



REPUBLIC OF KENYA



Kanji & 2 others (t/a AB Patel & Patel Advocates) v Raffiq & 5 others (Civil Suit 87 of 2016) [2026] KEHC 4379 (KLR) (19 March 2026) (Judgment)

Neutral citation: [2026] KEHC 4379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 87 OF 2016
F WANGARI, J
MARCH 19, 2026**

BETWEEN

**VIKRAM C. KANJI 1ST PLAINTIFF
SANJEEV KHAGRAM 2ND PLAINTIFF
FAIYAZ ANJARWALLA 3RD PLAINTIFF
T/A AB PATEL & PATEL ADVOCATES**

AND

**ZAHID RAFFIQ 1ST DEFENDANT
MOHAMED JAMIL RAFFIQ 2ND DEFENDANT
MILESTONE CARS (K) LIMITED 3RD DEFENDANT
MILESTONE CARS LIMITED 4TH DEFENDANT
SUKHVIR SINGH 5TH DEFENDANT
WASEEM LADHA 6TH DEFENDANT**

JUDGMENT

1. The Plaintiff filed this suit by way of the Plaint dated 19th August, 2016 seeking the following reliefs against the Defendants:
 - i. Damages including aggravated and exemplary damages for libel with interests at court rates;
 - ii. Injunction restraining the Defendants from further publishing defamatory words of the Plaintiffs;



- iii. Restraining orders against the 1st and 2nd Defendants from communicating or coming within 100 meters from the Plaintiffs' work place or residence;
 - iv. Mandatory injunction compelling the Defendants to remove the defamatory words from the worldwide web and replace it with an apology;
 - v. Costs and interest of the above at a rate of 14% until payment in full.
 - vi. An Order for an unequivocal retraction of the story and apology to the Plaintiff with equivalent publicity.
 - vii. Interest at court rates
 - viii. Costs of the suit
2. The Plaintiffs averred that between 20th March, 2016 to 14th August 2016, the Defendants made defamatory remarks by way of email, letters, text messages and social media, being the Facebook platform, published defamatory words against the Plaintiffs which not only maligned their personal and professional reputation but also the standing of the law firm whose practice is founded on the very values of trust, competence and ethical conduct.
 3. The genesis of the matter was that the 3rd Plaintiff had been instructed by one Jessica Holdings Limited to represent it in Mombasa Constitutional Petition No. 54 of 2013 pertaining Property No. Msa/Block xx/315, the suit property where the Defendant alleged that it was their property.
 4. The alleged defamatory words against the Plaintiffs was in their capacity as the legal representatives of the said Jessica Holdings Limited in the constitutional petition. The Plaintiff filed list of documents dated 19/08/2016, 15/09/2016 and 31/10/2016, being the defamatory documents and the Witness Statements.
 5. The 1st, 2nd, 3rd and 4th Defendants filed their Statement of Defence dated 19/09/2016 denying all the averments of the Plaintiffs and put them to strict proof thereof. The Defendants filed their list of documents dated 11/03/2025. No witness statement was filed by the 1st to 4th Defendants. The 5th and 6th Defendants did not enter appearance nor file their Statements of Defence.
 6. A proposal to settle the matter out of court was made by the Defendants. Parties were given time to settle, and in default of settlement, the matter to proceed for hearing. The negotiations were unsuccessful and the matter proceeded for hearing.

Evidence

7. At the hearing, the 1st, 2nd and 3rd Plaintiff, who are Partners in AB Patel & Patel Advocates relied on their respective Witness Statement and the documents in the Bundle of Documents as stated herein above and which were produced therein as exhibits. It was their case that their law firm was representing Jessica Holdings in a Constitutional Petition involving their client and the Defendants.
8. That is when the Defendants by way of emails, letters and social media platforms attacked them in their personal capacity and the law firm portraying them as untrustworthy, incompetent and unethical. Their professionalism was under attack and the law firm's reputation was damaged. The law firm was established over 100 years prior to the filing of the suit, and the Plaintiffs had practised law for over 30 years.
9. The defamatory statements to the 3rd parties and the public were said to be malicious and maligned both their personal and professional reputation and that of the law firm. It was admitted that the



- 1st Defendant did an apology letter dated 5th June, 2017 but the same was not responded to as the following day, the defamatory emails and letters continued. The defamation was therefore continuous.
10. The Plaintiffs called one Mr. Michael O Sangoro, an Advocate of the High Court practising in Mombasa. He adopted his Witness Statement dated 31st October, 2023 as his evidence in chief. He testified that he saw the defamatory statement on the Facebook page on 7th August, 2016. He called the 3rd Plaintiff, Mr. Khagram to ask him what was going on as he knew the advocates practising in the law firm, and he was surprised that the law firm was engaged in the alleged misconduct. He said if the same was true, he would not want to be associated with the law firm.
 11. On cross examination, he said the defamatory words raised concerns amongst his peers in Nyali Golf Club and Mombasa Club where they relate with Mr. Khagram. The Plaintiff's case was closed.
 12. The Defence did not call any witness. The defence case was closed after the Counsel for the Defence was denied an application for adjournment for reasons given in the orders of the court dated 15th July, 2025.
 13. Parties were directed to file their written submissions. Only the Plaintiffs complied by filing their submissions dated 23rd February, 2026.

Submission

14. The Plaintiff filed submitted that the publications by the Defendants were defamatory. It was however acknowledged that the 4th Defendant was an 18 year old student who was naively misled by the 1st Defendant, and the 6th Defendant wrote an apology letter dated 24th August, 2016. The Plaintiffs had no claim against the 5th and 6th Defendants, but submitted that in the event this court was to enter judgment against them, the same be on nominal basis.
15. The Plaintiffs highlighted he various defamatory publications and of more importance is the posts on Facebook (page 119-124, 149-152 of the Plaintiff's List of Documents dated 15th September 2016) and the emails alleging fraud against the Plaintiffs by the Defendants to 3rd Parties, including the British High Commission (See paragraph 2 of the submissions).
16. It was submitted that the evidence of the Plaintiff's having not been challenged by way of witness statements or evidence in court, the Plaintiffs had established that the published words were defamatory. Reliance was placed on the case of *Daniel Musinga t/a Musinga & Co. Advocates v Nation Newspapers Limited* [2005] eKLR. It was further submitted that the apology by the 1st Defendant was not genuine as he continued to publish defamatory words thereafter.
17. The Plaintiffs sought for Kshs. 20,000,000/= as general damages as it will be not only fair and just but commensurate to what the courts have been awarding individuals of the same status. Reliance was placed on the cases of *Macharia v Mwangi & another* [2001] KLR 532 where Kshs. 8,000,000/= was awarded as compensatory damages, Kshs. 2,000,000/= as aggravated damages and Kshs. 200,000/= in lieu of timely and appropriate apology. In the case of *Ken Odondi & 2 others v James Okoth Ombura t/a Okoth Omburah & Co. Advocates* [2013] KECA 252 (KLR) where Kshs. 4,000,000/= was awarded as general damages and Kshs. 500,000/= as aggravated damages.
18. Given the inflation, it was submitted that an award of Kshs. 20,000,000/= as general damages and Kshs. 2,500,000/= as exemplary or aggravated damages would be commensurate in the circumstances.



Analysis

19. I have considered the pleadings and evidence as well as the submissions and authorities in support and opposition of the respective cases. The issues before me for determination are;
 - a. Whether the impugned publications by the Defendants, were defamatory as to entitle the Plaintiffs to the reliefs sought.
 - b. Which Defendants are liable.
 - c. Who is to pay the costs.
20. To this court, the fundamental rationale of the protection against defamation is of constitutional and human rights imperative. I therefore inevitably proceeded with a rider to balance the provisions of Articles 33, 34 and 35 of the 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 of the Constitution, in respect of the inherent dignity of every person which dignity must be respected and protected.
21. 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).”
22. What then is defamation? As succinctly put by this Court in SMW vs. ZWM [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.”
23. Similarly, 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.
24. It follows that 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.
25. From the evidence of the Plaintiffs’ witness, Mr. Sangoro, he testified that when he saw the defamatory and he had to enquire from the 2nd Plaintiff what was happening. He said that the defamatory remarks had raised concerns at Nyalı Golf Club and Mombasa Club where the 2nd Plaintiff was a member. He stated that if the allegations were true, he would not want to be associated with the Plaintiffs.
26. The court’s duty is to establish whether the Plaintiff has proved his 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.



27. In the case of *Anne Wambui Ndiritu v 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*.”

28. 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 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.”

29. The Court of Appeal in *Nation Media Group & Another v 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 Publication refers to the Claimant.
- iv. The statement refers to the Plaintiff.

30. The Defendants did not call any witness to testify in Court. Even without the Defendant’s testimony, the Plaintiff is obliged to prove his case on a balance of probabilities. In the case of *Kerai Ghanshyam v James Wambua Muendo* [2021] eKLR, the court stated as doth: -

14. I am alive to the Court of Appeal’s position in *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* [2014] eKLR that espouses the correct legal position that:

“It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side.”

In the above case, the court held that submissions alone does not amount to evidence. The appellant in the lower court failed to tender evidence and hence the respondent’s evidence remained uncontroverted.



31. The Statement of Defence filed by the Defendants in this case contains mere denials. There are no Witness Statements filed by the Defendants. Further, the 1st Defendant wrote an apology letter to the Plaintiffs admitting publishing the defamatory statements. Unlike the Letter of Apology by the 6th Defendant which was acknowledged, the apology by the 1st Defendant was rejected for he thereafter continued to publish defamatory statements against the Plaintiffs.
32. It is thus difficult to find no malice on the part of the Defendants. Consequently, on a balance of probabilities, I find that the Plaintiff has established his case against the Defendants and is entitled to compensation.
33. As to the General Damages, the Court of Appeal in *Jogoo Kimakia Bus Services Ltd v 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...
34. The Plaintiff submitted for Kshs. 20,000,000 as appropriate General Damages for defamation. Award of damages is a matter of judicial discretion by the court. The Court of Appeal in *C A M v Royal Media Services Limited* Civil Appeal No. 283 of 2005 [2013] eKLR stated that:
- “No case is like the other. In the exercise of discretion to award damages for defamation, the court has wide latitude. The factors for consideration in the exercise of that discretion as enumerated in many decisions including the guidelines in *Jones v Pollard* (1997) EMLR 233 - 243 include objective features of the libel itself, such as its gravity, its province, the circulation of the medium in which it is published and any repetition; subjective effect on the Plaintiff’s feelings not only from the prominence itself but from the Defendant’s conduct thereafter both up to and including the trial itself; matters tending to mitigate damages for example, publication of an apology; matters tending to reduce damages; vindication of the Plaintiff’s reputation past and future.
- In the case of *Standard Media v Kagia and Co. Advocates* (*supra*) the court took the view that in situations where the author or publisher of a libel could have with due diligence verified the libelous story or in other words, where the author or publisher was reckless or negligent, these factors should be taken into account in assessing the level of damages. The court also stated that the level of damages awarded should be such as to act as deterrence and to instill a sense of responsibility on the part of the authors and the publishers of libel and that personal rights, freedoms and values should never be sacrificed at the altar of profiteering by authors and publishers.”
35. In the case of *Samuel Ndung’u Mukunya v Nation Media Group Limited & another* [2015] eKLR, the court awarded the Plaintiff who was a Judge a compensation of Kshs. 15,000,000 in general damages for defamation. In the case of, *Alnashir Visram v Standard Limited* [2016] eKLR the court awarded Kshs. 26,000,000 in General Damages to the Plaintiff who was then a Judge.
36. The Plaintiffs submitted for Kshs. 20,000,000 as general damages. I have also compared the above cited authorities with the authorities cited by the Plaintiffs. I find Kshs. 10,000,000/= to be a commensurate award of damages in the circumstances of this case considering the Defendants tendered an apology though not accepted by the Plaintiffs.



37. As for the exemplary damages, as stated in the case of *Godfrey Julius Ndumba Mbogori & another v. Nairobi City County* [2018] eKLR

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are:

- i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government,
- ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and
- iii) where exemplary damages are expressly authorized by statute”.

38. In the circumstances of this case, I assess exemplary damages at Kshs. 1,000,000 as reasonable and adequate compensation in the circumstances.

39. The Plaintiff also prayed for an order for retraction of the publication with an apology. I find it inappropriate to issue and order for retraction and apology considering the lapse of time. I decline this prayer.

40. In the circumstances, the Plaintiffs have proved, on a balance of probabilities that the Defendants jointly defamed him by their numerous publications from 20th March, 2016 to 14th August, 2016 and the defamation continued even after the filing of this suit.

41. The Plaintiff also sought for costs and interest. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR. I find no reason to deny the Plaintiff the costs of this suit.

42. On which of the Defendants is to pay the above damages and costs, the Plaintiffs in their submissions stated that they had no claim against the 5th and 6th Defendants. The said Defendants are hereby discharged from liability. As for the 1st, 2nd, 3rd and 4th Defendants, they are jointly and severally liable for their actions

Determination

43. Flowing from the above discourse, I proceed to make the following orders in favour of the Plaintiffs as against the 1st, 2nd, 3rd and 4th Defendants: -

- a. General Damages, Kshs. 10,000,000.
- b. Aggravated Damages Kshs. 1,000,000.
- c. Interest of (a) and (b) above from date of judgment.
- d. Costs of the suit to the Plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 19TH DAY OF MARCH, 2026.



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F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of:

Ms. Essajee Advocate h/b for Ms Julu Advocate for the Plaintiff

Mr. Mokaya Advocate for the Defendant

Ms. Getrude, Court Assistant.

