



Mwaura t/a Karuru Mwaura & Co Advocates v Kanyi (Civil Case 550 of 2012 & 343 of 2013 (Consolidated)) [2024] KEHC 2108 (KLR) (Civ) (29 February 2024) (Judgment)

Neutral citation: [2024] KEHC 2108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 550 OF 2012 & 343 OF 2013 (CONSOLIDATED)
JN MULWA, J
FEBRUARY 29, 2024**

BETWEEN

**DANIEL KARURU MWAURA T/A KARURU MWAURA & CO
ADVOCATES PLAINTIFF**

AND

JOHN MWANGI KANYI DEFENDANT

**AS CONSOLIDATED WITH
CIVIL CASE 343 OF 2013**

BETWEEN

**DANIEL KARURU MWAURA T/A KARURU MWAURA & CO
ADVOCATES PLAINTIFF**

AND

JOHN MWANGI KANYI DEFENDANT

JUDGMENT

1. The Plaintiff trading in the name and style of Karuru Mwaura & Company Advocates sued the Defendant in the two consolidated suits by a court order dated 17/09/2019 (Mboghli J. as he then was) as they involve the same parties and similar dispute being defamation.
2. Hcc. No. 550 of 2012 was filed following publication by email dated 10/11/2011. Despite demand to apologize having been send out to the defendant, he failed to apologize.



On 25/08/2012, the Defendant published another defamatory matter concerning the plaintiff. This necessitated filing of Hccc. No. 343 of 2013.

Once again, by a letter dated 21/08/2017, the Defendant published yet another letter that the Plaintiff deems defamatory. This particular letter is an exhibit in the Hccc. No. 550 of 2012.

That is why the Plaintiff describes the Defendant “a serial defamer” in his submissions dated 2/08/2023.

HCCC NO, 550 OF 2012

3. The plaint is dated 8/11/2012 and the offending email is dated 10/11/2011. It is addressed to Hon. Peter Kenneth who was then the Member of Parliament for Gatanga Constituency in Muranga County and copied to the Plaintiff and Gatanga Kwao Limited. It reads as follows: -

“After a long struggle and painstaking as MR. Karuru had threatened to sell my 4 acres of land because of the outstanding charges he had not indicated me in writing until that letter of 4th March, 2011.....”.

“it is unfortunate that I cannot prove to you that MR. Karuru had offered me very attractive terms to buy my farm of which, to his dismay I declined. I still think he still harbors that ambitions and tries on every opportunity to surrender my farm to him and panics whenever there is a positive sign that I might afford to pay outstanding charges.”

“What I know for sure is that lawyers study law to resolve conflict and not how to start one”.

“Mr. Karuru had been my friend, my lawyer and initially a close Gatanga Kwao Chairman, my empirical experience with him is that he lacks the basic circuitry for empathy as far as I am concerned. When he decided on a court against me, I am unable to convince him to identify with my feelings, needs and concerns.

I can no longer take him for granted..... I will take that seriously and to prevent him from selling my farm in the guise of non-payment thus pushing me to the wall.”

4. The Plaintiff claims that by publishing, printing and writing the said Email the Defendant meant and was understood to mean that: -
- a. The plaintiff is a swindler
 - b. The plaintiff as an advocate is a person of questionable character who lacks professional ethics and is unworthy of respect and trust.
 - c. The plaintiff is unfit to practice as an advocate who should be ostracized from the legal profession.
 - d. The plaintiff is a land grabber
 - e. The plaintiff acquired properties through unorthodox means
 - f. The plaintiff is a manipulator and arm twister of persons working and/or under his leadership
 - g. The plaintiff is a trouble maker and engage in underhand deals.
 - h. The plaintiff lacks human feelings, he is a dictator and hence ought to be ostracized by members of the public
 - i. The plaintiff is a criminal;



- j. The plaintiff lacks respect of the law(s) and hence unfit to occupy any public office
 - k. The plaintiff is dishonest and corrupt.
5. The plaintiff therefore sought: -
- a. Permanent injunction to restrain the defendant by himself his agents, servants and/ or employees from publishing, printing, Circulating writing any defamatory matter(s) concerning the plaintiff as an advocate and former Director and chairman of Board of Directors of Gatanga Gardens Company Limited.
 - b. General, punitive and exemplary damages
 - c. Costs
 - d. Interest
6. The defendant in his statement of defence denied that the allegations published of the plaintiff carried the meaning/innuendos stated at the plaint, and puts the plaintiff to strict proof.

HCCC NO. 343 OF 2013

7. The plaint is dated 21/08/2013 and the offending publication is dated 25/08/2012 . At paragraph 4, it states: -

“.....I also had a lot of misgivings about the newly acquired lavish life Mr. Karuru was leading..... His tongue could however slip occasionally and tell me about the money he has acquired as result of selling parcels of Samuru Land”

“.....it was obvious the subdivision was mooted to create Revenue for MR. Karuru in the sense that subdivision was compulsory and on the other hand amalgamation was optional”

“..... I personally thought he was trying to find a way of making revenue considering that he had handpicked his surveyor friend to carry out the survey”

“.....I thought he wanted to take advantage of the situation by giving me an offer of Kshs. 1.5m per acre for my parcel of land. He actually deriding in my financial illiquidity and wrong believed I was desperate that any offer of money would be alluring”.

“but of course he wanted profit out of my parcel of land! It is only God who would know the kind of street I got from Mr. Karuru and the whole business”

“..... I had suspected a lot of foul play in the purchase of Samuru firm and the moneys paid by the members.....”

“he also sent me a letter indicating he will no longer represent me in my cases. He also escalated the charges of the current and past cases he had undertaken for me except for the past accident case of my KAB 064U car in which he did not reveal to me the details of the court award compensation. He further threatened to tax the escalated charges to court”

“the threat of selling my land from and to Karuru increased..... At the back of mind, I thought he knew I did not have another alternative of getting money except by selling to him my parcel of Samuru farm.....”

“..... Mr. Karuru had by now accumulated a lot of wealth which in Kenyan context goes with power and arrogance such that he could defy our patron; the Hon. Peter Kenneth”



“..... I therefore knew for the time the ballot numbers MR. Karuru had assigned for me the 8 half acres parcels during the signing.

“..... MR. Karuru ignored this fact in pursuit of his greed for making more money”

“.....He must have sold my original parcel of land and later on dumped me there as a punishment of my refusing him to buy land, accompanied by greed for getting more money.....”

“I now wish the LSK to investigate the transactions of the Samuru farm from its original owners to Gatanga Kwao members, thereafter to Mr. Karuru as the new land owner and how many acres he had sold and pocketed the money as the new owner and to account for it.....and he should not fool anybody about the moneys he had collected.....”

“It is obvious that my land was in a location where it was worth that money especially from a Kikuyu capitalist like MR. Karuru”

“.....my empirical evidence about him is that he lacks the basic circuitry for empathy that renders him as the lowest form of human slime”

8. By the above publication, the plaintiff claims that the said publication meant and was understood to mean that: -

- i. The plaintiff as an Advocate is a person of questionable character who lacks professional ethics and unworthy of respect and trust
- ii. The plaintiff is unfit to practice as an advocate
- iii. The plaintiff should be ostracized from the legal profession\
- iv. The Plaintiff should be struck off the role of Advocates
- v. The Plaintiff has committed offences by misappropriation of company funds
- vi. The plaintiff has breached company’s laws and should be prosecuted and/or punished.
- vii. The plaintiff is a thief and unfit to hold any office be either private and/or public
- viii. The plaintiff is a social misfit and should be ostracized from the society
- ix. The plaintiff is greed and bent to benefit from misfortune of others
- x. The plaintiff is a fraudster
- xi. The plaintiff is corrupt
- xii. The plaintiff is a swindler
- xiii. The plaintiff is a land grabber

He therefore sought: -

- a. General, punitive and exemplary damages
- b. Costs
- c. interest



Plaintiff's Case

9. The plaintiff testified in respect of the two cases as PW1, and called two witnesses. His testimony was that he is an advocate of the High Court of Kenya, a law degree holder from Indore University India, a Bachelor of Arts Degree in economics and a Certificate in Governance and Leadership from Kenya School of Government and a certificate in Audit from Dubai. He added that at the material times he was a Director at Kenya Electricity Transmission Company and chairman of Gatanga Kwao Limited.

His evidence was that the defendant was not a stranger to him having known him from 2004 as Chairman of Gatanga Company Limited and his client in numerous cases during the period 2010-2011 when the Advocate-client relationship ended.

10. He produced his witness statements dated 8/11/2012 and 19/08/2013 and his bundle of documents which he adopted as his evidence in chief. He testified that the first offensive letter dated 25/08/2012 was written by the defendant to the Law Society of Kenya and came to know about it when he was summoned by DCI to go to record a statement which he did and upon investigations, nothing came out of it.

The Law Society by a letter dated 19/09/2012 also notified him of the complaint and sought his comments which he did by letter dated 1/10/2012. He further testified that by a letter dated 23/04/2013 the law society dismissed the complaint.

11. On cross examination by the Defendant's Advocate Ms. Ashi, it was his evidence that as chairman of the Gatanga Kwao Limited, the role placed him in a place of accountability and trust by the members and all acted collectively as a Board of Directors and that all the minutes of the Board are documented, and produced them as they arose from the Board meetings dated 8/09/2009 1/02/2009 and 2/06/2009 when the Board resolved to sub-divide the company land into 1 acre plots. He told the court that the proposal for the sub-division was made by the defendant and no board member voted against the resolution.

12. On the 1st offensive letter dated 10/11/2011 and stated in the plaint in Hcc No. 550 of 2012 it was his evidence that the said letter was addressed to Hon. Peter Kenneth then Member of Parliament for Gatanga Constituency in Muranga County, and copied to him via his official law firm email address where all his employees had access and read it including his legal associates.

It is then that he sent out the demand letter to the defendant seeking an apology by a letter dated 29/10/2012 but no response was received.

He further testified the defendant continued to defame him and by a letter dated 21/08/2017, the defendant wrote to LSK on matters/cases I had handled for him on an advocate-client bill of costs, stating to LSK that I was evil, intolerance, vindictive, jealous. Once again this letter was read by my staff in the office. He stated that his letter was published to LSK.

He wrote another letter to LSK dated 25/08/2018 whereupon LSK demanded an explanation from him which he did as a statutory requirement. Once again LSK dismissed the complaint.

13. It was his further evidence that by all these defamatory letters to various bodies and persons, he suffered loss and damages and that in 2013 he ceased to be chairman of Gatanga Kwao Company Limited due to the continued harassment by the defendant and had decided to avoid going to public functions where the defendant would go to avoid the embarrassment and innuendos including attending shareholders meeting where he had put his money and wherein he accuses him of being greedy and fraudulent.



In re-examination PW1 reiterated that he has gravely suffered as an Advocate and a family man and that after the offensive letters were circulated, meetings between himself, Hon. Peter Kenneth and defendant ceased.

14. In his view PW1 stated that his complaints about the company ought not have gone to the LSK but if the defendant had issues with him as an Advocate, the correct forum ought to have been the Advocates Dispute Tribunal or the Advocates Complaints Tribunal.
15. PW2 was Joseph Gitachio Thiga, a retired banker and farmer. He testified to have known both the plaintiff and the defendant for over 50 years. He recorded his witness statement dated 8/11/2020 and adopted the same as his evidence in Chief.
16. PW3 was one Angela Kabura Theuri. She adopted her statement dated 5/12/2012. Her evidence was that she worked for the Plaintiffs Law Firm since 2002 and knew the defendant since 2005 when he became a client of the firm. On cross examination she testified that it was her duty to open letters addressed to the law firm and indeed opened the offensive letters and read them as well as letters addressed to the chairman of Gatanga Kwao Company Limited where the Plaintiff was the chairman. She testified that the said letters were tagged take over 40 members of the company
She testified that the letters were demeaning and defamed her employer, the plaintiff.
17. PW4 was one Danel Gichuru Ngugi an Advocate of the High Court of Kenya of 22 years practice practicing in the firm of Gichuru & Gichuru Advocates, Nairobi. He told the court that he knows the Plaintiff for the last 17 years and also knows the defendant. He relied on his two witness statements in both cases dated 7/11/2012 and 21/08/2013 respectively. He testified that he was instructed to act for Gatanga Kwao Ltd, a company related to Gatanga Gardens Limited for sub-division and sell of the company land, together with others including a planner.

In cross examination, PW4 testified that he was appointed in a competitive process and he was thereafter instructed by the Board of Directors. He fully relied on his witness statements as his evidence in chief.

Defendant's Case.

18. DW1 was the defendant John Mwangi Kanyi, who described himself as a licensed Aircraft Engineer for 40 years. He relied on his evidence in chief and his witness statements dated 14/11/2013 in Hccc. 343 /2013 in respect of Hccc. 550/2012. He also relied on his bundle of documents dated 3/10/2018 and 13/11/2017 (d Exhibit 1 – 4, 6-13).

On cross examination, the defendant (DW1) denied knowledge of the letter written to the Law Society of Kenya of and concerning the plaintiff dated 21/08/2017. Upon reading the same, he testified that the letter referred to LSK, not to the plaintiff's law firm but confirmed the signature to have been his. He too confirmed writing a letter to CID complaining about the plaintiff but that CID found no enough evidence.

DW1 also confirmed having written the letter dated 25/08/2012 to LSK and on email to Hon. Peter Kenneth and copied to Plaintiff. Upon being prompted, DW1 stated that he had no evidence that the plaintiff was forcing him to sell his land parcel to the company.

19. He further testified that by the letter dated 10/11/2011 he had no intention to defame the plaintiff but was writing to protest and sought investigations by LSK. Additionally, it was his evidence that he was writing about the character of the plaintiff but that the complaints were dismissed. He denied that he always wanted to defame the plaintiff by his letters.



On re-examination, DW1 testified and confirmed that he wrote many letters of and about the plaintiff with intention to prevent him from selling his land of four parcels. It was his evidence that the letters he wrote to LSK complaining about the plaintiff were to safeguard his land from being sold.

20. The defendant closed his case without calling witness. Parties were directed to file submissions. Only the plaintiff filed submissions despite the defendant having been given an opportunity to file his submissions on two occasions, on 4/07/2023 and 28/09/2023.

Analysis And Determination

21. I have carefully considered the pleadings, evidence and submissions (by the plaintiff) as well as the authorities cited, from which the following issues for determination are flagged: -

1. Whether the letters authored by the plaintiff of and concerning the plaintiff dated 10/11/2012 and 25/08/2012 as appears in the plaints in both suits are defamatory of and concerning the plaintiff's character and in his professional and business ventures.
2. Whether the defendant's statements of defence in both suits have any weight against the accusations.
3. Who bears costs of the suit.

22. By the said published letters, the plaintiff claims (in his suits) that the plaintiff as an Advocate is a

- a. A person of questionable character, who lacks professional ethics and unworthy of respect and trust.
- b. Is unfit to practice as an advocate
- c. Should be ostracized from the legal profession
- d. Should be struck off the role of Advocates
- e. Has committed offences by misappropriation of company funds.
- f. Has breached company's laws and should be prosecuted and/or punished.
- g. Is a thief and unfit to hold any office be it private or public?
- h. Is a social misfit and should be ostracized from the society
- i. Is greedy and bent to benefit from misfortune of others
- j. Is a fraudster
- k. Is corrupt
- l. Is a swindler
- m. Is a land grabber.

23. The law of defamation is underpinned under various statutes.

Article 32(1) of *the Constitution* provides that every person has the right to freedom of conscience, religion, thought, belief and opinion. That freedom of expression is fundamental.

Article 33(1)(a) provides that every person has the right to freedom of expression which includes freedom to speak, receive or impart information or ideas.



However, clause (3) provides that in exercise of the right to freedom of expression, every person shall respect the rights and reputation of others (emphasis added)

This is the constitutional fulcrum of the law of defamation- as ably stated in the case Kipyator Nicholas Kiprono Biwott v Clays Limited, & 5 others [2000] KLR, and applied in Phineas Nyagah v. Gitobu Imanyara [2013] eKLR

24. From various decisions of the Superior Courts, Defamation is defined as the publication of a statement which tends to lower a person in the estimation of right thinking members of the society generally or tend to make him be shunned or avoided, tends to injure the reputation of the person to whom it refers by further causing him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem, by an attack upon the moral character of the plaintiff attributing to him any form disgraceful conduct such as crime, dishonesty, cruelty among other adverbs.

Further, as stated in Phineas Nyagah V. Gitobu Imanyara [2012] eKLR an action for defamation is essentially an action to compensate harm done to a person's reputation. It is not about publication of falsehoods against a person. It is necessary to show that the published falsehoods disparage the reputation of the plaintiff or tended to lower him in the estimation of right thinking members of the society.

25. Additionally, the words complained of must be maliciously published and malice can be inferred from a deliberate or reckless or even negligently ignoring of facts – see J. P. Macharia Vs. Wangethi Mwangi & Nation News Papers in Civil Appeal No. 179 of 1997.

Further, malice may be inferred from the relations between the parties before or after the publication or be found in the language used if utterly beyond the facts.

Also, failure to inquire into the facts is a factor from which inference of malice may properly be drawn. Any evidence that shows that the defendant knows the statements were false or did not care whether they be true or false will be evidence of malice – see also Godwin Wachira v. Okoth [1977] KLR 24 and J. B. Machira vs. Wangethi Mwangi (supra)

26. Against the above principles, the court must also consider the defence if any, mounted by the defendant; - defence of justification fair comment or privileged communication.

In the instant case, the defendant in his statement of defence pleaded lack of malice in raising the complaints to the law society of Kenya and to the CID and Publishing the same to various other individuals and bodies including the law Society Complaints Commission and Tribunal.

It is a further defence that even if the complaints were dismissed by the Law Society Complaints Commission, the statements therein did not and cannot amount to defamation as the same were made pursuant to the complaints before a competent and statutory tribunal exercising quasi-judicial jurisdiction.

Further the defendant stated that the said publication of and concerning the plaintiff were privileged communication and therefore not defamatory.

27. The plaintiff by his witness statements averred that at all material times, he and his Law firm acted upon instructions received from the Board of Directors of Gatanga Kwao Limited to represent it in a sale transaction in respect of the land parcel situated at Thika in Kiambu and that the instructions were carried strictly pursuant to the instruction from the Board. It is noted that in both occasions the defendant failed to offer apologies or any explanation upon being served with demand letters by the plaintiff. It is therefore the Plaintiff's submission that the defendant continued publication of the same defamatory publication even after the plaintiff sued him in Hccc. No. 550 of 2012 and Hccc.



No. 343 of 2023 demonstrates the character of the Defendant and extreme malice and hatred towards the plaintiff.

28. To that extend the Plaintiff submitted that the conduct of the Defendant before and during pending of the cases calls for colossal awards of damages and permanent injunction as prayed in the plaint. This is the position taken by the court in the case J. P. Machira V. Wangethi Mwangi & Nation Newspapers (supra).
29. To succeed in a defamation suit, the plaintiff must establish and proof the following elements:
- a. The libel must be published by the defendant
 - b. The published words must refer to the plaintiff
 - c. The statement as published must be false and defamatory of the plaintiff
 - d. It must be published (communicated) to at least one person other than the Plaintiff.
 - e. That the publication was malicious.

Further, the plaintiff must establish that the publication complained of is defamatory to his character – see Samuel Ndung’u Mukunya vs. Nation Media Group & another (2015) eKLR.

30. During cross examination of the Defendant, he admitted having written the offensive letters to LSK, CID, DPP, DCI and copied to Hon. Kenneth, Member of Parliament for Kandara Constituency and to members of Gatanga Kwao Company. He also admitted having known the plaintiff since 2004, yet he knew and admitted having had no evidence that the plaintiff was forcing him to do what he alleged against him.

In his own admission, the defendant therefore knew that his publications of and concerning the plaintiff were false, malicious and defamatory of the plaintiff we – see J. P. Machiara case (supra).

Further, there is no dispute that the said defamatory publications were communicated and published to not one, but to many other persons as stated above.

31. As to whether the publications were actuated by malice and/or malicious, upon cross examination, the defendant told the court that he was trying to safeguard his land parcel from being sold by the plaintiff, who he also stated was his personal advocate prior to the said publications.

Yet the defendant did not call any evidence or adduce any evidence that the plaintiff had threatened to sell his land parcel the necessitate him to defame him to all the named persons including members of the Gatanga Kwao Co-Limited.

32. It is therefore not sufficient that the defendant stated to have had no intention to defame the plaintiff, not once but twice in succession forcing the plaintiff to institute suits against him in 2012 and 2013.

By the above including admissions of facts about the plaintiff by the defendant, the court is satisfied that the plaintiff has successfully proved the four elements that a plaintiff must demonstrate in a defamation case.

33. The plaintiff is an active advocate of the High Court of Kenya. He testified that at the material times, the defendant knew and was fully aware that:
- i. He never acted for the defendant in his private capacity or his advocate in the Samuru Farm transactions.
 - ii. That the farm in question was owned by Gatanga Kwao Ltd



- iii. That both the plaintiff and the defendant were shareholders in Gatanda Kwao Limited.
 - iv. That the Plaintiff was a founder Chairman of Gatanga Kwao Ltd.
 - v. That the sale and transfer of Samuru farm was being handled by M/S Gichuru & Gichuru Advocates.
 - vi. That the defendant had received demand letters from Gatanga Gardens Ltd for unsettled charges.
 - vii. That following thereof, the defendant made cheques for Kshs. 50,000/= to Gatanga Kwao Ltd as stated in Hcc. No. 550/2012.
 - viii. That he knew that Hon. Peter Kenneth was not an official of the two companies, Gatanga Kwao Ltd, nor Gatanga Gardens Ltd.
 - ix. He was fully aware of the company's minutes by the Board of Directors who appointed a consortium of other professionals to advise the company on developments, subdivision and transfer of Samburu farm.
34. And therefore, there was no reason or iota of truth why the defendant chose to defame the plaintiff to all the parties he did with the wide knowledge of the management of the companies. This in my view could only be due to extreme hatred and malice and intermingling with the company's affairs unfairly and for no reason.

Further, the court fully agrees with the plaintiff in his submissions backed by evidence adduced before the court that he never enriched himself from the allegations of fraudulent dealings in the land transactions nor that he was greedy, unprofessional, misconducted himself or was unbecoming of an advocate.

What this court can deduce from the defendants conduct and behavior before and during the pendency of the two cases is that the publications were actuated by hatred, malice, were false, untrue, spiteful, reckless and negligent. This is despite that the defendant is not an illiterate person but a very well knowledgeable Aircraft Maintenance Engineer by profession as he described himself and was only meant to destroy the plaintiff's professional career as an advocate as well as his character and reputation in his other business ventures and as a family man.

35. To support damage to his reputation and good character as a reputable advocate, one Angela Kabuta Theuri, testified as PW3 and she had worked in the plaintiff's law firm since 2002, and was her duty to open letters written to the firm. She read all the letters and responses from the defendant in respect to the suits herein. Her evidence was that she could not ascertain the truth, and felt tha the plaintiff was defamed.

PW4 Daniel Gichuru Ngugi as an advocate of the High Court, testified to have known the plaintiff as an advocate for over 17 years, he also knew the defendant. He testified to have worked as an advocate for Gatanga Kwao Ltd in several land transactions. He was one of the professionals appointed by the Board of Directors.

On the offensive letters published by the Defendant, it was his statement and evidence that both himself and the Plaintiff were appointed by the Board of Directors and therefore were acting on instructions by the Board and that the publication by the defendant had no truths, were false of and concerning the plaintiff and were therefore defamatory of his character and reputation and as a professional advocate.



36. In the case *Phinea Nyagah V. Gitobu Imanara* (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 disproportion 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”.

Also in the case *Rodger Abisai t/a Abisai & Co. Advocate vs. Waruru Wachira & Another* CA. 12/2003 cited in *Samuel Ndungu Mukunya* (Supra) the court held that imputation of corruption which is a criminal offence by the defendants deprives them of the defence of fair comment.

37. When the defendant published the letter under review and invited the CID and DCI to investigation, nothing was short of implying that the plaintiff was involved in criminal activities; which if turned out to be true would have caused the plaintiff dire consequences including criminal prosecutions and loss of trust from his clients as a professional advocate.

Upon careful analysis of the evidence the court finds that there was no justification whatsoever in publishing the offensive letters of and concerning the plaintiff to the parties he did with full knowledge that they were not true, were false malicious and knew the consequences and implication on the plaintiff's reputation and character in his personal and professional businesses.

38. The defendant's defences are therefore not available to him. The court finds and holds that the Plaintiff has successfully demonstrated that the offensive publications by the defendant injured his personal private and professional standing in the society and to the right thinking members of the society and therefore entitled to restitution by way of compensation in damages for the injury to his reputation which he was publicly defamed by way of vindication of the plaintiff to the public and as a consolation to him for a wrong done for no reasons at all.

Compensation is a solace rather than a monetary recompense for harm measurable in money as held in the court of Appeal by Windeyer J. in *Uren V. John Fairfax & Sons PTY Ltd* 117 C L. R. 115; cited in *Samuel Ndung'u Mukunya* (Supra)

Damages

39. In urging the court to award him Kshs. 12 million general damages, Kshs. 3 million as punitive and exemplary damages as well as Kshs. 5 million aggravated damages for repeated publications and lack of remorse, the plaintiff described the defendant as a “serial defamer” and cited several cases: -

- a. In *Ken Odondi & 2 Others v. Jamas Okoth Omburah t/A Okoth Ombura & Co. Advocates* (2013) eKLR, an award of Kshs. 7 million as general damages and Kshs. 500,000/= aggravated damages were awarded in 2013.
- b. In *Samuel Ndungu Mukunya* (supra), Kshs. 15 million general damages, Kshs. 3.5 million aggravated damages were awarded in lieu of an apology in 2019.
- c. *Michael Kamau Mubea v. Nation Media Group & 2 others* (2019) eKLR, awards OF Kshs. 7 million general damage, Kshs. 3 million aggravated and exemplary damages in 2019.

40. I have considered the above decisions and others. Failure by the defendant to offer an apology for the first publication dated 10/11/2011 and the 2nd publication dated 25/08/2012, and the magnitude of the said publications coupled with the innuendos that the plaintiff has stated in the suits and the injury to the plaintiff's reputation and character to his person and professional business, I find the defendant's conduct before and during the pendency of the cases and during the hearing of the cases intentional,



reckless, malicious, hateful, spiteful, unbecoming of the defendant a well knowledgeable person in the society and therefore undeserved.

41. Taking into account all factors necessary and being minded of the purpose of compensatory damages in defamation cases, I award to the plaintiff the following damages: -
- a. General damages – Kshs. 8 million
 - b. Aggravated and exemplary damages – Kshs. 3 million
 - c. Punitive damages Kshs. 2.5 million

The plaintiff shall have costs of the two suits.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2024.

J. N. MULWA

JUDGE

