUS

WILLIAM KIMUTAI B. KEITANY .... RESPONDENT

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JUDGMENT

1. This is an appeal from the decision of Hon. L.L. Gicheha (CM) given on 30.04.2020. This is an appeal in respect of one of the four cases, that is, 4457 of 2013. This was part of consolidated cases numbers 3524 of 2013, 3318 of 2013, 4457 of 2013, and 4473 of 2013. The memorandum of appeal is dated 27.05.2020. The memorandum of appeal is in relation to one of the four cases where the Respondent sued the Appellants herein. The other three consolidated cases are of no concern to the matter, though the parties made a huge reliance on some of the decided cases in the series. Those cases were

appeals on quantum by the Respondent and the question of the publication by the 4 Appellants was not touched.

2. Zubeida Koome and Noah Otieno were the second and third Respondents in 4457 of 2013. The memorandum of appeal set forth the following grounds:

    a. That the learned magistrate erred in law and in fact in misdirecting herself by holding the appellants liable.
    b. That the learned magistrate erred in law and in fact in failing to fully analyse the defence evidence.
    c. That the learned magistrate erred in law and in fact in awarding excessive damages of Ksh. 1,500,000/=, aggravated damages of Ksh. 1,000,000/= and exemplary damages.
    d. That the learned magistrate erred in law and in fact in issuing separate awards contrary to section 17(3) of the Defamation Act.

3. In short, the appellants contended that the learned magistrate misdirecting herself in holding the appellants liable. It is further argued that the trial court failed to fully analyse the defence evidence presented resulting in holding them liability. This they stated that the court erred in issuance of separate awards, which is said to be contrary to section 17(3) of the Defamation Act. Lastly, they challenged the award of excessive damages.

4. The sole Respondent filed four suits against three media houses, with the 1st Appellant herein sued twice, that is Kenya

Television Network (KTN) and Standard Newspaper. The appeal herein relates to the KTN case, with its employees, Zubeida Koome and Noah Otieno. The appeal by the same Appellant in respect of the newspaper aspect is not part of this appeal. Further, Luke Anami's case is not included in the appeal. This constitutes one of the most unclean and improper approaches to litigation, splitting a defendant's cause of action into two separate cases and getting two different judgments.

Pleadings

5. The Respondent filed a lengthy plaint dated 22.07.2013. The Respondent filed suit against the appellants herein. They are alleged to have published words in Kiswahili translated as follows:

> *According to the report of the efficiency monitoring unit and report of the inspectorate of state corporations the finance manager…while the legal officer William Keitany allocated himself 21 houses, the largest quantity compared to others, a situation that forced the housing minister Soita Shitanda to sack them.*

6. The Respondent averred that the reporting showed that:
    a. Two officers of NHC were involved in irregular allocation of houses.
    b. The Respondent was a man of questionable character.
    c. The Respondent breached fiduciary duty.
    d. The Plaintiff had abused his public office.

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7. The news was also said to have been relayed in the 9 pm prime time news in English language. The 3rd and the 2nd Defendant authored and the 1st Defendant published an article in its online newspaper 'Standard Digital News' with the headline banner: *NATIONAL HOUSING MD FIRED*

8. Appellant is said to have said the following words as follows:

   > *The recent scandal by the efficiency monitoring unit and inspector of state corporations has consumed the national housing managing director, director James Ruitha and NHC Board Chairman Bosire Ogero:*

9. It was indicated that the housing minister, Soita Sitanda, had indicated that the managing director had 4 houses, and the legal officer had 21 houses. The minister concluded that they were awaiting for the final report from the Ethics and Anticorruption Commission. The Respondent concluded that the words in the rolling banner meant that the Respondent was identified. It was their case that the report indicated him to be a man of questionable moral fiber. He stated further, that the Respondents were abusing office. The report also indicated that the Respondents were to be taken to court.

10. It was the respondent's case that the words for the 7 pm news, was said to be false and malicious. The rest were not said to be so. The Respondent thus sought general damages,

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exemplary damages, aggravated damages and costs and interest of the suit.

11. The Appellants filed defence and stated that the minister for housing held a press conference and sacked three managers for allocating themselves more than one unit of houses at National Housing Corporation. They stated that they were entitled to comment on it since it is a matter of public interest. They stated that the publication was a matter of public interest and a fair comment.

12. The Appellants denied that the plaintiff was brought to disrepute, public scandal, and reputation was injured as a lawyer. They denied that they occasioned aggravated injury to his dignity, self-confidence and reputation.

<u>Evidence</u>

13. PW1, was William Kimutai Keitany, the Respondent. He relied on his witness statement and documents filed. He testified that he was the Plaintiff in all the consolidated suits. In so far as is relevant, he testified that he was the plaintiff in the 4 cases numbers 3524 of 2013, 3318 of 2013, 4457 of 2013, and 4473 of 2013. He stated that Mr. Shitanda was then a minister for housing. He stated that the Respondents maliciously and falsely published an article in the Standard. He stated that out of these allegations, investigations were initiated by EACC, which landed him in court. He was suspended and taken through a criminal trial. He was the

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acting Company Secretary around the time the investigations were made.

14. He stated that the defendants retracted the statements after the notice was issued. He adopted his witness statement. He denied getting 21 houses. He denied the publication was a fair comment. He stated that there was a publication *Sakata ya Nyumba*, which alleged that he had allocated himself 21 houses. He was not dismissed from employment. He denied being allocated 21 houses.

15. It was his case that the allegations by the Appellants were not true. Further, he testified that the 1st Appellant apologized on 26.7.2012. The Defendants did not talk to him to verify the allegations.

16. It was his stated case that as a result of the publication, he was subsequently arrested and charged with abuse of office and acquiring wealth through fraud. He was suspended and taken through the criminal process. The court found that he had no case to answer in 2015 and he was back to the job in 2016.

17. In cross examination, it was his case that the Minister of Housing convened a press conference and the media houses attended the conference. He did not sue the minister. He was being paid half salary on suspension until he was acquitted in 2016. He was appointed acting corporation secretary in 2017.

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18. It was his further case on cross examination that he was also charged with conflict of interest. That the Board of NHC would deal with the minister's recommendations. Further, that the minister gave erroneous information and the Appellants published defamatory statements. The minister did not mention his name. He was the only legal officer with the name Keitany. There were 3 legal officers: Kennedy Nyariki and Kennedy Mundia. Elizabeth Mugo was the Company Secretary. He also testified that his fellow colleagues had shunned him. Members of his family had also shunned him.

19. He testified that the appellants did not verify his side of the story. Two videos were handed over to court, one which showed the minister of housing addressing three media about the 'company.' video 2 was showing that NHC managers were axed. The defendant video showed the managing director and 5 legal officers.

20. On cross examination he stated that he was admitted to the roll of advocates in 1996. He stated that he was charged of offence in 2013. He stated that the issue of houses allocated were brought out by the minister. He was charged in 2013 and acquitted in 2016. He stated that he was then a Company Secretary though he was not interviewed. He stated that EACC investigations were carried out in 2012. He stated that he was suspended from October 2013.

21. On cross examination by the advocates for the 1st Respondent, he stated that the information on 21 houses was

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from the minister for housing. The minister called a meeting and said that the Respondent had been relieved of duties which was a lie. The reports did not affect his work. He stated he was compensated upon being acquitted.

22. On cross examination by advocates for KBC he stated that he was charged in 2013. He stated that the contents of the four media houses were more or less similar. He said there were other legal officers. The English audio indicated that the managing director was sacked and legal officer suspended. The clips did not say that he was sacked. He stated that when a policy is introduced, it takes time to be implemented. He received a letter suspending him from the managing director.

23. On reexamination, he posited that the charge had no relationship with the media reports. He stated that he was not correct to say he was the legal officer referred to in the publication.

24. DW1 was Luke Anami now working at the Federation of Kenyan Employers. He stated he published everything the minister said on the next day. He did not mention the Respondent. The minister referred the legal officer as William Keitany. They corrected the number of houses on the online version. The announcement from the minister mentioned Willian Keitany and no one in the newsroom knew who he was. The minister also indicated on a normal allocation to his own wife, though not covered in the report.

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25. DW1 was then a reporter at the 1st Appellant. He testified that the publication was removed the same day it was published. This was after he talked to the Respondent. They published an apology. The report was on the website of NHC. On cross examination, it was his case that the apology was to the effect that the Respondent was not sacked. The information was in the public interest and the source was the minister for housing.

26. He stated that this was a matter that does not touch on Keitany. It was his evidence that since the matter touched on corruption it was in public interest. He stated it was not up to him to decide whether the minister was saying the truth or not.

27. DW2 was Nicholas Omondi who was the news reader on the material day. He recalled it was a matter of national importance. He stated that he could feel pained if the words were not true. The next witnesses relate to the KBC case, that is DW3 and DW4. There is no need to deal with the same in this appeal.

28. DW3 was Martin King'asia. He worked with KBC. The news was given by a reporter who attended the press conference. On cross examination, he testified that he read the news as was given to him. They were told that the Respondent had been suspended. That his duty was to report accurately.

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29. DW4 was Grace Matego. She introduced herself as news presenter at KBC. She read the news as it was presented. On cross examination, she testified that she did not contribute to the content.

30. DW5 was Zubeida Kananu Koome, who stated to have worked for KTN since 2007. She was an editor, news reporter and reader at KTN. She was not present at the press conference. She quoted what the minister said. On cross examination, it was her case that she did not make it conclusive that the Respondent had allocated to himself 21 houses. She was a political reporter in 2012. She had not known the Respondent.

31. On cross examination she said that she reported what the minister said. According to her, she stated that it was not conclusive that the 21 houses were allocated. According to her, it was allegations by the minister. The minister in turn relied on the Efficiency Monitoring Unit. She stated that the minister did not mention his name. However, he was the only legal officer who was charged.

32. DW6 was Noah Otieno Owich. He was a reporter at Standard Group. He did not go to the press conference. He took the statement as given by the minister. He testified on cross examination that he did not mention the Respondent. He had no reason to doubt what the minister said.

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33. DW6 continued that he worked for the 1st Appellant. He stated that the housing minister called a press conference which was covered by Michael Karanja and Luke Anami. He stated that he was working for the Standard Group. On cross examination, he stated that he watched the entire tape of the conference. The minister indicated that a legal officer was allocated 21 houses. The names were from briefings from the minister to the reporters in the press conference. He stated that he did not agree with the Respondent that the words were false. He says if the minister said anything false, he was to blame. He had no reason to doubt the minister by virtue of office.

34. DW7 was Ann Wairimu. She was a sub-editor with the People's newspaper. She attended the press conference and questions and answer session. She did not manufacture any story. She also testified that the MD made the correction. According to her, what was published was what the minister said. It was her case on cross examination that she could not tell whether what the minister said was true or not. They did not verify the facts from the Respondent.

35. It was her case on cross examination that she could not tell whether what the minister said was true or not. They did not verify the facts from the Respondent.

Submissions

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36. Parties filed humongous submissions. The appellants laid down the duty of the court. They stated that the minister for housing had a press conference on 24.07.2012 where he named the Respondent as having taken 21 houses. The clips of what the minister said was admitted in evidence. He gave the information on a position of authority. Further, the minister subsequently clarified and the clarification was not contradicted. Reliance was placed in the case of **Wycliffe A Swanya v Toyota East Africa Ltd & another [2009] eKLR**, where the court of appeal [P. K. Tunoi, P. N. Waki, and D. K. S. Aganyanya] posited as follows:

> 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
>
> (iv) In slander, subject to certain exceptions, that the plaintiff has suffered special damage.

37. It was their submission that malice in defamation need not always be proved by direct evidence of ill will. It may be

inferred from the circumstances of the publication itself. Where the words used are so exaggerated, disproportionate, or utterly beyond the facts as to suggest recklessness or spite, the court may find that malice is established. They relied on the decision of **Phinehas Nyagah v Gitobu Imanyara [2013] KEHC 6662 (KLR)**, where the court held as follows:

> **…Malice can be founded in the publication itself if the language used is utterly beyond the facts. The failure to inquire into the facts is a fact from which inference of malice may properly be drawn. Any evidence, which shows that the defendant knows the statement was false or did not care whether it be true or false will be evidence of malice...**

38. The Appellants relied on Halsbury's Laws of England 4th Edition Vol. 28 at page 23 where the learned authors opined as hereunder in deciding whether a statement is defamatory:

> **In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is 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.**

39. They stated that the court failed to consider whether the publication was defamatory. It was their submissions that the publication be seen in context. Reliance was to be placed on

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the case of **Hellen Makone versus Francis Kahos and another [2004] eKLR,** where the court of appeal defined malice as:

> *What then is malice in law?*
>
> *The most definitive consideration of malice is the statement of Lord Diplock on the case of Horrocks versus Lowe {1975} AC page 135 where at page 151 and 152 he stated:-*
>
> > *Judge and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed.*

40. Regarding the question of qualified privilege they placed reliance on the case of **Musikari Kombo v Royal Media Services Limited [2018] KECA 801 (KLR)**, where the court of appeal stated as follows:

> 16. Moreover, the intention of the Respondent's journalist was to report on the public interest issue pertaining to corruption. For that reason the defence of qualified privilege was available to the Respondent. Besides, the appellant being a public figure ought to expect unflattering statements made about him since it came with the territory.

41. It was their submissions that the actual words complained of and the substance must be proved by the plaintiff. Further, reliance was made on the case of **Simeon Nyachae V Lazarus Ratemo Musa & Another [2007] KEHC 885 (KLR**), where, M. Warsame J, as he then was, stated as follows:

> In an action for defamation, the actual words complained of and the substance must be proved by the plaintiff. And it is not sufficient to show the defendant made defamatory statements. The plaintiff must give particulars of the facts and matters from which the malice is to be inferred. He must show to court that the defendant acted maliciously. In my humble view, words are not defamatory perse, there has to be a statement of fact or expression of opinion or imputation conveyed by them, which will have the effect of defaming an individual.

42. They submitted that Order 7 Rule (2) of the Civil Procedure Rules provides as follows:

> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

43. They submitted that the aggravated damages are awarded only if the conduct increased injury to the claimant. Reliance was placed in the case of **<u>Heziekiel Oira v Standard Limited & another [2016] eKLR</u>**. The case was affirmed by the court of appeal [W Karanja, HM Okwengu & MSA Makhandia, JJA] in <u>*Oira v Standard Limited & another [2022] KECA 1361 (KLR*), </u> where the Court of Appeal held as hereunder:

> I would not award punitive and exemplary damages as there was no evidence of the conduct of the defendants before, during and after the trial of the suit herein that the defendants republished the alleged defamatory words of and concerning the plaintiff and with a sinister motive.

44. They urged the court to allow the appeal.

45. The Respondent filed submissions which he started with a prologue as hereunder:

> *Good name in man and 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.*

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William Shakespeare, Othello, Act 3 Scene 3, 155-161.

46. He submitted that the law of defamation is concerned with protection of a person's reputation. Reliance was placed on the Court of Appeal decision in **S M W v Z W M** [2015] eKLR:

> A statement is defamatory of the person of whom it is published if it tends to lower him/ her in the estimation of right-thinking members of society generally or if it exposes him/her to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.

47. It was his submission that the Appellants published a report in which they adversely mentioned the Respondent as having been sacked as an employee of NHC after fraudulently allocating himself 21 houses. The news item reported that:

> *…kwa mujibu wa Ripoti ya Kitengo cha Kusimamia Utendaji Bora na Ripoti ya Kitengo cha Ukaguzi wa Mashirika ya Serikali ni kuwa Meneja wa Fedha Manasseh Wandabwa alijitengea takriban nyumba tisa kinyume na sheria huku afisa wa Sheria William Keitany akijitengea nyumba ishirini na moja idadi kiubwa Zaidi ikilinganishwa na wengine hali ililazimu waziri wa nyumba Soita Shitanda kuwafuta kazi…*

48. It was his additional submission that in KTN Prime news bulletin in English, the 3rd Appellant reported that:

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…The Housing Minister has sacked the Parastatal’s Finance Manager Manasseh Wandabwa who allegedly got 9 houses and the legal officer william keitany…

49. It was submitted that these words imputed dishonesty and abuse of office, exposing the Respondent to public hatred, contempt, and ridicule. He stated that the Court of Appeal in **Miguna Miguna v Standard Group Limited & 4 others** [2017] eKLR, stated as follows:

> …In the 4th Edition Vol. 28 of Halsbury's Laws of England, the following statement appears at page 23: In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is 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. The reasonable man was explained in Winfield & Jolowiez on Tort 8th Edition at P. 255 as:
>
> The answer is the reasonable man. This rules out on the one hand persons who are so lax or so cynical that they would think none the worse of a man whatever was imputed to him, and on the other hand those who are so censorious as to regard even trivial accusations (if they were true) as lowering another's reputation or who are so hasty as to infer the worst meaning from any ambiguous statement. It is not these, but the

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ordinary citizen, whose judgment must be taken as the standard….

50. The Respondent submitted that the Appellants' words implied that he was corrupt, dishonest, and engaged in fraud against NHC and, by extension, the State, especially in light of the country's frequent corruption scandals. In respect to defamation, he relied on the case of **Selina Patani & another v Dhiranji V. Patani [2019] eKLR**, where the court of appeal [Karanja, Odek & Kantai, JJA] posited as follows:

> We have analyzed the judgment of the High Court and are satisfied that the Judge correctly identified and considered the elements of the tort of defamation. The Judge cited Winfield and Jolowitz on Tort, 8th Edition page 254 as well as excerpts from Halsbury's Laws of England, 4th Ed. Vol 28 paragraph 10 thereof. In rehashing, we note the ingredients of defamation were summarized in the case of John Ward -v- Standard Ltd, HCCC 1062 of 2005 as follows: -
>
> (i) The statement must be defamatory.
>
> (ii) The statement must refer to the plaintiff.
>
> (iii) The statement must be published by the defendant.
>
> (iv)The statement must be false.

51. The Respondent argued that the appellants argued they were merely relaying the Housing Minister's press briefing in the public interest, insisting such statements should be treated as unquestionable truth. However, it was countered that this

is not a recognized legal defence, as a Minister's statement is not beyond challenge, and defamation law remains central to the constitutional rights of all Kenyans. Reliance was placed on the case of **Gideon Mose Onchwati v Kenya Oil Co. Ltd & another [2015] [2015] KEHC 7444 (KLR)**, where R.E. Aburili, posited as follows:

> On the first issue, my commencement point is 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 freedom 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, the words of Lord Denning MR in Fraser v Evans &others (1969) All ER 6 are instructive that:
>
> 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.

52. They stated that the 2nd and 3rd Appellants fell short of Code of Conduct for the Practice of Journalism in Kenya. The code provides a guide on how journalists should abide by certain principles in their work. Section 1 reads:

1. Accuracy and Fairness

…(3) Comments shall be sought from anyone who is mentioned in an unfavourable context and evidence of such attempts to seek the comments shall be kept…

53. The code of conduct was not part of the pleadings and irrelevant for this case. They contended that the Appellants' actions could be excused within the pretext of qualified privilege. In the case of **Musikari Kombo v Royal Media Services Limited [Supra],** the Court clarified on qualified privilege within the realm of public interest as follows:

> …26. Was the defence of qualified privilege available to the Respondent? The essence of this defence is an attempt to balance two competing but vital interests in society; the individual's right to have their character and reputation protected and safeguarded from false, unwarranted and malicious or scurrilous attacks on the one hand, and the public's right to know as exercised and fed by freedom of expression, which is an indispensable feature of a free and democratic society as well as a major tool for public accountability. See Kagwiria Mutwiri Kioga & another vs. Standard Limited & 3 others [2015] eKLR. The defence is entrenched under Section 7 of the Defamation Act.
>
> 27. In Reynolds vs. Times Newspapers [1999] 4 ALL ER 609 the House of Lords went on further to set out a criteria for determining whether a publication is subject to qualified privileged as herein under:
>
> Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

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1. The *seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.*
2. *The nature of the information, and the extent to which the subject matter is a matter of public concern.*
3. *The source of the information. Some informants have direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.*
4. *The steps taken to verify the information.*
5. *The status of the information. The allegation may already have been the subject of an investigation which commands respect.*
6. *The urgency of the matter. News is often a perishable commodity.*
7. *Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed.*
8. *Whether the article contained the gist of the plaintiff's side of the story.*
9. *The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.*
10. *The circumstances of the publication including the timing.*

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54. He submitted that the 3rd Appellant admitted the minister never mentioned the Respondent's name in the recordings. Consequently, the trial Court correctly found no evidence to the contrary.

55. He argued that the damages and aggravated damages were proper. Reliance was placed on the case of **William J Butler v Maura Kathleen Butler** [1984] KECA 34 (KLR) and *Ken Odondi & 2 others v James Okoth Omburah T/A Okoth Omburah & Company advocates* [2013] KECA 252 (KLR). Further reliance was placed on the case of Keitany v Nation Media Group Limited & another (Civil Appeal 491 of 2019) [2024] KEHC 9736 (KLR) (Civ) (8 August 2024) (Judgment). The latter case is an appeal by the same Respondent over same circumstances.

56. He also relied on the case of appeal: Kenya **Broadcasting Corporation t/a KBC Radio Taifa & KBC English Service & 3 others v Keitany** (Civil Appeal E160 of 2021) [2025] KEHC 9169 (KLR) (27 June 2025) (Judgment). This is another case where the Appellant was successful. The question of liability was not decided in the latter case. He further submitted that failure of the Appellants to verify the information that adversely mentioned the Respondent was malicious. Reliance was placed on the case of **Phinehas Nyagah v Gitobu Imanyara** [2013] KEHC 6662 (KLR):

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57. In a similar defamation case, **Vimalkumar Bhimji Deepar Shah v Geryl Otieno & another** [2021] eKLR, the Court compared various authorities to determine whether to award damages.

58. In respect of costs reliance was placed on the case of **Morgan Air Cargo Limited v Evrest Enterprises Limited** [2014] eKLR, where F. Gikonyo stated as follows:

> The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that ''Cost follow the event'' was driven by the fact that there could be no ''one-size-fit-all'' situation on the matter. That is why section 27(1) of the Civil Procedure Act is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.

59. The Court was urged to consider two related appeals, based on the same facts, previously decided in favour of the Respondent Mr. Keitany, in which damages of Ksh. 3,500,000/= were awarded in each case.

Analysis

60. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that the lower court, unlike the appellate court, had the

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advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In the case of _Mbogo and Another vs. Shah_ *[1968] EA 93* the Court stated:

> *...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.*

61. The duty of the first appellate court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus classicus case of **_Selle and another Vs Associated Motor Board Company and Others_** [1968] EA 123, where the Judges in their usual gusto, held as follows;-

> .. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.

62. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the

demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them. In the case of **Peters vs Sunday Post Limited** [1958] EA 424, court therein rendered itself as follows:-

> **It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses…But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion…**

63. Finally, in deciding whether to disturb quantum given by the lower court, the court should be aware of its limits. Being exercise of discretion the exercise should be done judiciously in the circumstances to ensure that the award is not too high or too low as to be an erroneous estimate of damages.

64. The foregoing statement had been ably elucidated by Sir Kenneth ‘Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Counsel, that is **Nance vs British Columbia Electric Co Ltd, in the decision of Henry Hilanga vs Manyoka 1961, 705, 713** at paragraph c, where the learned Judge ably pronounced himself as doth regarding disturbing quantum of damages:-

> **“The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the**

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Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance…"

65. Therefore, for me to interfere with the award it is not enough to show that the award is high or had I handled the case in the subordinate court, I would have awarded a different figure.

66. So my duty as the appellate court is threefold regarding quantum of damages: -

a. To ascertain whether the court applied irrelevant factors or left out relevant factors.
b. To ascertain whether the award is too high as to amount to an erroneous assessment of damages.
c. The award is simply not justified from evidence.

67. The issue before me for determination is whether the impugned publication by the Appellants, in the circumstances of this case, were defamatory as to entitle the Respondent to the reliefs granted. The secondary issue is the extent of the damages awarded and whether the court has grounds for disturbing the same.

68. I understand that the fundamental rationale of the protection against defamation is of constitutional and human rights imperative. I therefore inevitably proceed with a rider to balance the provisions of Articles 33, 34 and 35 of the

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Constitution. The said provisions respectively deal with the fundamental right to the freedoms of expression, media and access to information. Consideration also is to be inevitably granted to Article 28 in respect of the inherent dignity of every person which dignity must be respected and protected.

69. The freedom of the media is guaranteed by Article 34 of the Constitution as follows:

> *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).*

70. Consequently, under Article 33(2) & 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.

71. On the right to access information and the freedom of expression, Lord Denning MR stated in **Fraser v Evans &others** (1969) All ER 6 as follows:

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> 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. Lord Coleridge, CJ in Bernard & another v Perriman (1891-4) ALL E.R 965had 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.

72. What then is defamation? As succinctly put by this Court in *S M W vs. Z W M [2015] eKLR:-*

> **A statement is defamatory of the person of whom it is published if it tends to lower him/her in the estimation of right thinking members of society generally or if it exposes him/her to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.**

73. The common thread in the definition for a defamatory statement or utterance is one that if published tends to lower the estimation of the person it refers to in the opinion of the right-thinking members of the community and may cause them to shun the person away.

74. Notwithstanding, it is the court’s duty to evaluate the evidence and establish whether the Respondent proved his

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case on a balance of probabilities within the meaning of Section 107 of the Evidence Act as read with Order 2 Rule 7 (1) of the Civil Procedure Rules.

75. The evidential burden is upon any party of proving any particular fact which he desires the court to believe. In **Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the Court of Appeal held that:

> As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.

76. The burden also lies in that person who would fail if no evidence at all were given by either side. In **Evans Nyakwana –vs- Cleophas Bwana Ongaro [2015] eKLR** it was held that:

> As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore, the evidential burden…is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person…The appellant did not discharge that burden and as Section 108 of the

Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side.

77. Consequently, the words leading to the controversy in this case were stated as follows:

<u>*NATIONAL HOUSING MD FIRED*</u>

> *Three other managers including Lilian Muinde, company secretary Elizabeth Mbugua and senior legal officer William Keitany have instead been shown the door following allegations of allocating more than one unit to themselves.*
>
> *Shitanda said the suspension of the MD follows a report by both Efficiency Monitoring Unit (EMU) and state corporations findings which have recommended the suspension of the MD and Chairman and recommended the sacking of the three officials.*
>
> *The MD suspension is essentially because of the manner in which they handled the sale of the houses. We had cases where some staff members had a situation where they were allocated 20 units. It is immoral to allocate yourself more than one unit when other Applicants have none…*
>
> *… the Minister blamed the NHC management for their 'apparent weaknesses' in complying with the housing*

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policies and allocating themselves more than one housing unit.

78. In his pleadings, the Respondent averred in material *inter alia* that the publication would, in its ordinary sense, mean that:

a) The Respondent was involved in disgraceful conduct causing public outrage (scandal).
b) The Respondent was dismissed as senior legal officer having engaged in fraudulent scheme to defraud public members and deserving members of the allocation of the units.
c) The Respondent was a man of questionable moral fibre who breached fiduciary duty to the public to acquire disentitled benefit by failure to follow laid down procedures.
d) The Respondent had abused his public office.
e) The Respondent as legal advisor to the Corporation and member of the legal profession had engaged in practice not sanctioned by regulation and so was dishonest and unethical lawyer not deserving of the legal office and professional calling.

79. The law has designed parameters that found a claim for defamation. In the case of **John Ward v Standard Limited [2006] eKLR** the court stated as follows: -

A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule, or

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contempt or which causes him to be shunned or avoided or has a tendency to injure him in his office, profession or calling. The ingredients of defamation are: -

The statement must be defamatory.

The statement must refer to the plaintiff.

The statement must be published by the defendant.

The statement must be false.

80. Whereas the position of the Respondent is that the words were defamatory, referred to the Respondent, were published and therefore, the learned magistrate properly found for the Respondent, the Appellants maintained that the learned magistrate misapprehended the principles of defamation and erred in finding the Appellants liable.

81. The Appellants' case was principally that the information was published but it was not malicious and defamatory. That the information was published as depicted from the press conference by the cabinet secretary for housing. I note that the publication, in so far as it related to the Respondent was stated as follows:

> *Three other managers including Lilian Muinde, company secretary Elizabeth Mbugua and senior legal officer William Keitany have instead been shown the door following allegations of allocating more than one unit to themselves.*

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82. The said publication is said to have been subsequently withdrawn to the extent that the name of the Respondent was deleted. On the face of the words, I am unable to agree with the lower court that anyone who reads the caption, would understand the caption to refer to the Respondent and to mean as alleged that the Respondent as senior legal officer and advocate of the High Court was:

a) Involved in disgraceful conduct causing public outrage (scandal)
b) Dismissed as senior legal officer having engaged in fraudulent scheme to defraud public members and deserving members of the allocation of the units.
c) Was a man of questionable moral fibre who breached fiduciary duty to the public to acquire disentitled benefit by failure to follow laid down procedures.
d) Had abused his public office.
e) The Respondent as legal advisor to the Corporation and member of the legal profession had engaged in practice not sanctioned by regulation and so was dishonest and unethical lawyer not deserving of the legal office and professional calling.

83. The court has to strike a balance between free speech, information in the public interest and the restriction to free speech that would amount to defamation. In the *Halsbury's Laws of England 4th Edition Vol. 28 at page 23* the authors opined as follows:

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> **In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is 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.**

84. The wording in reference to the Respondent included the term 'allegations' and as such cannot be said to have amounted to a conclusion that the Respondent had in fact been dismissed from service owing to fraudulent or unlawful conduct in the allocation of housing units. As was held in the case of **Onama v Uganda Argus Ltd [1969] EA 92**, the learned Judges of the Easter African Court of Appeal set out *inter alia* that:

> **In deciding whether the words are defamatory, the test is what the words could reasonably be regarded as meaning, not only to general public, but also to all those who have greater or special knowledge of the subject matter…..**

85. The article also referred generally to the alleged scam at the National Housing Corporation and mentioned the managing director, board chairman, estate officer, company secretary and senior legal officer. Except the Respondent, no material was placed before the court to show that either the others or the corporation itself preferred any defamation claim

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or to be witnesses for the Respondent. The imputation was therefore against the corporation as a whole and it was pertinent for the Respondent to demonstrate how as an individual he was defamed by way of the publication. Subsequently, the Court of Appeal in **Nation Media Group & Another vs. Hon. Chirau Mwakwere –Civil Appeal No. 224 of 2010** stated that a Claimant in a defamation suit ought to principally establish in no particular order:

i) The existence of a defamatory statement;

ii) The Defendant has published or caused the publication of the defamatory statement;

iii) The statement refers to the Respondent.

86. A further evaluation of evidence demonstrated that the allegations of defamation emanated from a press conference in which the Appellants attended or were represented. There was no evidence that the information as relayed by the press conference in reference to the Respondent was distorted. The subsequent prosecution of the Respondent followed allegation by the minister and not the Appellants.

87. The Respondent also failed to demonstrate how the alleged defamatory statement tended to lower his estimation of the right-thinking members of society such that it made them shun or avoid him. The allegation that colleagues and family shunned him away fell below the evidentiary threshold as none of such family or friends testified in court to support the

defamation case. Windeyer J in **Uren John Fair Fax & Sons Pty Ltd 117 CLC 115** at 115 stated.

> *Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tend to make them shun or avoid that person.''*

88. I equally do not find basis to infer malice in the said words and the follow up television broadcast both on live television and the subsequent website display. The publication was not reckless and malicious as no conduct on the part of the Appellants was proved as such. As was held in the case of **John Patrick Machira Vs Wangethi Mwangi & Another Nairobi HCCC No. 1709 of 1996**, malice can be inferred from deliberate or reckless or even negligent ignoring of facts as can be deliberate lies.

89. The Appellants submitted that the publication was on matters in the public interest. In my view, before finding whether the publication was in the public interest, the Court had to first find defamation. The Respondent had the burden to prove that the words referred to him and were defamatory. I have scrupulously perused the pleadings and evidence produced by the Respondent and find no basis to find defamation contrary to the learned Magistrate.

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90. Unlike the lower court, I find that the publication and its contemporaneous website displays were not defamatory. The conduct of the Respondent was criminal in nature. The report that the minister acted upon had been released by a public body. The respondent was later charged for the offences against public trust. The mere fact that he was acquitted does not make the report false. This is because of the criminal nature of the claims. The test in criminal cases is that of proof beyond reasonable doubt. This does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. Lord Denning in **<u>Miller vs. Ministry of Pensions</u>**, [1947] 2 ALL ER 372 had this to say:-

> That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.

91. The evidence submitted was enough, on a prima facie basis to make a decision to charge. The media houses have no way of verifying the competence or otherwise of investigators. The respondent created a mountain out of the fact that he was

only suspended in October. The fact that he could defy the minister for months up to October, from June is not edifying. The information was true that he was suspected of criminality and finally charged. If the investigators were indolent, then the claim lay elsewhere. It is preposterous to imagine that the media houses have to wait until conviction before reporting.

92. The court below was not disturbed by the fact that the stories in all the four media houses were consistent with what the minister said. As a fact, the media houses let the minister do the talking. The fact that the authors of the reports were not sued or the minister, meant that the reports remain part of public record. I have perused the entire record; I cannot find any point at which the report that resulted in the minister's report was quashed. By failing to quash that report, the contents remain as public record after expiry of 6 months.

93. There is a presumption that public reports bodies act in good faith. Without challenging the report, the respondent was unable to discharge the burden that he was defamed. It is true that there were allegations against the respondent. These allegations were acted upon by the EACC. The Respondent was formally suspended and charged. The day we lower the standards of defamation, is the date we will gag free media.

94. It is not true that the media branded the Respondent a criminal. It is the minister, who read a report he had showing

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the level of criminality and suspicion of criminal conduct. The events complained of may not arise to the criminal standard but were ethical in nature. However, it cannot be the duty of media to start to investigate all reports from government. It is only when the government is known to be habitual liars that the media must consider reports with circumspection. The media houses cannot have capacity to investigate every start of criminal proceedings.

95. Having found no defamation, it is equally difficult for me to find malice on the part of the Appellants. Consequently, I set aside the finding of liability for the tort of defamation against the appellants. In lieu thereof, I dismiss the suit against the appellants.

96. The next question relates to damages. I will deal with this in four aspects, that is:

a. The duty to assess damages
b. General damages
c. Exemplary damages
d. Award under section 17(3) of the Defamation Act

97. The impugned Section 17(3) of the Defamation Act addresses consolidated defamation actions. Its import is that the court will determine a single total amount of damages but give separate verdicts for each defendant as if tried individually. If more than one defendant is found liable, the

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court will apportion both the damages and any awarded costs among them as it deems just. It provides as follows:

> In a consolidated action under this section, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the court gives a verdict against more than one of the defendants it shall proceed to apportion the amount of damages so assessed between such defendants, and if costs are awarded to the plaintiff the court shall thereupon make such order as may seem just for the apportionment of such costs between such defendants.

98. I find that the court was enjoined to share on a prorate basis an award made. I am aware that the Respondent is in related matters, which are not before me. The other media houses, as at the time of writing this judgment do not appear to have any appeal on liability. Therefore, there is no possibility of different findings on liability. The court ought to have thus apportioned damages as against the alleged tortfeasors bearing certain percentages. Had the court found the appellants liable, it will have apportioned one third of damages to the Appellant together with the first Appellant's newspaper. This will not be, as the appeal on liability has succeeded. The Appellant and Nation Media Group have the highest circulation and must bear a heavier burden. However, the Nation case is not before the court.

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99. Further the first instance court and the superior must assess damages as they are not courts of last resort. The assessment and consideration of damages must be undertaken even where the lower court allowed the case and as in this case, the superior court has dismissed. In the case of **Lei Masaku versus Kalpama Builders Ltd** [2014] eKLR, the court noted as follows: -

> It has been held time and again by the Court of Appeal that the court of first instance assess damages even if it finds that liability has not been established. To have casually dismissed the suit and failed to address that issue of damages in this case is a serious indictment on the part of the trial court. Both the trial court and this court must assess damages as they are not courts of last resort. Their decisions are appealable and the appellate court needs to know the view by the Court of first instance on the issue of quantum. To the extent that the trial court failed to assess damages, its judgment was a serious flaw and cannot stand. It therefore behooves this court to assess quantum."

100. General damages are damages at large and the Court does the best it can in reaching an award that reflects the seriousness of injury either of character or of physical injuries. In **Nyambati Nyaswabu Erick Vs Toyota Kenya Ltd & 2 Others (2019)eKLR** , Justice D.S Majanja held as doth:

> **"General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of**

the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same."

101. The Court of Appeal, pronounced itself succinctly on these principles in **Kemfro Africa Ltd Vs Meru Express Servcie Vs. A.M Lubia & Another 1957 KLR 27** as follows: -

> "The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.

102. In the English Court of Appeal decision in the case of **John v MG Ltd.[1996] I ALL E.R. 35,** the Court held:

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

Exemplary damages on the other hand had gone beyond compensation and are meant to "punish" the defendant. Aggravated damages will be ordered against a defendant who acts out of improper motive e.g. where it is attracted by malice; insistence on a flurry defence of justification or failure to apologize".

103. The defence of justification was not set forth. They used public interest. Therefore the court was plainly wrong in awarding both exemplary and aggravated damages. Those are set aside.

104. Regarding general damages, had the case been proved, the amount awarded was a sum of 1,500,000/=. This was within range or lower. However, there is no cross appeal on damages. This is because, if the reports were false, they reached a wider circulation and touched on the Respondent's profession as a lawyer. The claim regarding general damages is dismissed. As to the General damages for defamation, the Court of Appeal in *Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177* stated that:

> *...General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it...*

105. Parties used the cases of **Ken Odondi & 2 others V James Okoth Omburah T/A Okoth Ombura & Co**

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Advocates, [2013] eKLR, where an amount of Ksh 4,000,000/= was awarded by the Court of Appeal. The case of **Miguna Miguna V The Standard Group Limited & 4 others** (Court of Appeal) [2017] eKLR, was based on more serious allegations and have no relationship with the current respondent.

106. In the case of award made in **Dr. W. M. M. V The Standard Group Limited** [2017] eKLR, the same involved a top jurist and touched on matters of administration of justice. The award was outside the purview of this matter. I have no doubt in my mind that an award of Ksh. 1,500,000/= as general damages is not inordinately high. An appeal on this limb is therefore dismissed.

107. The Appeal is merited and I allow it. The next question is the issue of costs. These are governed by Section 27 of the Civil Procedure Act, which provides as follows:

> (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

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(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

108. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say:

> **It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.**

109. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others**, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

> [18] It emerges that the award of costs would normally be guided by the principle that costs follow the event: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or Respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by

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> ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation…. Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

Determination

110. In the upshot, I make the following orders:-

a) The appeal is merited and is allowed. Judgment of the lower court in Milimani CMCC No. 4457 of 2013 given on 30.4.2020 is set aside and substituted with an order dismissing the said suit.

b) Appeal on exemplary and aggravated damages is allowed. The said awards are set aside and in lieu thereof, I substitute with an order dismissing the said prayers.

c) Appeal on general damages is allowed save that the appellants ought to have borne a third of damages by dint of

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Section 17(3) of the Defamation Act, had the suit succeeded.

d) The Appellants shall have the cost of the suits in the lower court.

e) The Appellants shall have the costs of the appeal of Ksh 125,000/=.

f) 30 days stay of execution.

g) The file is closed.

DELIVERED, DATED and **SIGNED** at **NYERI** on this **22nd** day of **October, 2025**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Onderi for the Appellants

Mr. Kirima for the Respondent

Court Assistant – Michael

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