

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: KIAGE, MUCHELULE & KORIR,

JJ.A.) CIVIL APPEAL NO. 255 OF 2019

BETWEEN

THE NATION MEDIA GROUP LIMITED.....APPELLANT

AND

TAIB ALI TAIB.....RESPONDENT

*(Being an appeal from the Judgment and Decree of the High Court of
Kenya at Nairobi (Sergon, J.) dated 10th February 2017*

in

HCC NO. 598 OF 2010)

JUDGMENT OF THE

COURT

1. This appeal arises from the judgment of the High Court at Nairobi (Sergon, J.) which was delivered on 10th February 2017. The judgment allowed the libel suit that had been filed by the respondent, Taib Ali Taib, against the appellant, The Nation Media Group Limited. The respondent's claim followed an article that the appellant had on 28th November 2010 published in its "Sunday Nation" under the title "***On the Trial of Drug Barons***" at page 10 of the newspaper. The respondent complained that the article was defamatory of him as it had alleged that he was corrupt; was involved in illegal narcotics trade and linked to drug barons; was

involved in fraudulent and illegal activities that included wrongful declaration of customed

goods and illegal diversion of transit goods into the local economy; was illegally engaging in importation of rice and sugar; was guilty of tax evasion; and was engaged in conspiracy with corrupt police and Kenya Revenue Officers.

2. The respondent, an advocate of the High Court of Kenya and former Mayor of Mombasa, claimed that the article had seriously injured his reputation, and had caused him stress and embarrassment. He sought general, exemplary and aggravated damages; and an injunction restraining the appellant from further publishing or causing to be published the said or similar defamatory articles.
3. The appellant admitted publishing the article but denied that the words therein were defamatory of the respondent. It was pleaded that the sugar trade and industry in Kenya and the issue of drugs and its use in the country were matters of public interest and in the public domain; that they were part of a report tabled in Parliament; that what was published was not defamatory; was published under a sense of public duty and without malice; and in the honest belief that the information contained therein was true; and further published as fair information on the matter of public interest. Lastly, it was pleaded that the words were published on a privileged occasion.
4. The learned Judge received the evidence of the respondent and a witness, Nevile Amollo Walusala (PW 2), his close

friend and schoolmate. No evidence was led by the appellant. It was found

that the article was defamatory of the respondent. The court awarded general damages of Kshs.7,000,000 and Kshs.3,500,000 for aggravated damages. Then costs and interests. Lastly, the appellant was restrained from further publishing or causing to be published the said or similar words that were defamatory of the respondent.

5. The appellant was aggrieved by the judgment and decree and annexed to this Court on the following grounds:-

- “1) The learned Judge erred in finding that the publication in its ordinary natural meaning was that the respondent was implicated in illegal and corrupt activities or at all.***
- 2) The learned Judge erred in holding that the respondent had been defamed by the appellant, as the evidence adduced did not support the respondent’s claims.***
- 3) The Judge erred in finding that the respondent was defamed by the appellants herein yet the article complained of was not produced as a document at the hearing of the suit.***
- 4) The learned Judge erred by failing to take into account and fully consider the various authorities submitted by the appellant before arriving at the decision.***
- 5) The learned Judge erred in awarding the respondent Kshs. 7,000,000/- to the respondent, which amount is inordinately high when taking into account the evidence, the pleadings and all other factors to be considered when assessing damages for defamation.***
- 6) The learned Judge erred in failing to take into account and fully consider the various authorities submitted by the appellant***

before

arriving at the sum of Kshs. 7,000,000/- which award was not founded on any outlined legal principle or precedent and was inordinately high.

- 7) The learned Judge erred in finding that there was evidence of any conduct on the part of the appellants justifying any award of aggravated damages of Kshs. 3,500,000/- or any other sum.**
- 8) The learned Judge erred in awarding aggravated damages of Kshs. 3,500,000/- which sum was inordinately high when taking into account the evidence and all other relevant factors when assessing the same (which in any event should not have been awarded).**
- 9) The learned Judge erred in law and in fact by basing the award on extraneous consideration.”**

6. In his cross-appeal dated 22nd June 2019, the respondent indicated his displeasure with the judgment to the extent that:

- “1) The learned trial Judge erred in law and or fact in assessing the amount of general damages awarded at Kshs. 7,000,000/- instead of the correct amount upward of Kshs. 15,000,000/-**
- 2) The learned trial Judge erred in law and or in fact in assessing the amount of aggravated damages awarded at Kshs. 3,000,000/- instead of the correct amount upward of Kshs. 10,000,000/-**
- 3) The learned trial Judge erred in law and or in fact in failing to assess and or award the plaintiff any exemplary damages.**
- 4) The learned trial Judge erred in law and or in fact in awarding interest and directing**

that it be calculated from the date of judgment

instead of from the date of filing of the suit until payment in full.”

7. We heard the appeal on 22nd October 2025 when learned counsel Mr. Taib, SC, appeared in person while learned counsel Ms. Olunga was present for the appellant. Each side had filed written submissions which they highlighted.
8. Learned counsel Ms. Olunga, while referring us to the decision in **Wycliffe A. Swanga -vs- Toyota East Africa Ltd & Another, Civil Appeal No. 70 of 2008** regarding the elements of defamation, submitted that the respondent had not proved that the published words were defamatory, and neither had he proved that the words had been maliciously published. It was urged that the article did not demonstrate spite or ill will or even recklessness; that it had not been shown that the language used was not disproportionate to the facts. Learned counsel submitted that the article complained of had merely given a fair report of allegations made against the respondent on the sugar industry and the issue of drugs and its abuse in the country, and that these were matters of public interest and in the public domain.
9. On the question of loss and damage to reputation, learned counsel submitted that the respondent had not called evidence regarding the same; that it had not been shown that the published words had occasioned any substantiated loss to the respondent's business or that they had affected

his reputation

in the mind of third parties. The article in ***Gatley on Libel and Slander, 10th Edition*** was referred to by the learned counsel who argued that a publication is defamatory if the article complained of conveys a defamatory imputation to a hypothetically reasonable person. In the Book, at page 91, the words of Villiers C.J. in the case of ***Rudd -vs- DE. Vos (1892) 2 CTR 384*** as follows: -

“The mere fact that the hearers understood the language in a defamatory sense does not make it defamatory unless they are reasonably justified to understand it.”

10. On the question of compensatory damages, learned counsel submitted that the article in question had not in any way caused reputational damage to the respondent and therefore the award made by the learned Judge was unwarranted and lacked merit. Learned counsel pointed out that the witness (PW 2) whom the respondent had called did not show that the respondent had been shunned or avoided following the publication. The decision in ***John -vs- MGM Limited [1996] 2 Ali ER 35*** was cited to us to highlight the importance of reputational damage when assessing compensatory damages in defamation cases. In the decision, it had been pointed out that-

“the award for compensatory damages was excessive because although the article was false, offensive and distressing, it had not attacked the plaintiff’s personal integrity and reputation as an artist.....in assessing

the appropriate damages for injury to reputation the most important factor is the gravity of the libel, the more closely it touches the plaintiff's personal

integrity, professional reputation, honour, courage and loyalty, the more serious it is likely to be....”

11. While making reference to comparable awards in **National Newspapers Limited -vs- Daniel Musinga t/a Musinga & Company Advocates, Civil Appeal No. 120 of 2008, Royal Media Limited & Another -vs- Zakayo Miano, Civil Appeal No. 136 of 2012, Ken Odondi & 2 Others -vs James Okoth Omburah t/a Okoth Omburah & Company Advocates, Civil Appeal No. 84 of 2009 and Standard Ltd -vs- G.N. Kagia Trading as Kagia & Company Advocates, Civil Appeal No. 115 of 2003,** learned counsel Ms. Olunga submitted that the award in the instant case was manifestly excessive and lacked juridical basis. We were asked to reduce the award on this limb to Kshs.200,000.
12. In opposing the appeal, and while urging us to allow the cross- appeal, learned senior counsel Mr. Taib submitted that the publication of the article having been conceded by the appellant, this Court is asked to consider whether the learned Judge was correct in finding that the article was defamatory in its natural and ordinary meaning; and whether the damages and orders granted were justified in the circumstances.
13. Senior counsel submitted that the heading of the article ***“On the Trail of Drug Barons”*** clearly set out the agenda of

the article to be the pursuit of those people dealing in drugs.
The article had then gone ahead to name him as one of the
persons

the investigative journalist was pursuing. It named him as a person involved in diversion of transit goods into the local market; as a person who owned a warehouse in Ganjoni in Mombasa into which 18 containers of illegally imported sugar had been traced; sugar in respect of which no duty had been paid; in respect of which Kenya Sugar Board Authority had not been sought; and in respect of which about Kshs.200,000,000 of duty had been lost by the Kenya Revenue Authority.

14. Senior Counsel submitted that he had testified to show that he did not deal in drugs or sugar importation; that he did not own the said warehouse and knew nothing about the 18 containers of sugar; and that the entire publication of him was false. In the evidence in court, he had complained that the appellant had not, before pursuing the article, contacted him to get his side of the story. He submitted that, on the other side, the appellant had not called evidence to support any of the matters contained in the article. The appellant had not called any evidence to support any of the defences that it had raised in the statement of defence. That being the case, it was submitted, defamation had been established, and that the learned Judge had been correct in finding so. The learned Judge had correctly found that the defence of fair comment or qualified privilege were not factually and evidently sustainable, the appellant having failed to call evidence that the appellant having not verified the allegations before publishing them of the respondent.

15. On quantum, senior counsel submitted that he was an advocate of the High Court of Kenya, a former Mayor of Mombasa and a prominent politician; that his reputation had been soiled when the article had associated him with drugs, with illegal importation of sugar, diversion of transit goods and failure to pay huge amount of due duty. It was for those reasons that he asked that the general and aggravated damages be enhanced as what had been awarded was inordinately low.
- 16.** We have considered the appeal and cross-appeal and the rival submissions. We have done this while being conscious of our power of reappraisal of evidence under **Rule 31** of the **Court of Appeal Rules, 2022** which requires us to reach our own independent conclusions. We bear in mind that the trial court had the advantage of seeing and hearing the witnesses. We can only interfere with the decision of the learned Judge if satisfied that he misdirected himself in law; or that he misapprehended the facts; or took account of considerations he should not have taken into account; or failed to take into account consideration of which he should have taken into account; or that his decision was plainly wrong (see **United India Insurance Co. Ltd Kenindia Insurance Co. Ltd & Oriental Fire & General Insurance Co. Ltd -vs- East African Underwriters (Kenya) Ltd [1985] eKLR**).
17. In this case, the respondent was required to prove that the

article complained of referred to him; that the words
contained

in the article were defamatory in their natural and ordinary meaning; and that the publication was to a third party (see **Mudi & 2 Others -vs- Nation Media Group Limited, Civil Appeal No. 407 of 2017 [2024] KECA 20 (KLR)**).

18. It was common ground that the appellant published the article. It was published to be read by the public. The readership of the appellant is certainly wide. PW 2 was just an example of that wide readership. The question was whether the article defamed the respondent. The respondent gave evidence in the trial court to state that it did. Under the banner of ***“On the Trail of Drug Barons”***, the article mentioned the respondent by name, it implicated him in serious illegal and corrupt activities, including illegal importations of sugar, diversion of transit goods, warehousing the same and evasion of payment of large amounts of duty. These were all serious criminal activities. According to the respondent, all these were false.
19. The appellant did not call any evidence. It did not show that the article was accurate about the respondent. It did not show that it sought to verify the information contained in the article before publishing it. The respondent stated that his position on any of these was not sought before the publication went out. That was not denied.
20. The statement of defence raised several defences. It was pleaded that the article was a report on parliamentary

proceedings. No evidence was called about this. The reporting

on drugs abuse or sugar trade and industry may constitute a matter of public interest, but before associating a person with illicit drugs or illegal importation and diversion of sugar into the local market, it was required that the report or article be based on verified information and be as accurate as was humanly possible. This is because such a story can have irreparable damage to a reputation.

21. The appellant did not show that there was basis to claim that the publication was out of privileged position or was the subject of fair comment. In **National Media Group Limited & Another -vs- Alfred N. Mutua [2017] eKLR**, this Court observed that a comment can only be fair if the basic facts upon which the comment is premised are correct. That –
“A comment which is based on lies and falsehood cannot be designed to be fair.”
22. Where the appellant did not call evidence to establish truth, qualified privilege or fair comment as pleaded in its defence, the publication was actionable (see **Onyango & 5 Others - vs- See & 7 Others [2022]**).
23. The trial court observed that such publication of unverified allegations as facts amounted to constructive malice. In all, the court found that the respondent had been defamed. We agree totally with the learned Judge.

24. The law is that the respondent did not have to prove actual, tangible or monetary loss to succeed in libel claim. However, he was still required to prove reputational harm (see **Joseph Gilbert Kibe -vs- James Muchene Ngei & BOC Kenya Ltd [2020] eKLR**). Defamation focuses on reputational damage. It was not denied that that the respondent was an advocate of the High Court of Kenya, a former Mayor of Mombasa Municipality and a prominent politician. To be associated with drugs, illegal importation and diversion of sugar and to be called an evader of tax, entailed serious damage to his reputation (see **Mworia & Another -vs- Githinji & Another, Civil Appeal No. 225 of 2017 [2024] KECA 6 (KLR)**).
25. On the question of damages, we consider that the damages in defamation is intended to compensate for injury to reputation and to vindicate the plaintiff's dignity. Aggravated damages serve to deter irresponsible publication, especially where allegations are published maliciously and without verification (see **Adidi -vs- Mutinda & 5 Others [2025] KECA 1121 (KLR)**, and **Miguna Miguna -vs- The Standard Group & 4 Others [2017] eKLR**). Triggers for aggravated damages include malicious conduct, refusal to apologise or retract and the persistence in a plea of justification, and so on, without evidence.
26. We consider that the assessment of damages entails the exercise of discretion by the trial court and an appellate

court

should be slow to reverse the trial court unless it has either acted on wrong principles or awarded so excessive or so little damages that no reasonable court would; or it has taken into consideration matters it ought not to have considered; or not taken into consideration matters it ought to have considered, and, in the result, arrived at a wrong estimate (see **William J. Butler -vs- Maura Kathleen Butler [1984] eKLR**).

27. We consider that the trial court's award, while recognising the injury suffered, did not reflect on the gravity of the defamatory imputations and the sustained harm to the reputation that fell on the respondent in his professional and public nature. Given the serious nature of the allegations that the appellant published of the respondent and the wide reach of the publication, we find that an enhanced award in general damages would be appropriate in this case. We set aside the award of Kshs.7,000,000 in general damages and, in its place, we order Kshs.10,000,000 in general damages.
28. On the evidence, we will not interfere with the aggravated damages of Kshs.3,500,000. The appellant's publication was maliciously reckless in the extreme. There was no apology and no retraction. There was no effort to justify the publication by calling evidence.
29. In conclusion, the appeal is found to be without merit and is dismissed with costs. The cross-appeal is allowed to the

extent that the general damages are varied to
Kshs.10,000,000. Costs

of the cross-appeal shall be paid by the appellant to the respondent.

Dated and delivered at Nairobi this 25th day of March 2026

P.O. KIAGE

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

SIGNED

DEPUTY

REGISTRAR