



Titus & another v Sang & 4 others (Civil Case 231 of 2016 & Civil Suit 225 of 2016 (Consolidated)) [2025] KEHC 16540 (KLR) (Civ) (13 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 231 OF 2016 & CIVIL SUIT 225 OF 2016 (CONSOLIDATED)

JN MULWA, J

NOVEMBER 13, 2025

BETWEEN

FRANCIS MWENDWA TITUS PLAINTIFF

AND

JOE KIMUTAI SANG 1ST DEFENDANT

KENYA PIPELINE COMPANY LIMITED 2ND DEFENDANT

KIPCHUMBA SOME 3RD DEFENDANT

NATION MEDIA GROUP LTD 4TH DEFENDANT

AS CONSOLIDATED WITH

CIVIL SUIT 225 OF 2016

BETWEEN

STANLEY KERANDI MANDUKU PLAINTIFF

AND

JOE KIMUTAI SANG 1ST DEFENDANT

KENYA PIPELINE COMPANY LIMITED 2ND DEFENDANT

KIPCHUMBA SOME 3RD DEFENDANT

NATION MEDIA GROUP LIMITED 4TH DEFENDANT



JUDGMENT

1. Francis Mwendwa Titus – (the plaintiff in Nairobi Milimani HCCC No. 231 of 2016) by way of a plaint dated 01 09 2016 and Stanley Kerandi Manduku – (the plaintiff in Nairobi Milimani HCCC No. 225 of 2016), by way of a plaint dated 30 08 2016 (hereafter the respective Plaintiffs) sued Joe Kimutai Sang, Kenya Pipeline Co. Ltd, Kichumba Some and Nation Media Group Ltd (hereafter the 1st, 2nd 3rd & 4th Defendant) for alleged defamation and respectively sought judgment against them by way of-;
 - a. A permanent injunction restraining the Defendants, their servants, employees and or agents from writing, printing, publishing, airing any defamatory statements about the Plaintiffs;
 - b. General Damages for defamation;
 - c. Aggravated or Exemplary damages.
 - d. Costs and Interest.
2. The Plaintiffs respectively aver that on 26 06 2026 at Pg. 20 of the Sunday Nation in an article titled “Pipeline suspends 7 bosses shakeup” the Defendants published defamatory words of the Plaintiffs which read in part as follows-;

.... “She was suspended alongside Mr. Stanley Manduku, who was the acting Company Secretary....

Others who were suspended areMr, Titus Mwendwa, an internal auditor,

Without giving much details, Mr. Sang said the employees had been suspended to pave the way for investigations into their conduct.

“As you are aware the company has not had a good name due to corruption allegations and other forms of misconduct by our employees. I am not saying the employees are guilty in any way, but they must be taken through the due disciplinary process and, if they are cleared of any wrongdoing they will return to their jobs” he said. (sic)
3. It was further averred that the Defendants went on to publish-;

“I don’t think our employees are unhappy about it. Contrary to that notion, they feel it is something that will encourage productivity. There was no witch-hunt in the process. All companies do it and I don’t see why anyone should criticize us for doing it” said Mr. Sang.” (sic)
4. Further,

“In an internal memo, this week seen by the Sunday Nation, Mr. sang seemed to caution staff against leaking damaging information about the company to the media.



However, he defended his actions saying it was necessitated by a desire to cut down on the negative publicity they have been receiving.

“You have to appreciate the internal conflicts that these leaks do to the company. Some of our employees have vested interest in some of the tenders here. Some employees are gatekeepers of companies that want tenders here. So sometimes these people leak reports that are yet to be fully processed by the board and adopted. They are really unfair to us,” he said” (sic)

5. The Plaintiffs aver that the words in their natural and ordinary meaning, meant and were understood by right thinking members of the society to mean that the Plaintiffs were unprofessional, corrupt, engaged in unprofessional conduct, were dishonorable and lacked integrity, were unethical and an impediment to the productivity of their employer, were racketeers, involved with cartels and gate keepers for profiteers. It was further averred that by reason of the said publication, the Plaintiffs had been gravely damaged in their character and reputation, had suffered considerable distress and embarrassment and that despite their demand to the Defendants to retract and or offer an apology for the defamatory statement, the Defendants refused, neglected and or failed to offer the same.
6. The 1st and 2nd Defendant filed statements of defence to the respective suits denying the key averments in the plaint and put the Plaintiffs to strict proof.
7. The 3rd and 4th Defendant equally filed statements of defence to the respective suits denying the key averments in the plaint and averred that in their natural and ordinary meaning, or otherwise, the words in the article consist of expression of opinion, fair information upon the facts which are a matter of public interest. Further that the words in their natural and ordinary meaning or otherwise were published under a sense of public duty, and without malice against the Plaintiffs and in the honest belief that the information contained therein was true and published as fair information on matters of public interest. The 3rd and 4th Defendant further averred that the said words emanated from statements uttered by the 1st and 2nd Defendants which were in the public domain, and which they were under a public or moral duty to report or publish, on a privileged occasion.
8. By their subsequent replies, the respective Plaintiffs joined issue with the Defendants defences and reiterated the averments in their respective plaints. The forestated thus formed the state of pleadings.
9. It necessitates mentioning at this juncture that the instant suits formed as series of matters being Nairobi Milimani HCCC No. 302 of 2016, Nairobi Milimani HCCC No. 230 of 2016, Nairobi Milimani HCCC No. 233 of 2016 Nairobi Milimani HCCC No. 225 of 2016 and Nairobi Milimani HCCC No. 225 of 2016 with the former three (3) being consolidated for disposal and determined by Meoli, J. vide a judgment rendered on 20 06 2024. Whereas directions on the latter two (2) was to the effect that the suit were to be heard separately but disposed of together.
10. Prior and subsequently during the hearing of the matter, the Court was informed of the respective Plaintiffs intention to withdraw the case as against the 2nd Defendant. The same was formerly marked as withdrawn on 20 02 2025, as an order of this Court.

Plaintiffs Case and Evidence

11. Francis Mwendwa Titus testified as PW1. He began by stating that he is an accountant working at Kenya Pipeline Co. Ltd meanwhile proceeded to adopt as his evidence in chief, his witness statements dated 29 08 2016 and 19 09 2019. He went on to adduce in to evidence the documents appearing in this his list of documents dated 01 09 2016 and 27 09 2018 as evidence before this Court. It was his



statement that he was suspended on 04 05 2016, after the disciplinary process, however he eventually returned to work upon successfully litigating before the Employment and Labour Relations Court. He concluded by stating that he would not be calling any other witness and that the Employment and Labour Relations matter was between him and Kenya Pipeline Co. Ltd, to wit, he presently has no claim as against the latter.

12. Stanley Kerandi Manduku, testified as PW1. He began by identifying himself as an Advocate of the High of Kenya currently serving as the Chief Legal Officer at Kenya Pipeline Co. Ltd having been seconded to Kenya Refineries Ltd in Mombasa. He proceeded to adopt as his evidence in chief his witness statement dated 30 08 2016, 8 11 2016 & 29 11 2019 meanwhile adduced into evidence the documents appearing in this his list of documents dated 30 08 2016, 8 11 2016 & 27 09 2018 as evidence before Court. It was his evidence that at the time, he was the Ag. Company Secretary whereas he was not suspended as at publication of the article however was asked to take a leave of absence to allow for investigations. That he was addressed via a letter dated 13 04 2016 by Kenya Pipeline Co. Ltd for alleged gross negligence wherein he was asked for an explanation. The 1st Defendant who was the managing director of Kenya Pipeline Co. Ltd, at the time, gave a press statement on the suspension as he was authorized to do so on accord of his position. He confirmed having no claim as against Kenya Pipeline Co. Ltd however on backdrop of the 1st Defendant's statement, the 4th Defendant went on to publish what was untrue. He further iterated that 1st Defendant was only authorized to make truthful statements within the scope of his employment, to wit, the published statement was untrue.
13. Jason Ondabu, testified as PW2. He too began his evidence by identifying himself as an Advocate of the High of Kenya where after he proceeded to adopt as his evidence in chief, his witness statement dated 24 9 2018. It was his evidence that suspension was not synonymous to guilt whereas the article, aside from other employees of Kenya Pipeline Co. Ltd, touched on PW1, whom he was familiar with. That it was difficult for him to believe what he had read about PW1 as it portrayed him as unprofessional and corrupt on account of the suspension. He however confirmed that the article did not specifically state that PW1 was corrupt, nevertheless qualified the latter by stating that, a reading of the article, an ordinary person would have understood that seven (7) persons mentioned therein were corrupt. He concluded by stating that PW1 was a friend and partner in his law firm having had a long standing relationship with him since 1995 therefore the article was written in bad faith.
14. Kevin Aruasa Nanyamba, testified as PW3. Likewise, he adopted his witness statement dated 24 09 2018 as his evidence in chief. It was his evidence that on reading of the article, the impression or implication garnered therein was that PW1 was corrupt and unprofessional, of which, was contrary to what he had known about him as a legal advisor. He went on to state that he is a managing director by profession and on occasion suspended employees however the latter was not synonymous to guilt. That he had known PW1 for more than eighteen (18) years meanwhile despite the article he knew PW1 would be cleared of the accusations. He concluded by stating that when he spoke to PW1, the latter informed him of the suspension, to wit, in his mind thought that he was corrupt and unprofessional, nonetheless, he later came to learn of his reinstatement.
15. Judith Sijeny, testified as PW4. On her part she identified herself as an Advocate of the High of Kenya thereafter proceeded to adopt as her evidence in chief, her witness statement dated 24 9 2018. The gist of her evidence was that the allegations in the article did not necessarily confirm the truth however the innuendo by implication meant that people who read the article would perceive the allegations until proven otherwise.
16. Prior to the defence hearing, the Court was informed that the defence witnesses' evidence would be applied in both suits.



1st Defendants Case and Evidence

17. Joe Kimutai Sang, the 1st Defendant, testified as DW1. He identified himself as the managing director of Kenya Pipeline Co. Ltd whereinafter he proceeded to adopt as his evidence in chief his witness statement dated 31 05 2017. He went on to adduce into evidence the documents appearing in his list of documents dated 20 09 2017 and 21 09 2017 as evidence in Nairobi Milimani HCCC No. 231 of 2016 and the documents appearing in his list of documents dated 10 10 2017 as evidence in Nairobi Milimani HCCC No. 225 of 2016 before Court. It was his evidence that the comment he rendered at the time was in his capacity as managing director of Kenya Pipeline Co. Ltd whereafter he had no control on what the media would publish. That his statement was made in public interest. He further confirmed that the respective Plaintiffs resumed working for Kenya Pipeline Co. Ltd.
18. He went on to state that Francis Mwendwa Titus and Stanley Kerandi Manduku were suspended to facilitate investigations on the matter whereas his statement was premised on material before him. That suspension was by the board and not in his personal capacity. Meanwhile he had no control over what would be published by the newspapers. It was his evidence that he could not recall whether he spoke to the 3rd Defendant nevertheless he iterated that he did not make any false comments. That the Plaintiffs were not guilty of any allegations pending investigations whereas the information provided was in the public interest. He maintained that his statement constituted a fair comment without malice over the alleged misconducts by the Plaintiffs.
19. That the article was not entirely accurate whereas his communication was to the public in respect of the decision made by Kenya Pipeline Co. Ltd. That the board decision was with respect to suspension of the six (6) employees for leaking information. Whereas the article was correct in quoting him however he had no control on what would be published verbatim. He qualified that as at publication the Plaintiffs had already been suspended.

3rd & 4th Defendants Case and Evidence

20. On behalf of the 3rd and 4th Defendant, Sekuo Owino, testified as DW2. He began by identifying himself as an Advocate of the High Court of Kenya and head of legal at the 4th Defendant. He thereafter proceeded to adopt as his witness statement dated 25 01 2022 as his evidence in chief. The gist of his evidence was that the impugned article represented true facts of the Plaintiffs and Defendants as at the date of publication. That despite demand, the 3rd and 4th Defendant did not offer an apology or retract the article given the accuracy of the impugned publication. He went on to state that the purpose of a by line helps identify who, where and what the story is about. In summation he maintained that the article was published as truth on the premise of information availed by the 1st Defendant whereas the Plaintiffs suspension was not synonymous to guilt. He thus urged the Court to dismiss the suits with costs.
21. At this juncture, it behooves me to mention that the respective counsel for the parties had the opportunity to cross-examine and re-examine the witnesses.
22. That said, upon close of the trial, parties filed submissions, of which, respective counsel equally had the opportunity to highlight. The Court has duly considered the said submissions alongside the authorities relied in support thereof.

Plaintiffs Submissions

23. The Plaintiffs rather lengthy submissions were anchored on the decision *Alnashir Visram v Standard Limited* [2016] eKLR and *Nation Media Group Ltd & 2 Others v John Joseph Kamotho & 3 Others* [2010] eKLR as concerns the burden of proof in defamation cases and constituent ingredients of



- defamation. Addressing publication of the impugned article, it was pointed out that this was readily admitted by the Defendants in their respective pleadings. On whether the impugned publication referred to the Plaintiffs, it was submitted that both DW1 & DW2 acknowledged that the impugned article referred to the Plaintiffs in their evidence before Court.
24. As to whether the article was false, firstly, counsel asserted that the Plaintiffs were not high ranking officials at Kenya Pipeline Co. Ltd, to wit, it can be stated that the impugned the article met the threshold towards referring to the Plaintiffs as bosses; secondly, the words used in the publication were false as the disciplinary process, irregularly carried out by the staff disciplinary committee, did not amount to a ‘major probe’ and there was ‘no purge’ concerning the Plaintiffs. Francis Mwendwa Titus was suspended and later terminated for allegedly leaking confidential company information to a blogger whereas Stanley Kerandi Manduku was sent on compulsory leave and dismissed for allegedly attempting to alter board minutes. It was thus argued that contrary to the above, the Plaintiff were not suspected or accused of being members of a corruption cartel as imputed by the impugned article.
 25. It was further submitted that the 3rd and 4th Defendant acted recklessly in publishing the impugned article without properly verifying the accuracy of the information and ensuring that it was a matter of legitimate public interest therefore by dint of Section 7 of the *akn ke act 1970 10 Defamation Act*, the Defendants publication did not qualify as privileged information. The decisions in *Alnashir Visram (supra)*, *Godwin Wachira v Okoth [1977] KLR 24* and *Dorcas Florence Kombo v Royal Media Services Ltd [2014] eKLR* were cited in the latter regard.
 26. On whether the publication constituted fair comment, counsel argued that for the defence to be sustained the statement ought to be honest and without malice. That the Defendants failed to discharge their burden of proof by showing that the statement was substantially true or that the suspension of the Plaintiffs was a matter of public interest. Further, the publication was defamatory as the Plaintiffs’ witnesses confirmed that upon reading the article they understood it to mean that the Plaintiffs were unprofessional, corrupt, engaged in unprofessional conduct, dishonorable, lack integrity, were an impediment to the productivity of their employer, racketeers, belonged to cartels and were gatekeepers for profiteers.
 27. Addressing the Court on the reliefs sought, concerning a permanent injunction, counsel called to aid the decision in *Alnashir Visram (supra)* and the decision in *Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib [2018] eKLR* to posit that the defence witnesses were categorical that they were right to publish the impugned article, would not apologize, have no reason to correct or retract the impugned statement therefore it is would be imperative that this Court issues a permanent injunction as against the Defendants to avert further publication of defamatory material.
 28. On awardable damages counsel anchored his submissions on the decision in *Nation Media Group Ltd & 2 Others v John Joseph Kamotho & 3 Others [2010] eKLR* to contend that on account of the publication the Plaintiffs have been gravely damaged in character, reputation, suffered considerable distress, embarrassment and their name tainted therefore this Court ought to award general damages. The decisions in *Kipyator Nicholas Biwott v Clays Limited & 5 Others [2000] eKLR*, *John Ritho Kanogo & 2 Others v Joseph Ngugi & Another [2015] eKLR* and *Alnashir Visram (supra)* were relied on.
 29. Concerning whether the Plaintiffs are entitled to aggravated and exemplary damages, counsel reiterated that the Defendants have neither apologized nor retracted the defamatory article despite the pendency of the suits, leading to additional distress and injury arising from the defamatory article. The decision in *Ken Odondi & 2 Others v James Okoth Omburah t a Okoth Omburah & Company Advocates [2013] eKLR* and *Alnashir Visram (supra)* were called to aid.



30. The Court was therefore urged to award Francis Mwendwa Titus general damages in the sum of Kshs. 40,000,000 -, Exemplary Aggravated damages in the sum of Kshs. 20,000,000 - and damages in lieu of an apology in the sum of Kshs. 10,000,000 - thus totaling Kshs. 70,000,000 -. With respect to Stanley Kerandi Manduku the Court was urged to award general damages in the sum of Kshs. 50,000,000 -, Exemplary Aggravated damages in the sum of Kshs. 25,000,000 - and damages in lieu of an apology in the sum of Kshs. 15,000,000 - thus totaling Kshs. 90,000,000 -. In conclusion the Court was urged to allow the suits as prayed.

1st Defendants Submissions

31. On the part of the 1st Defendant, counsel acceded to the fact that there was indeed publication in respect of the Plaintiffs on account of a statement made by DW1. Concerning whether the statement was defamatory, counsel anchored his submissions on Section 107 of the *akn ke act 1963 46 Evidence Act*, the decisions in *Wycliffe A. Swanya v Toyota East Africa Ltd & Another* [2009] eKLR and *Phinehas Nyagah v Gitobu Imanyara* [2013] eKLR, to posit that with respect to Francis Mwendwa Titus, the article was factual and there was no proof that he was shunned or avoided by anyone. That Francis Mwendwa Titus equally failed to evince any loss he suffered as a result of the article which did not expressly state that he was corrupt. It was further argued that DW1 merely made a statement on the happenings at Kenya Pipeline Co. Ltd, which information was of public interest on account of the latter being a public company. That Francis Mwendwa Titus failed to call a character witness to corroborate his statement and in particular demonstrate the damage to his reputation as required therefore failed to discharge his burden of proof. The decisions in *Selina Patani & Another v Dhiranji V. Patani* [2019] eKLR and *Daniel N. Ngunia vs K.G.G.C.U. Limited* [2000] eKLR were cited in the latter regard.
32. On whether the defence of truth and fair comments were available, counsel maintained that DW1's evidence confirmed that he uttered the impugned words which were a true and fair representation of the obtaining position at Kenya Pipeline Co. Ltd. In concluding, counsel opposed the Plaintiffs proposed awards and urged for dismissal of the suits. However, in the alternative and without prejudice to his earlier submissions, counsel stated that if the Court is persuaded that the Plaintiffs were defamed, an award of Kshs. 200,000 - for each Plaintiff would be sufficient compensation. The decisions in *Jacob Kipngetch Katonon v Nation Media Group Limited* [2017] eKLR and *Kennedy Bitange Mageto & 4 other v Macloud Malonza & Another* [2011] eKLR were cited in the foregoing regard.

3rd & 4th Defendants Submissions

33. On the part of the 3rd and 4th Defendant, counsel condensed her submissions around four (4) cogent issues. On whether the impugned publication was defamatory of the Plaintiffs, it was posited that the burden rests with the Plaintiffs to show that indeed their reputation was lowered, the publication had the effect of having others shun and or avoid them and the publication was malicious.
34. That the respective parties' evidence showed the impugned article as factual as it quoted statements by DW1; that there was no proof that either of the Plaintiffs was shunned and or avoided; that there was no proof that the Plaintiffs had suffered any loss as a result of the article given that they were reinstated back into employment; that the article did not refer to either of the Plaintiff's as corrupt and or unethical; and that the article merely reported the happenings at Kenya Pipeline Co. Ltd. Therefore, with no evidence of injury the article cannot be held to be defamatory. The decisions in *Wycliffe A. Swanya* (supra) and *Phinehas Nyagah* (supra) were relied on in the forestated regard.



35. On the defence of qualified privilege, while calling to aid the decisions in *Helen Makone v Francis Kahos & Another* HCCC No. 2869 of 1997 [2004] eKLR, *Musikari Kombo v Royal Media Services Limited* [2018] eKLR, *Simeon Nyachae v Lazarus Ratemo Musa & Another* [2007] eKLR and the provisions of Order 7 Rule 2 of the Civil Procedure Rules (CPR), counsel argued that there was no proof that the Defendants were motivated by actual or intrinsic malice in publishing the impugned article. Further given that the impugned article was based on a statement made by DW1 who at the time was the MD of the Kenya Pipeline Co. Ltd therefore the 3rd and 4th Defendant published the article in the belief that the information and contents of the article were factual, true and accurate.
36. As to whether the respective Plaintiffs have proved their claim for defamation, counsel contended that Francis Mwendwa Titus's suit was not supported by any character witnesses to corroborate alleged loss and damage to reputation. Therefore, his claim ought to be dismissed with costs. Once more, the decisions in *Daniel N. Ngunia* (supra) and *Selina Patani* (supra) were cited. Regarding Stanley Kerandi Manduku's suit, it was contended that despite calling character witnesses, he failed to prove that the article was false, inaccurate and actuated by malice. That he further confirmed that the article was factual given his leave of absence to pave way for investigations against him. Moreover, the article did not specifically mention him in relation to corruption allegations. Therefore, the article was not defamatory in so far as he was concerned, as such, he failed to establish his case on a balance of probabilities, to wit, his claim ought to be dismissed with costs.
37. Concerning the remedies sought by the Plaintiffs, counsel posited that injunctive orders should not be granted as they would ultimately operate as a gag order against the 3rd and 4th Defendant, thereby infringing on the freedom to expression as enshrined under Article 33 (1) of *akn ke act 2010 constitution the Constitution*. Addressing general damages, counsel argued that the award of damages is not intended to enrich a party but to restore the said party to the position he she was in prior to the injury. Further that the award ought to be fair and restrained, whereas the Court ought to consider the damage the article complained of had on the Plaintiffs reputation.
38. On exemplary and aggravated damages, counsel cited Halsbury's Laws of England on Libel and Slander, 4th Edition, and Reissue Vol. 28 on page 127 paragraph 248, *Gatley on Libel and Slander Tenth Edition* at page 246 – 250, the decisions in *Hezekiel Oira v Standard Limited & another* [2016] eKLR and *Michael O. Weche v Fredric N. Mvumbi O.P & 3 Others* [2015] eKLR to submit that aggravated damages are awarded where the conduct of the defendant aggravated the injury caused to the Plaintiff. That there was no proof here that the conduct of the 3rd & 4th Defendants led to the aggravation of the injury to the Plaintiffs, or that 3rd & 4th Defendant acted oppressively or arbitrarily towards the Plaintiffs before the filing of the suit and during the hearing of the suit.
39. It was further submitted that for an award of exemplary damages to be made, the Court must be certain that firstly, the article complained of was made in cynical disregard of the consequences that would flow therefrom and despite the belief that the contents of the article were not true; and secondly, that the publication was made pursuant to a contemptuous calculation of profiting therefrom. That in the instant suits, no such motivation was established. Further, concerning the proposed award of damages in lieu of apology, it was contended that the award is unavailable as none of the Plaintiffs included such relief in their pleadings. In conclusion, counsel contended that the respective Plaintiffs suits ought to be dismissed. However, if the Court was otherwise persuaded, damages ought to be awarded at Kshs. 200,000 - for each Plaintiff. The decisions in *Jacob Kipngetch Katonon* (supra) and *Kennedy Bitange Mageto* (supra) were cited in that regard.



Analysis and Determination

40. The Court has carefully considered the respective parties' pleadings, the evidence adduced by respective witnesses, and the parties' written submissions.

Issues for determination:-

- a. Whether the Plaintiffs have made out a case for defamation against the Defendants;
- b. Whether the Plaintiffs are entitled to an award of damages, and if so, the quantum.

Whether the Plaintiff has made out a case for defamation against the Defendants?

41. In so far as the tort of defamation is concerned, the rationale behind the law of defamation was spelt out by the Court of Appeal in *Musikari Kombo v Royal Media Services Limited* [2018] KECA 801 (KLR), wherein it was stated that;

“The law of defamation is concerned with the protection of a person’s reputation. Patrick O’Callaghan in the Common Law Series: *The Law of Tort* at paragraph 25.1 expressed himself in the following manner:

“The law of defamation, or, more accurately, the law of libel and slander, is concerned with the protection of reputation: ‘As a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporary sanction ...’

Defamation protects a person's reputation that is the estimation in which he is held by others; it does not protect a person's opinion of himself nor his character. The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit' and it affords redress against those who speak such defamatory falsehoods...”

42. Further, according to Black’s Law Dictionary, 9th Edition at Pg. 479 defamation is defined as:

“The act of harming the reputation of another by making a false statement to a third person.”

43. It must also be remembered that when it concerns the tort of defamation, there exists competition between the private and public interest. The current constitutional dispensation at Article 33(1) of *akn ke act 2010 constitution the Constitution* guarantees the freedom of expression by way of seeking, receiving or imparting information. Corollary of the fore stated, is sub-Article (3) which provides that in exercise of the right of freedom of expression, every person shall respect the rights and reputation of others.

44. Considering these competing rights Lord Denning MR stated in the English Case of *Fraser v Evans & Others* [1969] 1 ALL ER 8; -

“The right of speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise it without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed.”

45. The Court of Appeal in the case of *Wycliffe A Swanya* (supra) rendered that in a suit founded on defamation the plaintiff must prove the following elements -:



- 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, the plaintiff has suffered special damage.
46. Later, the Court of Appeal in *Selina Patani* (supra) while addressing itself to the purport of the law of defamation affirmed the above position by stated that: -
- “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.”
47. In the instant case, publication of the impugned article and or that the impugned publication referred to the Plaintiffs by name is undisputed. That said, what I garner to be the 1st, 3rd & 4th Defendants contestation is that the impugned article was not defamatory of the Plaintiffs. It is since well settled that the ingredients set out in *Selina Patani* (supra) are sequential hurdles, to wit, all must successively be met in order for one to succeed in a claim premised on defamation. Consequently, given that ingredient (iii) and (ii) are uncontested, the key issue falling for determination is whether the Plaintiffs have equally established ingredients (i) & (iv). The Court proposes to concomitantly address the above.
48. It is common ground that both Francis Mwendwa Titus and Stanley Kerandi Manduku prior to publication, were employees of Kenya Pipeline Co. Ltd serving as Internal Auditor and Ag. Company Secretary respectively. And that as at publication were on suspension and compulsory leave of absence respectively. Notably, DW1 was at the time serving as the Managing Director of Kenya Pipeline Co. Ltd and on occasion of his position rendered a statement to the 3rd Defendant which was later published in the 4th Defendant’s newspaper.
49. DW1’s statement was of and concerning the suspension of seven (7) senior staff and or bosses serving at Kenya Pipeline Co. Ltd. The impugned article of which was adduced into evidence conspicuously contained direct commentary that were attributable to DW1.
50. At the hearing, while DW1 admitted the factual facets of his statement, he emphatically denied having made any defamatory or false statements concerning the Plaintiffs as rendered to the 3rd Defendant, who was the author of the impugned article. Palpably, neither party tendered a transcript or interview notes of the communication as between the 1st Defendant and 3rd Defendant leading to the impugned publication.
51. The gist of the impugned article was captured earlier in this judgment and as such the same does not require restatement at this juncture. What this Court garners to be the Plaintiffs case is that the impugned publication by imputation as may be read by an ordinary right-thinking member of society is that Plaintiffs were unprofessional, corrupt, engaged in unprofessional conduct, were dishonorable



- and lacked integrity, were unethical and an impediment to the productivity of their employer, were racketeers, involved with cartels and gate keepers for profiteers.
52. The article itself employed a varied choice of words and phrases starting with the title that captioned “Pipeline Suspends 7 bosses in shake up”. The article further went on to state in part that “Without giving much details, Mr. Sang said the employees had been suspended to pave the way for investigations into their conduct” and “I am not saying the employees are guilty in any way, but they must be taken through the due disciplinary process and, if they are cleared of any wrongdoing they will return to their jobs”.
53. As concerns Francis Mwendwa Titus, his evidence was limited to his testimony and documentary evidence. He made heavy weather of the fact that, by reason of the article, which referenced him by name, anyone reading the article in its natural and ordinary meaning understood the imputation that he was unprofessional, corrupt, engaged in unprofessional conduct among others as pleaded in his plaint.
54. While the opening paragraph of the impugned article captured that senior managers of Kenya Pipeline Co. Ltd were suspended to pave way for investigations, it did not directly link any of the allegations contained in the subsequent paragraphs to either Francis Mwendwa Titus or Stanley Kerandi Manduku. Whereas DW1 qualified his statement as may have concerned the Plaintiffs innocence pending disciplinary proceedings as against them.
55. It is notable that none of the imputations pleaded by the Plaintiffs were directly associated to their name in the impugned article whereas DW1 maintained that having issued his statement, he was not responsible for the way the author perceived and presented it. Moreover, the communication was issued by him on behalf of the Board of Kenya Pipeline Co. Ltd regarding events in the organization. It is not in doubt that by issuing the said impugned statement, DW1’s intention was to disseminate the said information for public consumption.
56. What the Court ought to discern from the said statement is whether the impugned publication was false and defamatory in nature?
57. I have since partially addressed myself on the latter question in the course of this judgement. Nevertheless, to further answer the question, reference is made to what comprises defamation as highlighted by the writers of Gately on Libel and Slander 6th Edn, wherein they state that;
- “A man commits the tort of defamation when he publishes to a third person words (or matter) containing an untrue imputation against the reputation of another”.
58. Further, a defamatory statement is defined in Halsbury’s Laws of England 4th Edition Vol. 28 paragraph 10 as:
- “.... a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business”.
59. It is well trodden that the burden of proving the above test rests on the Plaintiffs. The Plaintiffs must demonstrate an ordinary right-thinking member of society who reads the article garners the imputation pleaded by reading the impugned article in question. Stanley Kerandi Manduku, called evidence by way of PW2, PW3 & PW4 whereas Francis Mwendwa Titus failed and or opted not to call any other evidence witness evidence. This Court has held time without number that it is not enough



for a plaintiff to assert that an article had defamatory tendencies, on accord of the opinion he or she holds themselves to.

60. It is the discernment of the third party to whom the alleged defamatory publication is made, that is of importance in defamatory proceedings. It necessitates that in order to prove that the impugned publication was indeed defamatory, the evidence of a third party who read the impugned article is necessary. The latter is fortified by the Court of Appeal in Selina Patani Case wherein it was observed that-;

“26. The other issue for our consideration is whether the Judge erred in finding it was imperative to call a third party to prove the appellants claim for defamation. In principle, defamation is actionable per se. This does not mean the ingredients of the tort must not be proved. It simply means you must prove the elements of the tort of defamation; what need not be proved is the damage suffered. If no damage is proved, a claimant may be entitled to nominal damages. In this case, the legal issue is whether the appellants proved there was publication to a third party and injury, or damage suffered to their reputation.

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

61. It is solely on the premise of the latter dicta that Francis Mwendwa Titus claim must collapse given his failure to call evidence demonstrating the defamatory tendency of the impugned publication as may have been construed by a third party reading the impugned publication.

62. With respect to Stanley Kerandi Manduku’s claim, at the risk of repetition, he called evidence by way of PW2, PW3 & PW4 to shore up the defamatory tendency and or imputation upon the latter reading the impugned article.

63. It must be remembered that on cross-examination, PW2, PW3 & PW4 all confirmed that suspension was not synonymous to guilt. While the witnesses tried to advance the argument that the impugned publication portrayed Stanley Kerandi Manduku as unprofessional, corrupt, a gatekeeper among others, as pleaded in his plaint, it is notable that DW1 in his statement to 3rd Defendant, did not directly attribute the above upon Stanley Kerandi Manduku. Whereas his statement was equally qualified as to the innocence of the person’s named in his statement pending investigations.



64. Further, on the premise of the above, I draw guidance from the applicable test on defamation as spelt out in *Onama v Uganda Argus Ltd (1969) EA* by the East African Court of Appeal, that:-

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

65. It is not in dispute that PW2, PW3 & PW4 were persons known to Stanley Kerandi Manduku as at publication. Therein, comprising third parties who supposedly read the impugned article. Palpably, as at reading of the impugned article they were unaware of his purported gross misconduct by attempting to alter board minutes and later an invitation for personal hearing in respect of the latter as evinced in the 1st Defendant’s list of documents. Thus, for all intents and purposes, they had no greater or special knowledge of the subject matter whereas Stanley Manduku’s assertion that the article was defamatory of him appears weak at best.

66. As to whether the article was false, Mr. Manduku appeared to dispute the imputation created by the article and went to great lengths vide his documentary evidence in his list of documents dated 30 08 2016, 8 11 2016 & 27 09 2018 to demonstrate his upstanding character within society.

67. By DW1’s evidence in the 1st Defendant’s list of documents dated 10 10 2017, it can be gathered therefrom that as at 13 04 2016, Kenya Pipeline Co. Ltd has cited the Mr. Manduku for alleged gross misconduct and had sought an explanation why he attempted to alter minutes of a meeting held on 20 11 2015.

68. Thereafter, on 16 06 2016, he was invited for personal hearing in relation to the show cause letter dated 13 04 2016. Upon occurrence of the latter, Mr. Manduku services were eventually terminated for gross misconduct after consideration of his explanation. That said, notwithstanding his reinstatement to his position, it cannot be stated that as at publication of the impugned article the same was false, given material supplied in the 1st Defendant’s list of documents.

69. In my estimation, the DW1 statement to the 3rd Defendant was at all material times factual as to happenings within Kenya Pipeline Co. Ltd at the time. Further, the impugned article as published did not expressly associate Mr. Manduku with the imputation set out in his plaint whereas DW1 issued a qualifier as to the guilt of the person’s name in his statement.

70. I am therefore inclined to agree with DW2 that there was no proof of malice on the part of the 3rd and 4th Defendants as argued by the Plaintiffs concerning the impugned publication. In any event, publication by the 3rd and 4th Defendant appears to have been anchored on direct quotes received from DW1.

71. Meanwhile, and for arguments sake, even if the publication were to be considered defamatory, would it be covered by the defence of fair comment and justification. On justification, this Court in *Uhuru Muigai Kenyatta V Baraza Leonard [2011] eKLR* observed that -;

“While taking the defence of justification, or qualified privilege in a defamation case, the defendant was required by law to establish the true facts and the plaintiff has no burden to prove the defence raised by the defendant. Once verified, the justification or qualified privilege does not inure the defendant and in any event, the onus that the same is true rests on the defendants to make it a fair publication.”



72. Concerning the defence of fair comment, the Court of Appeal in *Nation Media Group Limited & another v Alfred N. Mutua* [2017] eKLR observed that -;

“28. To sustain the defence of fair comment, the appellants were required to demonstrate that the words complained of are comment, and not a statement of fact; that there is a basis of fact for the comment, contained or referred to in the article complained of; and that the comment is on a matter of public interest. [See *Gatley on Libel and Slander*, 8th edition, 1981 (Sweet & Maxwell) at paragraph 692 at page 291].

29. The respondent could however defeat the defence of fair comment by showing that the comment was not made honestly or was actuated by malice. In *J. P. Machira t a Machira & Company Advocates vs. Wangethi Mwangi & another* [1998] eKLR, the Court said that malice “can be inferred from a deliberate, reckless, or even negligent ignoring of facts” and that “deliberate lies can also be evidence of malice.”

30. In *Mong’are t a Gekong’a & Momanyi Advocates vs. Standard Ltd* (above) this Court stated, “that comment can only be fair if the basic facts upon which the comment is premised are correct. A comment which is based on lies or falsehood cannot be designated as fair.” And in *Grace Wangui Ngenye vs. Chris Kirubi and another*, Civil Appeal No. 40 of 2010 [2015]eKLR this Court reiterated that a fair comment must be based on facts that are true or substantially true; and that a fair comment is a commentary, an expression of opinion based on true or substantially true facts.

31. An exposition of what Lord Phillips, the President of the Supreme Court of England described as “the outer limits of the defence” of fair comment is set out in the Supreme court of England decision in *Spiller & another vs. Joseph & others* [2010] UKSC 53. In that case, Lord Phillips adopted with approval what the Court of Final Appeal of Hong Kong 1 characterized as the five “well established” “non-controversial matters” in relation to the defence of fair comment. First, the comment must be on a matter of public interest. Second, the comment must be recognizable as comment, distinct from an imputation of fact. Third, the comment must be based on facts, which are true or protected by privilege. Fourth, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded. Fifth, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views.”

73. The 1st Defendant and by extension the 3rd and 4th Defendant, have anchored their defence of justification and fair comment on his list of documents dated 10 10 2017. The purport of the said document therein, of which, the Court has addressed earlier in this judgment.

74. Nevertheless, it is not in dispute that the Plaintiffs were at the time of publication suspended pending investigations and or facing disciplinary proceedings. Therefore, in totality of the above it is difficult to arrive at the conclusion that the article in question is defamatory of the Plaintiffs as alleged.



75. Consequently, having reviewed the totality of the material and evidence before me, it is this Court's reasoned determination that the Plaintiffs have failed to prove their cases on a balance of probabilities, to wit, the respective suits are dismissed with attendant costs to 3rd and 4th Defendants only.

76. Costs in favour of the 1st Defendant are declined given the present and or existing employment relationship as between 1st Defendant and the Plaintiffs.

Order Accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

.....

JANET MULWA.

JUDGE

