



**Mwau v Standard Limited & 2 others (Civil Suit 4 of 2005)
[2025] KEHC 3825 (KLR) (Civ) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3825 (KLR)

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

**CIVIL
CIVIL SUIT 4 OF 2005**

**JN MULWA, J
MARCH 27, 2025**

BETWEEN

JOHN HARUN MWAU PLAINTIFF

AND

THE STANDARD LIMITED 1ST DEFENDANT

TOM MSHINDI 2ND DEFENDANT

MUTUMA MATHIU 3RD DEFENDANT

JUDGMENT

1. At all material times to this suit, the Plaintiff, a male adult of sound mind, a resident of Nairobi, a renowned businessman nationally and internationally, and a former Director of The Kenya Anti-Corruption Authority and a politician. The 1st Defendant is a limited liability company, and a publisher of the “THE STANDARD” – ‘SUNDAY STANDARD’ while the 2nd and 3rd Defendants were the Managing Director and the Editor in Chief of the 1st Defendant’s newspaper respectively, and were responsible for the managing and publication of any material at their direction and authority.

2. The Plaintiff complained that on 17th December 2004 the 1st Defendant at page 1 of its newspaper “The Standard” published an article containing the following words of and concerning the Plaintiff:

Cocaine:

Police raid another warehouse

Police yesterday searched a warehouse belonging to Nairobi businessperson and politician John Harun Mwau as investigations contained into then Sh.5.3 billion cocaine haul.



Officers searched Pepe Limited, the Athi River based warehouse belonging to Mwau, who is a former director of the Kenya Anti-Corruption Authority.’ The Standard 17th December, 2004.

3. That on 31st December 2004, the 1st Defendant on the front page of its aforesaid daily newspaper known as the “the Standard” published a big picture of the Plaintiff juxtaposed besides the words: “Cocaine: Ministers house is searched” and “Exposed “Drug suspect in Dutch jail called MPs, other big names.”
4. Following the said publications, the Plaintiff filed this suit against the Defendants jointly and severally by way of a Further Amended Plaint dated 26th September 2006, seeking :-
 - a. Exemplary or aggravated damages.
 - b. General damages for defamation.
 - c. Special damages as prayed hereinabove.
 - d. A permanent injunction to restrain the Defendants whether by themselves, their servants, agents, authorized representatives or any other person or authority connected therewith be restrained from further making, printing broadcasting, televising or publishing defamatory and libelous statements against the Plaintiffs and or any other matter relating to the Plaintiffs whatsoever.
 - e. Costs of the suit and interest on (a) and (b) above.
 - f. Such further orders or remedies as this Honourable Court would deem just and expedient to grant.
5. The Plaintiff stated that to the ordinary right thinking members of the public the publications meant and were understood to mean that:
 - i. The Plaintiff’s house was searched for drugs.
 - ii. The Plaintiff is a drug suspect.
 - iii. The Plaintiff knows something in relation to the alleged cocaine haul.
 - iv. The Plaintiff is a drug peddler.
 - v. The Plaintiff’s drug dealings have been exposed.
 - vi. The Plaintiff is being held in a Dutch jail as a drug suspect.
 - vii. The Plaintiff is associated with MP’s and other big names in drug deals.
6. The Plaintiff continued to claim that the said publications implied, would imply and indeed gave the impression to those who know and knew him that;
 - i. The Plaintiff is a drug peddler.
 - ii. The Plaintiff is actually linked to the alleged cocaine haul.
 - iii. The Plaintiff is a criminal and drug trafficker.
 - iv. The Plaintiff is untrustworthy and immoral.
 - v. The Plaintiff is dishonest and a drug dealer.



7. The Plaintiff further stated that the said publications were actuated by malice, spite, ill will and were outside the known parameters of objective journalism.

Particulars of malice in the publication dated 17/12/2004

- i. The Defendants knew or ought to have known that the three persons in the earlier publication were not police officers.
- ii. The Defendants knew or ought to have known that the container in question did not contain any drugs.
- iii. The Defendants knew or ought to have known that the said container had no link whatsoever to the containers allegedly linked to the cocaine haul.

Particulars of malice in the latter publication dated 31/12/2004

- i. The Defendants knew or ought to have known that the Plaintiff is not a Minister in the Kenya government.
- ii. The Defendants deliberately and conspicuously published the Plaintiff's picture in the front page of their daily newspaper having national and international circulation and coverage, juxtaposed against the offending words described as hereinabove.
- iii. The conspicuous and emboldened size of the picture in question.
- iv. The fact that no drug search has ever been conducted at the Plaintiff's premises or house and the Defendants are well aware of this fact.
- v. That the Defendants have never taken the trouble to confirm from the Plaintiff the veracity, truth or falsity of their publications.

8. In their joint Defence dated 24th March, 2005 and Defence to Further Amended Plaintiff dated 19th October, 2006 the Defendants admitted that the article under the heading "Cocaine: Police raid another warehouse" was published in the Standard newspaper dated 17/12/2004, including the pictures of three men printed but deny that the same was done either falsely and/or maliciously and put the Plaintiff to strict proof thereof.
9. In furtherance to their defence, the Defendants stated that the said words in the publications consisted true facts in substance and in so far as they consisted of opinions, they were fair comment on a matter of public interest, namely that the public has a right to know of any transactions involving criminal activities and in particular drug trafficking in the country.
10. In addition, the Defendants admitted that it was a fact that the Plaintiff was a former Director of the Kenya Anti-Corruption Authority, and that the police searched warehouses for drugs including one belonging to Pepe Limited, informed by the fact that the Plaintiff had sworn the verifying affidavit to the Plaintiff on their behalf and on behalf of Pepe Limited hence they formed an opinion that there was a link between the Plaintiff and Pepe Limited.
11. However, the Defendants denied that the words 'Cocaine: Minister's house is searched' and "Exposed: Drug suspect in Dutch jail called MPs, other big names" can be construed either in their natural and ordinary sense or by way of innuendo or any necessary implication in the manner or form stated in the paragraph (5bb) and (5c) of the Further Amended plaintiff.



Plaintiff's Case

12. The Plaintiff testified as PW1 by adopting his witness statement and list of documents and admitted as his evidence in chief.

The Plaintiff testified that he was aggrieved by the impugned newspaper articles it published in naming him in connection and associating him with drug trafficking, namely cocaine which was false, malicious and defamatory.

13. The Plaintiff further testified that the Defendants on 31/12/2004 repeated the same publication with his photograph on the front page linking him to the crime of drug trafficking even when they failed to respond to a demand letter he had send to them seeking for an apology.
14. In further evidence the plaintiff testified that the DCI informed him that he was not profiled nor linked to the crime, that persons who were profiled were charged in Criminal Case No.3165 of 2004 – convicted and sentenced in July 2006- ruling at page 17-45 of bundle of documents, but then the defendants never offered an apology to him, thus urged the Court to grant him the prayers in the plaint.
15. In cross examination by Mr. Wepo Advocate for the Defendants, the Plaintiff stated that he was aware of drug search was conducted in the Country, particularly at Mombasa and some parts of Embakasi but that he had nothing to do with drugs. It was his testimony that he knew a company called Pepe Limited, was a shareholder of the company and not a director.
16. The Plaintiff confirmed that the company was searched and that the police men were searching for narcotics and if they found them, they did not arrest anyone and that the publication was true but he is not a director nor a worker, and denied all allegations in the articles, but even then, the defendants placed his photo on the front page of the Newspaper publication of 17/12/2004, describing him as Director of ACC with intention to tarnish his name as high ran.
17. It's the Plaintiff's testimony that at Paragraph 5.A of its amended plaint, the defamatory part describes him as a director of the ACC and that it was true but the intention to tarnish his name in the article as a high level person holding such office as director the Anti-Corruption Commission, was
18. On the publication of 31/12/2004 the plaintiff testified that his picture was published and stated to have been a minister or an MP which he was not, and clarified that his house was not searched for drugs but placing his photo and name with the suspects suggested that he was one of them, and the photo placed next to the open containers also suggested that there were drugs in the container and was connected to the drugs.
19. PW2 Gilbert adopted his witness statement dated 2/10/2023 as his evidence in chief. In cross-examination, he told the court that he had known Harun Mwau since 1990's when he was vying for presidency of the Republic of Kenya, that he read the impugned articles in the Standard newspaper dated 17/12/2004 at the school library, that it was his view that it was true.

In re- examination. He told the Court that the publication was true because he saw three policemen next to a container saying that it was from a company said to have belonged to the Plaintiff; the publication was about some cocaine that the police were searching from the container of the company named.
20. The Defendants did not call any witness. The Plaintiff filed its submissions dated 26th April 2024.

The Defendants had not filed submissions at the time the court retreated to write this judgment in march 2025.



Issues for determination

- a. Whether the impugned publications by the 1st defendant in its Sunday Standard issues dated 17/12/2004 and 31/12/2004 referred to the plaintiff
- b. If the answer to (a) above is in the affirmative, whether the said articles were false, untrue and defamatory of and concerning the plaintiff
- c. Whether the defendant's defence of truth and fair comment on a matter of public interest – can be sustained.
- d. Whether the plaintiff is entitled to an award of damages, and if so, what is the quantum
- e. Who bears costs of the suit?

Analysis and determination.

21. Whether the publications in issue referred to or identified the Plaintiff. The Plaintiff submitted that It is axiomatic that for a publication to be defamatory, at the outset, it must be and of concerning the Plaintiff. Where the publication does not refer to the Plaintiff, whether directly or indirectly through extrinsic facts, then no claim lies.

In *Elisha Ochieng Odhiambo v Booker Ngesa Omole* [2021] eKLR, the High Court adopted the decision in the case of *Newstead v London Express Newspaper Ltd* [1940] 1 KB 377 [1939] 4 ALL ER 319, it was held as follows:-

“Where the plaintiff is referred to by name or otherwise clearly identified, the words are actionable even if they were intended to refer to some other persons. It is not essential that the plaintiff must be named in the defamatory statement; where the words do not expressly refer to the plaintiff they may be held to refer to him if ordinary sensible readers with knowledge of the special facts could and did understand them to refer to him.”

22. The Plaintiff asserted that both articles refer to and identify him, and all who read the same understood the articles to have been written of and concerning the Plaintiff. The first article published on 17th December, 2004 referred to the Plaintiff by his names and former positions thus "John Harun Mwau", "Mwau" and "a former Director of the Kenya Anti-Corruption Authority". The Second article published on 31st December, 2004 prominently published the Plaintiff's photograph on the front page against the title "Exposed: Drug Suspect in Dutch jail called MPs, other big names" "Cocaine: Minister's House is searched".
23. Whether the publications of and concerning the Plaintiff were defamatory. The Plaintiff submitted that the sting of the article published on the 17th December, 2004 meant that the Plaintiff, who was a former director of Kenya Anti-Corruption Authority, was connected/linked to the Kshs. 5.3 billion cocaine haul and that the Plaintiff was a criminal and a drug trafficker.

This meaning is reasonable and clear, because if the Plaintiff was not in any way connected with the haul, there was no justification whatsoever in mentioning in the article, including his former position, in the context of the drug haul. The further meaning of the article is that the containers in the picture contained drugs and that the drugs were seized in a warehouse owned by the Plaintiff, a former director of Kenya Anti-Corruption Authority.



24. In support of this meaning the Plaintiff sought to rely on the decision in *In support of this meaning, the Plaintiff relies on the decision in Marleys Transport Pty Ltd & Anor.v West Australian Newspapers Ltd & Anor,*

where the newspapers published an article stating that long haul drivers were taking legal and illicit drugs to stay awake during their journeys, juxtaposed a truck next to the article in colours belonging to the Plaintiff. The Court held that the publication was defamatory of the Plaintiff, as one of the meanings available was that Plaintiff's had failed to address dangers arising from drivers consuming drugs and other illegal substances in their duty.

25. The Plaintiff's further submitted that in the matter at hand, the Defendants published an article showing people alleged to be police officers opening a container allegedly at Pepe Limited in Athi river, juxtaposed with the words "Cocaine: Police raid another warehouse", and "Police yesterday searched a warehouse belonging to Nairobi businessman and politician John Harun Mwau as investigations continued into the Sh. 5.3 billion cocaine haul. Officers searched Pepe Limited, the Athi River based warehouse belonging to Mwau, who is also a former director of the Kenya Anti-Corruption Authority".

The sting of naming the Plaintiff in connection with the cocaine haul and the container with people alleged to be police officer, in light of the fact that a container of cocaine was seized in a go-down in Embakasi was to impute that the Plaintiff, despite being a former director of the Kenya Anti-Corruption Court, was connected/linked to the drugs, and that indeed the container showed in the picture container drugs which is not the case.

26. The Plaintiff submitted that the second article published on 31st December, 2004, where a prominent and conspicuous photograph of the Plaintiff was juxtaposed against the title "Exposed: Drug Suspect in Dutch jail called MPs, other big names" "Cocaine: Minister's House is searched" meant that and was understood to mean that the Plaintiff was a drug suspect, that the Plaintiff knew something in relation to the alleged cocaine haul; that the Plaintiff associates with other big names and drug suspects in drug deals. There is no doubt that the meaning ascribe to the words can reasonably be drawn from the publication.

27. The Plaintiff cited the case of *Richard Otieno Kwach v the Standard Limited & Anor.* [2007] eKLR, the Defendants published the words, "Secrets of the Ringera Reports", "Loud Silence:Appeal Judge R. O. Kwach" and juxtaposed the judge's photograph to the words in relation to publications touching on corruption in the judiciary. The High Court held that the publication, including the juxtaposition of the judge's image with the allegations of corruption, meant that the judge was one of the corrupt judges, lacking in integrity and not fit to be a judge. In this matter, the juxtaposition of the Plaintiff's conspicuous and prominent photograph with the offending words ""Exposed: Drug Suspect in Dutch jail called MPs, other big names" created a meaning that the Plaintiff was connected to the drug haul in December, 2004.

28. It is the Plaintiff's submissions that it is trite that imputations of involvement in crime are defamatory in nature. In *Gatley on Libel and Slander*, 10th Edition, page 105, states as below in relation to imputation of crime:

"Imputations of crime. Many cases of defamation arise from statements which connect a claimant in some way with criminality and provide illustrations of what imputations will, in the eyes of the law, be conveyed to the ordinary reader. A statement by D that X says C is guilty of a crime conveys the imputation that C is guilty and the same is generally true if D



says that there is a rumour that C is guilty. In other words, such imputations must be justified by proof of guilt, not by proof that the statement was made by X or that the rumour exists."

29. On whether the Defendant's published the defamatory statement of the plaintiff to third parties, the Plaintiff submitted that the Defendant's publications by the fact that they made circulated and disseminated for sale to third parties in the country, by necessary implication, means that the same were published. In the matter at hand, PW2 confirms that he read the defamatory publications, which were widely circulated.

The Plaintiff further submitted that the Defendant's publications containing the complained of statements were newspapers with nationwide circulation, and were in fact circulated and distributed as such and the Defendant's admitted to having published the articles complained of.

30. Whether the statements made of and concerning the Plaintiff were false and untrue. The Plaintiff submitted that the Defendant's publications creating an imputation that he was linked or connected to the Kshs 5.3 billion cocaine haul is false and untrue and that the Plaintiff testified on oath that he is a law-abiding citizen, who has never been involved in any criminal activity, whether directly or indirectly, in Kenya or any other part of the world. Further, the Plaintiff confirmed that he was never a suspect nor was he charged or even questioned in respect of the alleged cocaine seized in December 2004.

31. Whether the statements were malicious, while citing the case of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR Justice Mativo (Now J.A) held:

Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice the Plaintiff submitted that the publication was made with malice, which defeats the defence of fair comment and entitles the Plaintiff to award of the damages sought.

32. The Plaintiff further submitted that while the report may well have been in the interest of the public, the way in which it was conveyed was arguably reckless. The inclusion of the Plaintiff's picture together with a caption that I find was, to say the least, "sensational", alongside the various allegations, would no doubt instill a belief in the reasonable man reading the paper that the allegations referred to the Plaintiff.

The logic in this case, is that pictures within an article are in fact connected to that article is simple. It seems that the Defence in this case cannot claim to be bereft of this simple logic, and as such, the inclusion of the Plaintiff's picture within the article and the fact that he, the Plaintiff would be connected to the substance of the article ought to have been within their contemplation at the time.

33. On these facts, if one can infer an intention to connect the Plaintiff with the stated allegations; and that the defence did so with the knowledge that this connection would result in harm; then there is no doubt that such an action would be malicious. In this case, given the facts, logic, and experience of the defence as a newspaper that convey information to the public that is trusted their failure to exercise due caution in the publication of their article appears tantamount to malice.

34. That the Defendants were reckless to the harm and damage the publication would cause the plaintiff, while publishing the complained of articles creating an imputation that the Plaintiff, a former director of Kenya Anti-Corruption Authority, was linked or connected to the cocaine haul, more so as the publication was deliberately done before verifying the facts or seeking comment from the Plaintiff. This leads to inference that the defendants were actuated by malice. This is so the malice in this matter is evident from the fact that when the Defendant's published the first article on 17th December, 2004,



the Plaintiff complained to the Defendants and made a criminal complaint to the police and made a demand for an apology to the defendant.

35. The Plaintiff asserted that despite the demand and criminal complaint being made to the Defendant's on 30th December, 2004 concerning the publication of 17th December, 2004, on the 31st December, 2004, with malice and in retaliation, the Defendants published the complained of article, now including a conspicuous and prominent photograph of the Plaintiff against the sensational words "Exposed: Drug Suspect in Dutch jail called MPs, other big names" on the front page. This republication and repetition of publications creating an imputation that the Plaintiff was connected to the drug was done with malice to further tarnish the plaintiff's name.
36. On whether the Defendant established and proved the defence of fair comment and truth, the Plaintiff submitted that the Defendant's defence of truth and fair comment ought to fail as the statement of defence did not point out what facts were true and that the Defendants had failed to point out what were the facts and what are the comments on which the facts are based.
37. In order to establish the defence of truth, the Defendant has an obligation to prove that the defamatory imputation is true.

While relying on *Gatley on Libel and Slander* 10th Edition at page 267, where the author states:

"It is a defence for the Defendant to establish that the imputation in respect of which he is sued is substantially true,..."

Gatley on Libel and Slander 10th Edition at page 274, makes it clear that what needs to be proved is the defamatory imputation thus:

"It is the imputation contained in the words which has to be justified, not the literal truth of the words, nor some similar charge not contained in the words... The issue of what may be advanced under a plea of justification is therefore closely linked to the meaning or meanings which the defamatory words are resonantly capable of bearing..."

38. In the case of *Spiller & another v Joseph & others* [2010] UKSC 53, Lord Phillips adopted with approval what the Court of Final Appeal of Hong Kong 1 characterized as the five "well established" "non-controversial matters" in relation to the defence of fair comment thus:-

First, the comment must be on a matter of public interest. Second, the comment must be recognizable as comment, distinct from an imputation of fact. Third, the comment must be based on facts, which are true or protected by privilege. Fourth, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded. Fifth, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views.

39. Taking guidance from the decision in *CAM v Royal Media Services Limited* Civil Appeal No. 283 of 2005 [2013] eKLR it is trite in law that an award of damages is a matter of judicial discretion by the court.

The Court of Appeal sated:

"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”.

40. On quantum of damages awardable to the plaintiff, factors to consider in determining the same has been settled in the case of *Elisha Ochieng Odhiambo v. Booker Ngesa Omole* [2021]eKLR whereof the court cited the jurisprudence relating to award of damages in defamation matters thus:-

“...a plaintiff is entitled to an award of damages and if so how much?..... he is entitled to recover the general compensatory damages of such sum as will compensate him for damages to his reputation...”

41. The Plaintiff in its submissions proposed an award in general damages of Kshs.15,000,000/= and exemplary damages of Kshs.3,000,000/= relying on the cases of:-

- a. *William Kabogo Gitau v The Standard Group* (Civil Appeal No. 74 of 2011) where the Court awarded general damages of Kshs 12,000, 000 and exemplary damages of Kshs 1,000, 000.
- b. In the case of *Samuel Ndung'u Mukunya v Nation Media Group Limited & Anor*, the Court awarded general damages of 15,000,000/=, aggravated damages of 3,500, 000/= and Kshs 1,500, 000/= to the plaintiff in lieu of an apology.
- c. In *Kipyator Nicholas Kiprono Biwott-v-Clasy Limitd and 5 others* [2000] eKLR, general damages of Kshs 10, 000, 000 and exemplary damages of Kshs 15, 000, 000 were awarded to the plaintiff; further in
- d. *Hon. Christopher M. Obure v Tom Alakwa & Others HCCC No. 956 of 2003* the Court awarded general damages of Kshs 15,000,000/= and exemplary damages of Kshs 2,000,000/= to the plaintiff.
- e. In *Francis Muthaura v Nation Media Group & Maina Kiai* [2025] eKLR the court awarded to Plaintiff who at the time of defamation was a high ranking civil servant, the court awarded him a sum of Kshs. 6,000,000/= in general damages, Kshs. 1,500,000/= aggravated damages and Nil damages in exemplary damages.

42. This suit was filed in 2005. The above awards resonate well with this suit in terms of time they were filed. The court has taken due consideration to inflation in arriving at the quantum of damages awardable to the plaintiff.

43. Upon careful consideration of the totality of the plaintiff's complaints and claims against the defendants defence, the court is persuaded that the plaintiff has made out clear case of defamation by the 1st defendant against the plaintiff sufficiently to attract awards of damages. The 2nd and 3rd defendants, as employees, servants and/or agents of the 1st defendants are absorbed from liability, the plaintiff having failed to show and demonstrate their personal roles in the plaintiffs claim and complaints in their personal capacities as sued.

44. Consequently, judgment is hereby entered for the plaintiff against the 1st defendant, the Standard Limited as follows:-

- a. Liability - 100%



- b. Quantum of damages
 - i. General damages – Kshs. 7,000,000/=
 - ii. Exemplary damages - Kshs. 1,000,000/=
 - iii. Special damages – Nil
- c. Prayer (d) in the plaint is denied
- d. Interest on (b) (i) and (ii) at court rates effective 45 days from the date of this judgment until payment in full.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF MARCH, 2025

.....
JANET MULWA.
JUDGE

