

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E043 OF 2025

JOHN OKANO BWIRE.....

APPELLANT

=VERSUS=

GEOFFREY

KIMONGE

MBOGO.....RESPONDENT

**(Being an appeal from the Judgment of Hon. A. M. Obura
(CM) in Voi CMCC No. 57 of 2020 delivered on 20th June
2025)**

JUDGMENT

1. The Appellant's suit against the Respondent was dismissed on 20th June 2025.
2. The Appellant had sued the Respondent seeking damages for the tort of defamation.
3. The Appellant alleged that the Respondent published the following words:-

“TAVEVO’S WORRYING TRENDS IS IT THE NEW CASH COW - AN OPEN LETTER TO THE WORLD BANK”

I don’t make it my business to nose around what changes take place in the now usual management style of Governor Samboja’s administration – not at all. I chose to keep my peace since Samboja’s administration is legitimately elected and will run the county till 2022 whether this will be done professionally or not, will be judged in 2022 ballot. ▶

Having said so, I consider it my patriotic duty to raise a RED FLAG especially where and when I have reasons to believe, the tax payers monies are at great risk. This is one such occasion where I believe there is great danger of funds purposed to benefit the community being injected to the wrong hands. Let me qualify this statement.

In the previous administration of Governor Engineer John Mruttu, a thorough feasibility was done on the water and sewage situation in this county and a proposal was sent to the World Bank for funding. The World Bank in preparation for the release of the funds, identified three key senior officers whom they would train and provide the necessary tools to receive, measure, account and report to WORLD BANK, for purposes of ensuring the funds meet the objectives purposed.

The officers who underwent the World Bank training were **Mr. Habel Salimu then TAVEVO Managing**

Director, Mr. Duncan Maghanga then Finance Manager and Pricilla Saidi then Commercial Manager, all whose employment contracts were **terminated** between 2018 and 2019. This leaves TAVEVO without a single WORLD BANK TRAINED PERSON to receive, account and report to the WORLD BANK!

As if that was not enough, in the recent months between 2018 and 2020, we have witnessed the highest turnover of members of the TAVEVO BOARD OF DIRECTORS with members perceived to be independent minded being removed from the board and in their place appointments being made through the County Public Services Board (CPSB) believed to be another highly politicized board whose allegiance and loyalty is said to be to the Governor Samboja himself.

Recently the Water County Executive Committee Member (CECM) was moved to another department and in his place, the Governor replaced him with Mr. Devis Mwangoma in acting capacity for the Water docket, a trained and qualified AGRICULTURALIST. Davis Mwangoma is said to be a close confidant of the Governor. He formerly was the CECM of Agriculture and Fisheries and at some point he acted as the CECM Finance and Planning when the Governor terminated the then CECM Dr. Vincent Masawi. Mr. Mwangoma is considered the Governor's 'Blue-eyed-boy' who execute the boss's bidding without asking too many questions.

The latest appointment of three new directors to TAVEVO which include a private practicing lawyer who in the recent past represented the County Government cases in court, raises very serious concerns. Why would the Governor need a Lawyer on the TAVEVO BOARD? Another concern should be, why would the Lawyer forgo having Taita Taveta County as his client and serve in a WATER BOARD instead keeping in mind that it would be a conflict of interest for the Lawyer to represent the County, moving forward? Does it mean that the TAVEVO BOARD compensation is better than the Lawyer's private practice?

Lawyers come in handy especially where one needs to have 'clean paper trail' and in my case I believe the inclusion of a Lawyer in the TAVEVO BOARD has a 'deeper' purpose than what meets the eye! What motivation does the Samboja Administration have to go out of their way in the 'RECONFIGURATION' of TAVEVO from the CECM, BOARD OF DIRECTORS to operation staff **who don't have the training and skill**, to handle Kshs. 2.5 Billion (Two Billion Five Hundred Million Shillings)?

My hypothesis therefore is simple, all this interference of the running of TAVEVO is for purposes other than benefiting the Mwanachi in the service delivery.

The World Bank is at this point in the process of releasing over **Two Billion Five Hundred Million Kenya Shillings** to TAVEVO for purposes of establishing a SEWER

SYSTEM for VOI TOWN and improvement in the delivery of Water to various regions in this county.

Is this **Kshs. 2.5 Billion** the reason why these changes have been taking place in TAVEVO? Are these funds really going to meet the intended objective? Should this money be released to TAVEVO by the WORLD BANK when the **TAVEVO DOESN'T HAVE** personnel qualified and trained to handle and manage the FUND? Does anyone else see this DANGER? **TAVEVO THE CASH COW - TAVEVO FOR 2022 FUNDS!**

4. The Respondent shared the said Article in his Facebook page under his name and he expressed himself as follows:-

“The latest appointment of three new directors to TAVEVO which include a private practicing lawyer who in the recent past represented the County Government cases in court, raises very serious concerns. Why should the Governor need a lawyer on the TAVEVO BOARD? Another concern should be why would the lawyer forgo having Taita Taveta County his client and serve in a WATER BOARD instead keeping in mind that it would conflict of interest for the lawyer to represent the County moving forward? Does it mean that the TAVEVO BOARD compensation is better than the lawyer’s private practice? Lawyers

come in handy especially where one needs to have 'clean paper trail' and in my case I believe the inclusion of a lawyer in the TAVEVO BOARD has a 'deeper' purpose than what meets the eye.' What motivation does the Samboja administration have to go out of their way in the 'RECONFIGURATION' of TAVEVO from the CECM, BOARD OF DIRECTORS to operation staff who don't have the training and skill, to handle Kshs. 2.5 Billion (Two Billion Five Hundred Million Shillings)?"

5. The trial court found that the statement is a fair comment made in good faith and in public interest appealed against the dismissal on the following grounds:-

- (i) The learned trial Magistrate erred in law by and fact by disregarding the Appellant's evidence thus arriving at a wrong conclusion that the case had not been proven to the required standard.**
- (ii) That the learned trial Magistrate erred in law and fact in holding that the publication by the Respondent was not defamatory despite evidence being adduced to the contrary.**

- (iii) The learned Magistrate erred in law by basing her findings and decisions on extraneous matters and in particular, that the publication appears to be a fair comment made in good faith and in public interest.**
- (iv) The learned Magistrate erred by failing to consider the submissions and the authorities cited by the Appellant on the inference of malice in defamation, all which were binding upon the Court.**
- (v) The Honourable Magistrate erred in law and in fact in holding that the Appellant failed to prove loss and/or damage.**
- (vi) The learned magistrate erred in law and in fact in finding that it was imperative to call third party to prove the Appellants claim for defamation and that the Appellant ought to have gone a step further and call a third party to court to corroborate his claims.**
- (vii) The findings of the learned Magistrate that there was no evidence to show that the Appellant's**

esteem had been lowered in the eyes of right thinking persons in society and that further even assuming that the concerns raised in the publication were false or untruth per se does not render the publication defamatory, are wrong in principle.

(viii) The learned Magistrate erred and wrongly found that a witness must appear to prove how the words were defamatory and by this she completely introduced a new meaning to “reasonable thinking members of society” by imputing that they must be known people.

(ix) The learned trial magistrate erred in arriving at conclusions that were not supported by the law or established facts and specifically by holding that the Appellant having been elected as member of parliament even after the publication was made implied that the said publication was not defamatory in nature.

(x) That the learned Magistrate erred in law in her appreciation of the Law of Defamation, in

particular libel, and/or in not appreciating the law, to the extent of:

(a) The ingredients of the tort of defamation.

(b) The essence of the publication.

(c) The test to be applied on publication.

(d) The right thinking members of the society.

(e) The evidence receivable to establish libel.

(f) The ingredients of malice in defamation.

(xi) The learned Magistrate erred in law by awarding costs against the Appellant.

6. The parties filed written submissions as follows; The Appellant, John Okano Bwire, submitted that he is challenging the judgment delivered on 20 June 2025, which dismissed his defamation suit against the Respondent, Geoffrey Kimonge Mbogo, with costs.

7. The Appellant's suit arose from an article published by the Respondent on 29 May 2020 on Kwaela News Network, titled "TAVEVO'S WORRYING TRENDS. IS IT THE NEW CASH COW-AN OPEN LETTER TO THE WORLD BANK."

8. The article was also shared via the Respondent's personal Facebook account and various WhatsApp groups.

9. The Appellant, an Advocate of the High Court of Kenya who had just been appointed to the Board of Directors of TAVEVO, contends that the publication accused him of being corrupt, irregularly appointed, lacking integrity, dishonest, unprofessional, and involved in covering up corruption.
10. He asserts that the words were understood by right-thinking members of society to mean that he had stolen public funds, had no regard for the law, and was dishonourable.
11. The Appellant argues that the learned magistrate erred in holding that the impugned publication was not defamatory in its natural and ordinary meaning or by innuendo.
12. He submits that defamation is established when words tend to lower a person in the estimation of right-thinking members of society generally, or expose them to hatred, contempt, or ridicule.
13. Citing authorities such as **Murphy v LaMarsh, Nation Media Group Limited v Njuru, and Musikari Kombo v Royal Media Services Limited**, he contends that a statement is defamatory if it has a tendency to injure a person in their office, profession, or calling.

14. The Appellant maintains that the Respondent's statements clearly referred to him as the only lawyer recently appointed to the TAVEVO Board.
15. He testified about the negative impact on his reputation, including being subjected to ridicule and questioning by colleagues and the public.
16. He further argues that the learned magistrate wrongly required independent third-party witnesses to prove that his esteem had been lowered, whereas libel is actionable per se and damage is presumed.
17. He also notes that the magistrate erred by concluding that the publication was not defamatory simply because the Appellant was later elected as a Member of Parliament.
18. On the issue of fair comment and public interest, the Appellant submits that the magistrate erred in holding that the publication was a fair comment made in good faith and in the public interest.
19. He emphasises that the right to freedom of expression under Article 33 of the Constitution is not absolute and he stated that Article 33(3) requires every person to respect the rights and reputation of others.

20. Citing **Nation Media Group & Another v Alfred N. Mutua and Grace Wangui Ngnye v Chris Kirubi**, he argues that for the defence of fair comment to succeed, the words must be comment (not statements of fact), must be based on true or substantially true facts, and must be on a matter of public interest.
21. The Appellant contends that the Respondent failed to verify his facts before publication, did not demonstrate that the facts were true, and did not make any amendment or apology as required under Section 12 of the Defamation Act.
22. He argues that the publication was actuated by malice, as evidenced by the Respondent's failure to contact the Appellant prior to publication, failure to inquire into the veracity of the allegations, failure to afford the Appellant an opportunity to respond, and reckless disregard for the truth.
23. The Appellant relies on **Royal Media Services Limited t/a Citizen TV v Alfred Amayio Maiko and Phinehas Nyaga v Gitobu Imanyara** to support that recklessness and failure to inquire into facts can constitute malice.

24. He further notes that the Respondent, having worked as a director of political affairs for a county governor, had a large following and abused his influence to publish false statements.
25. Regarding injury to reputation, the Appellant submits that the magistrate erred in holding that he failed to demonstrate injury. He reiterates that libel is actionable per se, and the law presumes damage without requiring the plaintiff to call witnesses to prove actual harm.
26. He relies on **Kamunge v Gachari and Gatley on Libel and Slander** to argue that the law looks only to the tendency of the words, not their actual effect.
27. He asserts that as a result of the publication, he suffered scandal, ridicule, odium, and contempt in his office and profession as an Advocate of the High Court.
28. He contends that the magistrate wrongly introduced a requirement that third-party witnesses must appear to prove how the words were understood by reasonable members of society.
29. Finally, the Appellant argues that the appeal is merited and that he is entitled to damages.

30. He relies on principles set out in **Standard Limited v G.N. Kagia T/A Kagia & Company Advocates**, which require courts to consider whether the publisher was reckless or negligent and to award damages that act as deterrence.
31. He cites **Miguna Miguna v Standard Group Limited (Kshs 6 million awarded)** and **Samuel Ndung'u Mukunya v Nation Media Group Limited** (Kshs 20 million awarded) as comparables.
32. He also relies on **Hon. Henry Obwocha v Headlink Publishing Ltd and Eric Gor Sungu v George Oraro Odinga** to support claims for exemplary and aggravated damages.
33. The Appellant prays that the appeal be allowed, the lower court's judgment be set aside, his suit be allowed with costs, and that this Court grant such other
34. The respondent submitted that the trial magistrate was correct in dismissing the appellant's claim.
35. The respondent contends that the publication on Facebook was not defamatory but merely raised concerns and questions about public appointments, which constitutes fair comment made in good faith and in the public interest.

36. The respondent emphasises that the appellant failed to prove malice, as malice must be demonstrated by cogent evidence rather than inferred from the publication alone.
37. Additionally, the respondent submits that the appellant did not prove any loss or damage to his reputation, noting that general damages cannot be awarded in the absence of proved defamation.
38. The respondent further relies on the principle that a claimant's own view of his reputation is not sufficient that a third party should have been called to corroborate that the appellant's standing had been lowered in the eyes of right-thinking members of society.
39. The respondent also points out that the appellant was subsequently elected as a Member of Parliament after the alleged publication, which suggests that his reputation was not harmed.
40. Finally, the respondent prays that the appeal be dismissed with costs, as costs follow the event.
41. **As a first appellate court, it is my duty to re-evaluate the evidence on record and reach my own independent**

conclusions, while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses first-hand.

42. The issues for determination in this appeal are as follows;

- (i) Whether the words complained of were defamatory,
- (ii) Whether the defences of fair comment and public interest were established, and;
- (iii) Whether the trial court erred in its evidentiary requirements regarding third-party witnesses and the assessment of damages.

43. The Respondent's publication, shared on social media and digital platforms, questioned the "reconfiguration" of TAVEVO and specifically highlighted the appointment of a private practicing lawyer to a water board, suggesting such an appointment had a "deeper purpose than what meets the eye" and was linked to the management of Kshs 2.5 Billion.

44. To determine if these words are defamatory, the court must apply the test of the reasonable, right-thinking member of society.

45. Such a person understands the nuances of language and the implications of suggesting that a professional is being used to create a "clean paper trail" for potentially irregular funds.

46. The trial magistrate erred in finding that these words were not defamatory.
47. A statement is defamatory if it tends to lower the plaintiff in the estimation of right-thinking members of society.
48. By suggesting that the Appellant's appointment was part of a scheme to turn a public utility into a "cash cow," the Respondent directly attacked the Appellant's professional integrity and honesty as an Advocate and a public officer.
49. The trial court further erred in holding that it was imperative for the Appellant to call third-party witnesses to prove that his reputation was lowered. It is a long-standing principle in Kenyan law, that libel is actionable per se and therefore damage is presumed by law.
50. While calling witnesses may assist in quantifying damages, the absence of such witnesses is not fatal to a claim where the words are clearly defamatory in their natural and ordinary meaning.
51. The court itself is the arbiter of what a reasonable person would think.

52. Furthermore, the trial court's reasoning that the Appellant's subsequent election as a Member of Parliament meant no defamation occurred is legally flawed.
53. A person may succeed in life despite a libel, but that success does not retroactively sanitize a defamatory statement or negate the injury suffered at the time of publication.
54. Regarding the defence of fair comment, the Respondent bore the burden of proving that the words were a comment on true facts regarding a matter of public interest.
55. While the management of TAVEVO is undoubtedly a matter of public interest, the defence of fair comment fails when the comment is based on a foundation of untruths or is actuated by malice.
56. The facts upon which the comment is based must be substantially true. The Respondent's publication went beyond raising "questions" and crossed into the territory of imputing criminal intent and professional misconduct without a factual basis.
57. The failure of the Respondent to contact the Appellant or verify the legal nature of the TAVEVO board appointments before suggesting a "corrupt reconfiguration" points to a

reckless disregard for the truth, which defeats the defence of fair comment.

58. In light of the above, I find that the Appellant proved his case to the required standard.

59. The Respondent's words were defamatory, and no valid defence was established.

60. On the question of damages, the court must balance the need to vindicate the Appellant's reputation with the principle of proportionality.

61. The Appellant is an Advocate and a public figure, and the reach of social media amplifies the harm.

62. Following the principles in **Standard Limited v G.N. Kagia T/A Kagia & Company Advocates [2022] eKLR**, the award must reflect the gravity of the allegations and the standing of the plaintiff.

63. Consequently, the appeal is allowed. The judgment and decree of the trial court delivered on 20th June 2025 are hereby set aside.

64. This court finds in favour of the Appellant and awards him general damages for libel in the sum of Kshs 2,000,000.

65. Considering the Respondent's conduct and the lack of an apology, I also award aggravated damages in the sum of Kshs 500,000.

66. The Appellant shall have the costs of this appeal and the costs in the lower court. Interest shall accrue on the decretal sum at court rates from the date of the trial court's judgment until payment in full.

67. Orders to issue accordingly.

Dated, signed and delivered this 29th day of April 2026 in open court at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Mabishi/Millicent

.....**for the Appellant**

.....**for the Respondent**