



REPUBLIC OF KENYA



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**Apidi v Mutinda & 5 others (Civil Appeal 570 of 2019)
[2025] KECA 1121 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1121 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 570 OF 2019
SG KAIRU, FA OCHIENG & AO MUCHELULE, JJA
JUNE 20, 2025**

BETWEEN

ALI ONAMU APIDI APPELLANT

AND

ONESMUS MUTINDA 1ST RESPONDENT

ELVIS MULUVI 2ND RESPONDENT

JACKSON NYUMU 3RD RESPONDENT

DOMINIC NZINE 4TH RESPONDENT

KANG'OTI KATHUVI 5TH RESPONDENT

STANDARD LIMITED 6TH RESPONDENT

*(Being an appeal from the Judgment and Decree of the High Court at Machakos
(D.K. Kemei, J) dated 26th September 2019 in HCCC No. 71 of 2005)*

JUDGMENT

1. The present appeal arises from the judgment and decree of the High Court at Machakos (D. K. Kemei, J.) dated 26th September 2019, in Machakos HCCC No. 71 of 2005. The appellant, Ali Onamu Apidi, had filed a defamation suit against the respondents, Onesmus Mutinda & 5 Others. In the suit, the appellant sought various reliefs, including general, exemplary, and punitive damages for defamation of character, an unconditional apology, and costs.
2. The appellant's case was predicated on an article published by the 6th respondent (Standard Limited) in their newspaper on 23rd January 2004, titled "councilors want clerk transferred". This article, it was alleged, stemmed from a press briefing conducted by the 1st to 5th respondents. The 1st to 5th respondents were elected councilors serving in the then Municipal Council of Kitui.



3. It was alleged that the article claimed the appellant was corrupt and misusing council funds. Further, a letter dated 8th November 2004, written by the 1st to 5th respondents to the then Kenya Anti-Corruption Commission (KACC) and copied to the appellant, referred to "breach of procurement procedures and other irregularities by the clerk Mr. Ali Onamu Apidi".
4. The appellant contended that these statements insinuated and concluded that he was incompetent and a corrupt officer who should not be entrusted with public office. He asserted that the respondents' conduct and words were intended to lower his reputation in the eyes of right-thinking members of society. The appellant's position was that these allegations were serious and defamatory per se.
5. In their joint statement of defence, the 1st to 5th respondents maintained that the issues they raised were of significant public interest and were not defamatory. They claimed that the issues raised in the letter to the KACC were substantially true and calculated to expose a scam at the Municipal Council of Kitui. They viewed their statements as fair comment on matters of public interest, aimed at exposing abuse of office by the appellant. They further stated that preliminary investigations had suggested that the appellant had committed acts of impropriety and had been transferred to Isiolo to allow for investigations.
6. The 6th respondent admitted publishing the article but denied doing so with malicious intent. They stated that the publication consisted of opinions, which constituted fair comment on matters of general public importance.
7. During the trial, the appellant testified that the respondents did not follow the correct procedure for lodging complaints against him. He stated that he was not given reasons for his transfer or summoned in respect of the complaints leveled against him.
8. A witness for the appellant, Joseph Ochieng, an accountant at the time when the appellant was the clerk, but did not work in Kitui, testified that after the newspaper article came out, he did not want anything to do with the appellant, as he had not been cleared of the allegations. He told the court that his relationship with the appellant was strained following the article's release.
9. The 3rd respondent testified that he wanted the appellant removed and eventually succeeded. He claimed that there was no malice, as the publication was a last resort after the appellant refused to attend a meeting to resolve the issues. He stated that the article emanated from issues he had forwarded to the minister in his report. The 1st respondent's testimony echoed the evidence tendered by the 3rd respondent.
10. Paul Mutua, who was the author of the impugned article, testified that he was not malicious or reckless when he published the article. He further testified that his attempt to contact the appellant before the publication failed, and that he would have published the appellant's side of the story had he been able to get in touch with the appellant. He added that, as a resident of Kitui, he knew that there was a public outcry over the conduct of the appellant in the performance of his public duties.
11. Upon evaluation of the evidence, the learned judge was not satisfied on a balance of probabilities that the statements complained of by the appellant were defamatory. The learned judge reasoned that the appellant, being a clerk, did not have a sensitive reputation, which could be harmed by the allegations published about him. The learned judge further noted that the appellant had remained a public officer, which implied, (in the judge's mind), that the appellant's reputation had not been impacted negatively by the publication.
12. The learned judge further found that the appellant had not demonstrated that the respondents were reckless with their words about him or that any right-thinking member of society would lower



their estimation of him upon reading the impugned publications. The learned judge noted that the appellant's witness did not work or reside in Kitui, and thus could not attest to the impact on the appellant's reputation, and that none of the appellant's colleagues and friends within Kitui came forward to corroborate his assertions. Based on these findings, the learned judge held that the statements complained of were not defamatory.

13. The learned judge held that if the appellant's claim had succeeded, he would have awarded the appellant Kshs. 3,000,000 as general damages. However, the claim for punitive and exemplary damages lacked basis as recklessness was not established.
14. Accordingly, the appellant's suit was dismissed with costs to the respondents.
15. Being dissatisfied with the judgment, the appellant lodged the present appeal in which he raised the following grounds of appeal:
 - a. The learned judge erred in finding that the appellant had not been defamed by the impugned publications and that the impugned publications were not defamatory.
 - b. The learned judge erred in holding that the appellant's position as the town clerk could not be harmed by libelous statements.
 - c. The learned judge erred in finding that the fact that the appellant was still in public office meant that he had not been defamed or that he had not suffered damages as a result of the impugned publications.
 - d. The learned judge erred in failing to find that the respondents did not prove the truth in the allegations against the appellant in the impugned publications.
 - e. The learned judge erred in finding that the defamatory statements by the respondents were accompanied by a public outcry, when there was no evidence to that effect.
 - f. The learned judge erred in not finding that the 6th respondent ought to have cross-checked and ascertained the veracity of the statements before the publication.
 - g. The learned judge erred in not finding that the 6th respondent was guilty of malice given that the appellant approached them for an apology but they refused.
 - h. The learned judge erred in finding that there was no evidence that the appellant's reputation took a hit as a result of the impugned publication.
16. During the hearing of the appeal on 17th February 2025, Mr. Odhiambo, learned counsel, holding brief for Mr. Wasuna appeared for the appellants, whereas Mr. Mwalimu, learned counsel, appeared for the 1st to 5th respondents. Despite being served with the hearing notice on 30th January 2025, there was no appearance by the 6th respondent.
17. Mr. Odhiambo relied on the appellant's written submissions dated 26th September 2019. He submitted that the article alleging that the appellant was corrupt and misusing funds was defamatory per se. He asserted that the learned judge's analysis is baffling, particularly the implication that a clerk's position lacked a "sensitive reputation" or that a public official facing criticism might be incapable of being defamed.
18. Counsel submitted that the learned judge erred in concluding that defamation was not established because the appellant had not lost his job, finding it ironic that the learned judge implied "professional harm" through the transfer while denying defamation occurred because the appellant retained his position.



19. Counsel contested the judge's finding that the allegations were true, simply because the appellant was transferred at the councilors' request, arguing that the basis for this finding was unclear. He noted that the appellant had not been indicted, formally charged, or been summoned by a body mandated to carry out investigations into the allegations of misuse of public funds, notwithstanding that the allegations implied dishonesty and criminality, which right-thinking members of society would find defamatory.
20. Counsel submitted that the 6th respondent acted maliciously by not contacting the appellant for his side of the story or verifying the information before the publication. He submitted that the newspaper had a duty to cross-check the veracity of the statements before publication as the evidence of malice may be found in the publication itself, if the language used is utterly beyond or disproportionate to the facts, or inferred from the relations between the parties, or the failure to inquire into facts.
21. In conclusion, the appellant sought orders allowing the appeal;
 - a. Setting aside the High Court judgment;
 - b. Enter judgment for the appellant;
 - c. Award general damages of Kshs. 3,000,000/= together with interest to the appellant;
 - d. Costs of the suit and appeal to the appellant;
 - e. An award requiring the 6th respondent to publish a conspicuous apology.
22. Opposing the appeal, Mr. Mwalimu conceded that the article arose from the press briefing of the 1st to 5th respondents as elected councilors of the Municipal Council of Kitui. He stated that they had received complaints regarding corruption against the appellant and had attempted to address them internally, but their efforts were frustrated by the appellant's failure to respond to the allegations leveled against him. They therefore raised the issues with the minister and through the press. Counsel submitted that the respondents' press briefing was in good faith and was not malicious.
23. Counsel reiterated the respondents' view that the appellant was not defamed and supported the learned judge's finding that a public officer is not immune from public scrutiny. He submitted that calling the appellant an abuser of funds or in breach of procurement procedures was a statement of fact which could be substantiated.
24. Counsel further submitted that the failure by the appellant to respond to the allegations was deemed an admission that the allegations against him were true. He submitted that complaints about the appellant's "modus operandi" had been raised by members of the public. He referred to three documents (pages 27 to 30 of the record of appeal) containing letters from contractors alleging impropriety against the appellant. These were complaints addressed to the then Kenya Anti-Corruption Commission and the Permanent Secretary, Ministry of Local Government, copied to the appellant for response.
25. Counsel submitted that their defence was based on truth and justification. He confirmed that abusing council funds and breach of procurement procedures are criminal offences. He submitted that complaints were lodged with KACC and the minister, but investigations were delayed, and the harm was continuing, so they supported the allegations by raising similar complaints. He urged that the appeal should fail with costs.
26. This is a first appeal. Rule 31(1)(a) of the [*Court of Appeal Rules*](#) provides that:



- (1) On an appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power— Power to reappraise evidence and to take additional evidence.
- (a) to re-appraise the evidence and to draw inferences of fact;
27. The primary role of this Court as a first appellate court is to re-evaluate and reassess the evidence presented to the trial judge and to draw our own conclusions based on that evidence. However, we recognize that the trial court had the advantage of observing and hearing the witnesses, and we therefore take that into account in our evaluation. In the case of *Peters v Sunday Post Ltd* [1958] EA 424, at P 429 O'Connor P. stated thus:
- “An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand”.
28. We have carefully considered the record, the rival submissions by counsel, the authorities cited, and the law. The issues for determination are: whether the statements published and uttered concerning the appellant were defamatory; whether the respondents established the defence of truth and/or justification; whether the appellant established malice on the part of the respondents, particularly the 6th respondent; and whether the High Court erred in its assessment of the impact of the statements on the appellant's reputation, considering his position as a public officer.
29. Defamation is defined in *Black's Law Dictionary* (10th Ed.) as:
- “The act of harming the reputation of another by making a false statement to a third person.”
30. The impugned article and letter clearly referred to the appellant and were published to third parties, the general public, and KACC. The content accused the appellant of corruption, misuse of public resources, and abuse of office, all of which connote criminality and lack of integrity.
31. The tort of defamation in Kenya is guided by both common law and the *Defamation Act*. At common law, for a claim of defamation to succeed, the plaintiff must establish the following elements, as set out in *Wydliffe A. Swanya v Toyota East Africa Ltd & Another* [2009] KECA 379 (KLR):
- “For the purpose of deciding a case of defamation, the Court is called upon to consider the essentials of the tort generally and to see whether these essentials have been established or proved. It is common ground that in a suit founded on defamation, the plaintiff must prove:
- i. That the matter of which the plaintiff complains is defamatory in character.
 - ii. That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed.
 - iii. That it was published maliciously.
 - iv. In slander, subject to certain exceptions, that the plaintiff has suffered special damage.”
32. The High Court, while outlining these elements, concluded that the impugned statements were not defamatory. The appellant contested this finding, arguing that allegations of corruption, misuse of public funds, and procurement breaches were inherently defamatory and, if false, would undoubtedly tarnish his personal and professional reputation.



33. The test for whether a statement is defamatory is how right-thinking members of society would understand it. In *SMW v ZWM* [2015] KECA 602 (KLR), this Court held that:

“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.”

34. The test for whether a statement is defamatory is an objective one. It is not dependent on the intention of the publisher but on what a reasonable person reading the statement would perceive. In *Halsbury's Laws of England* 4th Edition Vol. 28 at page 23 the authors opined:

“In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense.”

35. It follows that allegations that the appellant, then a public officer, was involved in acts of corruption, misuse of public funds, and was in breach of procurement procedures, would reasonably be construed as suggesting dishonesty and criminality. It is arguable that such allegations, if untrue, would tend to lower the subject's reputation, expose them to hatred, ridicule, or contempt.

36. We find the High Court erred in reasoning that the appellant's position as a “clerk” lacked a “sensitive reputation.” The *Constitution*, under Article 28, guarantees the inherent dignity of every individual, and Article 33(3) restricts the right to freedom of expression to ensure it does not impugn the reputation of others. The law of defamation protects every citizen equally, including public servants. That the appellant retained public employment cannot in itself exonerate a defamatory publication or mitigate its impact.

37. A defence of truth requires proof that the statements are substantially true. Simply lodging complaints or the subject failing to respond to them does not automatically prove the truth of the allegations, particularly allegations implying criminality.

38. Section 14 of the *Defamation Act* provides that:

“In any action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the reputation of the plaintiff having regard to the truth of the remaining charges.”

39. The defence of justification allows a defendant to escape liability if they can prove the truth of the statements made. However, the burden of proving that a defamatory statement is substantially true lies with the defendant. In *Jones Maghanga Solomon v Eliud Mbogho Majani* [2015] KECA 297 (KLR), this Court held that:

“On the first issue, the defamatory words were admitted. The appellant even testified and called witnesses to support the fact that he uttered the words. There was no dispute that the words carried the meaning and were understood to mean what the respondent contended. Indeed, the stance taken by the appellant is that he was justified in exposing the respondent as an adulterer. In his defence, the appellant pleaded justification and he adduced evidence through Mr. Erick Jumbe Mwangongo, whose sister is married by the



respondent and is therefore the respondent's brother-in-law. The witness claimed to have found the respondent having sex with his (Erick Jumbe Mwangongo's) wife on 5th August 2007. Erick Jumbe Mwangongo filed Suit No.97/2008 in the Magistrate's Court against the respondent. It was dismissed. The effect of the dismissal is that the allegations were not proved to the satisfaction of the Court. The two lower courts made concurrent findings that there was no evidence adduced to support the defence of justification. The only "evidence" the appellant put forward as justification for the defamation was the evidence of Eric Jumbe Mwangongo whose suit No.97 of 2008 against the respondent was dismissed. Eric Jumbe told the trial court that he sued the respondent for raping his wife. As the suit was dismissed, the allegations of rape made in it and/or adultery were not proved and there were no findings made by the court in that regard.

20. The onus of the defence of justification was on the appellant. The law requires that there be justification of the truth of the substantial imputation in a libel or slander. The defence of justification is that the words complained of were true in substance and in fact (see *Associated Leisure Ltd (photographic Equipment Co Ltd) v. Associated Newspapers Ltd* [1970] 2 QB 450 pg 456. It was incumbent upon the appellant to satisfy the Court that the defamatory words were true in substance and in fact. It is correct in our view, that where a defamatory statement imputes the commission by the plaintiff of an offence, the defendant, so as to succeed in his plea of justification, must prove the commission of the offence as strictly as if the plaintiff was being prosecuted for it (see *Chalmers v. Shackell* [1834], 6 c. & p.475)). Where there is no imputation of a crime, the proof required is less strict but it is incumbent for the defendant to satisfy the Court that the statement justified is substantially true. The law presumes that defamatory words are false and it is for the defendant to satisfy the Court that the statement which is justified is true in substance and in fact. It is however accepted in law that a justification does not have to be in respect of every detail or epithet in the words complained of. (see *Halsbury's Laws of England*, Fourth Edn, para 85 pg 43). In cases where, as here, the words complained of do not impute commission of a criminal offence, the proof required is, on the balance of probabilities but the defendant must satisfy the Court that the statement justified is substantially true, even if the proof does not establish every detail."
40. In this case, the 1st to 5th respondents admitted the alleged defamatory words, and asserted that the issues raised were substantially true and calculated to expose a scam. The appellant contended that the respondents failed to prove that the allegations were true, noting that they had never been formally proven, and if proved, would lead to his job loss, indictment, or formal charges.
41. In this instance, we find that it was incumbent upon the respondents to satisfy the court that the defamatory words were true in substance and fact. The statement in issue imputed that the appellant had committed criminal offences. The standard of proof for a plea of justification required that it be proved that any reasonable person, applying their mind to the facts which were the foundation of the article, would conclude that such facts constituted a criminal offence, for which the appellant could have been charged. It was not merely sufficient for them to lodge complaints against the appellant and then proceed to publish the said complaints simply because, as stated by the 3rd respondent, they wanted the appellant out, and they succeeded in doing so.
42. The appellant's counsel specifically stated that the appellant had never been indicted or brought before any judicial body to answer the allegations. This contradicts the 1st to 5th respondents' claim that preliminary investigations suggested impropriety. The High Court judge seemed to find the allegations true based on the appellant's transfer, a finding that the appellant strongly contested as lacking basis in the pleadings or evidence. Transfers within public service are administrative in nature and do not,



in themselves, indicate culpability. To infer guilt from a reassignment was a misdirection in both fact and law. Therefore, we find that the respondents did not discharge the burden of proof to establish the defence of justification or truth.

43. The 6th respondent denied malice. Malice can defeat a defence like qualified privilege or fair comment. Malice in defamation may be express or implied. It may be inferred from recklessness, lack of honest belief in the truth, or failure to verify before publication. In the persuasive case of *Phineas Nyagah v Gitobu Imanyara* [2013] eKLR, Odunga, J. (as he then was), held that:

“Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice. Malice may also be inferred from the relations between the parties..... The failure to inquire in the facts is a fact from which inference of malice may properly be drawn.”

44. The appellant submitted that the 6th respondent acted maliciously by failing to verify the facts with him before publication and for refusing to issue an apology when requested. The 6th respondent's witness claimed to have attempted to contact the appellant but failed. However, no evidence was provided to corroborate such attempts, nor was any fair opportunity offered to the appellant to respond prior to the publication. Given the gravity of the allegations and the public platform of dissemination, we are satisfied that malice could be inferred on the part of the 6th respondent.

45. The High Court placed significant weight on the appellant being a public officer and allegedly lacking a "sensitive reputation". It was argued that public officers are subject to public scrutiny. While public officers are indeed subject to scrutiny, this does not grant immunity to those who make defamatory statements about them. The defence of fair comment applies to matters of public interest, but it must be based on true facts and be an honest expression of opinion.

46. In *Gatley on Libel and Slander*, (6th Edition), the author stated:

“There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend “to lower the Plaintiff in the estimation of right-thinking members of society generally,” “to cut him off from society,” or “to expose him to hatred, contempt or ridicule,” is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published. Where, as in the cases of libel and of slander actionable per se, the publication of the matter containing the defamatory imputation is actionable without proof of damage, the law will presume that some damage flows from such publication.”

47. The following passage of Goddard L J in the case of *Hough v London Express Newspaper Ltd.* [1940] 2 KB 575 was adopted with approval by the Court of Appeal for East Africa in the case of *JN Bendzel v Kartar Singh* [1953] Vol. XX page 53:

“If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation and may even know that it is untrue.”

48. The injury in defamation lies within the imputation itself. Allegations of corruption against a public officer are presumed to be injurious unless justified. The transfer, although not a dismissal, was cited in the defamatory material, and reasonably associated with the alleged wrongdoing. The learned judge's reliance on the appellant's continued employment as evidence that no harm occurred misconstrued the principle of injury to reputation, which is independent of administrative status.



49. From the foregoing, we are satisfied that; the statements made by the respondents were defamatory; the respondents failed to prove justification or truth of the allegations; the appellant established malice, particularly on the part of the 6th respondent; and that the High Court erred in both legal reasoning and factual assessment by minimizing the impact of the publications on the appellant's professional reputation.
50. As regards the prayers sought, the appellant prayed for general damages of Kshs. 3,000,000 as proposed by the learned judge. The 1st to 5th respondents in their submissions had proposed a nominal amount of Kshs. 100,000.
51. In *Butler v Butler* [1984] KLR 225 the court held that:
- “The assessment of damages is more like an exercise of discretion by the trial judge and an appellate court should be slow to reverse the trial judge unless he has either acted on wrong principles or awarded so excessive or so little damages that no reasonable court would; or he has taken into consideration matters he ought not to have considered, and in the result arrived at a wrong decision.”
52. An award of damages in a defamation case is discretionary. This Court in *CAM v Royal Media Services Limited* [2013] eKLR, held 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.”
53. In this case, the appellant's position as a public officer, clerk, was not in contention. The publication also referred to his position as the clerk of the then Municipal Council of Kitui. It is trite that in cases of libel, the law presumes damage as long as a party has shown that the defamatory material was written or printed or in some permanent form.
54. *Uren v John Fairfax & Sons Pty Ltd* 117, C.L.R. 115, the court held that:
- “...a man defamed does not get compensated for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways - as a vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.”
55. In the English Court of Appeal decision in the case of *John v MG Ltd.* [1996] I ALL E.R. 35, the Court held:
- “The successful plaintiff in a defamation action is entitled to recover the general compensatory damages, such sum as will compensate him for the wrong he has suffered.



That must compensate him for damages to his reputation, vindicate his name, and taken account of the distress, hurt, and humiliation which the defamatory publication caused...

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

56. In *Kenneth Nyaga Mwigie v Austin Kiguta & 2 Others* [2015] KECA 334 (KLR), this Court held thus:

“It is our view that this appeal has merit. We allow the same and set aside in its entirety the judgment of the trial court dated 18th April, 2008, dismissing the appellant’s claim in the plaint and substitute the same with a judgment for the appellant against the respondents jointly and severally as prayed for in the plaint. On the quantum of damages, we see no reason to interfere with the views of the trial court. We adopt the decision of the learned judge and award the appellant the sum of Kshs. 1,500,000/= as general damages for defamation. We make no award for aggravated or exemplary damages. Interest on the general damages to run with effect from 18th April, 2008, being the date of judgment of the trial court. The appeal is allowed with costs.”

57. While taking into account the appellant’s standing in terms of status, recognition, and reputation as a clerk, his position in life, and the extent of circulation of the publication, we are satisfied that the appellant is entitled to an award of general damages.

58. Without appearing to belittle the appellant, his status cannot be equated to that of, for instance, the case Johnson *Evan Gicheru v Andrew Morton & Another* [2005] KECA 307 (KLR), where the appellant was once the Chief Justice of Kenya, an award of 2,500,000/- was enhanced to 6,000,000 by this Court; or in *Nation Media Group Ltd, Mutegi Njau & Bob Kioko v John Joseph Kamotho, Charles Githii Kamotho, James Kamotho & David Kamotho* [2010] KECA 360 (KLR), where the 1st respondent was a cabinet minister in government, and the award of Kshs. 6,000,000 was upheld by this Court.

59. For the foregoing reasons, we find that an award of Kshs. 1,500,000 would be sufficient compensation as general damages.

60. Accordingly, the appeal is merited and it is allowed. We make the following orders:

- a. The judgment and decree of the High Court (D.K. Kemei, J.) delivered on 26th September 2019 is hereby set aside and substituted with judgment on liability for defamation in favour of the appellant as against the respondents jointly and severally.
- b. General damages are awarded to the appellant in the sum of Kshs. 1,500,000.
- c. Interest is awarded at court rates on general damages from 26th September 2019, when the High Court delivered its judgment.
- d. Costs of the suit, before the High Court, are awarded to the appellant, against all the respondents herein.
- e. The costs of this appeal are awarded to the appellant against all respondents jointly and severally.

Orders accordingly.



DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

S. GATEMBU KAIRU, FCIArb.

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

Deputy Registrar

