



REPUBLIC OF KENYA



**KENYA LAW**  
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**Saruni v Mulinge & 2 others (Civil Appeal 5 of 2017)  
[2024] KEHC 1910 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1910 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CIVIL APPEAL 5 OF 2017  
RK LIMO, J  
FEBRUARY 27, 2024**

**BETWEEN**

**DAVID SARUNI ..... APPELLANT**

**AND**

**DENNIS NTHIWA MULINGE ..... 1<sup>ST</sup> RESPONDENT**

**STANDARD GROUP LTD ..... 2<sup>ND</sup> RESPONDENT**

**NATION MEDIA GROUP LTD ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This suit herein is based on the tort of defamation. David Saruni, the plaintiff herein who describes himself as a public servant with a good reputation and a good person with high moral standing integrity and professional competence deservedly held in high esteem by his family, friends, colleagues and the general public.
2. The Plaintiff pleaded that he was a public servant working in Kitui County at the material time and that on 28<sup>th</sup> March 2017, he learnt about a confidential letter addressed to the County Commissioner Kitui by the 1<sup>st</sup> Defendant. An excerpt of the said letter is pleaded at paragraph 7 of the plaint as follows;

“The person at the center of it is Mr David Saruni (DCC-Lower Yatta) ...Before going into a relationship with my lawfully wedded wife, he, Mr Saruni had prior knowledge that she was married.”



3. The Plaintiff continues that on 31<sup>st</sup> March 2017, the 3<sup>rd</sup> Defendant published an article in its publication, the 'Daily Nation' titled 'Man accuses boss of wrecking his marriage'. An excerpt of the said article as contained at paragraph 10 of the plaint is reproduced as follows;

“A 31-year-old clerk at the Interior Ministry is accusing his boss of destroying his seven-year marriage after he allegedly eloped with his lawfully wedded wife. Dennis Nthiwa Mulinge is now seeking the intervention of interior Cabinet Secretary Joseph Nkaisery to save his marriage and wants the administrator, Mr Saruni, restrained from seeing his wife”. Kitavi Mutua”.

4. The Plaintiff further contends that on 7<sup>th</sup> April 2017, the 2<sup>nd</sup> Defendant through its publication, the Nairobiian published an article titled “County Commissioner has gone kuku over my wife”. An excerpt of the article as contained at paragraph 11 of the plaint is reproduced as follows;

“Dennis Nthiwa Mulinge, 31, who works at Kisasi Deputy Commissioner’s office is accusing Lower Yatta DCC Saruni of “Chewing” his lawfully wedded wife, Eunice Mbithe”

5. The plaintiff further claims that he the 1<sup>st</sup> defendant cited above dated 28<sup>th</sup> March 2017 was slanderous because the words in their ordinary meaning or by imputation innnerdo were understood to mean that he was;

- a. Corrupt
- b. Greedy
- c. Unethical and unscrupulous
- d. Adulterous
- e. Unprofessional and
- f. Morally unfit to hold a public office.

6. The plaintiff claims that the lady mentioned in the defamatory letter reportedly wrote a letter refuting the allegations and accused the 1<sup>st</sup> defendant for defamation of character.

7. He further pleads that despite the letter refuting claims having been written, the 1<sup>st</sup> defendant proceeded to share the story with the 2<sup>nd</sup> defendant who posted on social media vide its Facebook page attracting comments from the people who read the story.

8. The Plaintiff contends that the publication of the statements was calculated to and did in fact injure his character and reputation as a public servant and upright member of society in the eyes of right-thinking members of the society causing him embarrassment, discomfort and distress. The Plaintiff further averred that his employment was threatened as there were threats of his interdiction.

9. He claims that the publications were malicious, oppressive spiteful calculated to injure, disparage, lower his esteem with which the public and right-thinking members who highly regarded him adding that the same has brought his character to grave public ridicule, hatred, odium and contempt from the public.

10. The 2<sup>nd</sup> Defendant filed its defence dated 1<sup>st</sup> February 2018 and denied publishing false statements against the plaintiff and further contended that the plaintiff was contacted prior to the publication and accorded an opportunity to address, comment or reply to the statements.



11. The 3<sup>rd</sup> Defendant filed its defence dated 14<sup>th</sup> February 2018 on 20<sup>th</sup> February 2018 where it admitted to publishing the article of 31<sup>st</sup> March 2017 but denied claims that the article was false, defamatory or published maliciously. The 3<sup>rd</sup> Defendants contends that the statements contained in the article were true and accurate account of the letter dated 28<sup>th</sup> March 2017.
12. At the trial the plaintiff testified that he learnt on 28<sup>th</sup> March 2017 about a confidential letter written by the 1<sup>st</sup> defendant addressed to his immediate supervisor, the County Commissioner of Kitui and copied to CS & PS Ministry of interior and Co-ordination of National Government.
13. He further stated that as a consequence he was summoned to record a statement with the police over the allegations made.
14. He testified that on Friday the 31<sup>st</sup> March 2017 while undergoing his duties he was informed by a colleague that the 3<sup>rd</sup> defendant's newspaper had carried a story at Page 31 accusing him of destroying someone's seven year marriage. He stated that the lady with whom he was being accused of having and illicit affair with namely Eunice Mutisya Mbithe wrote a letter to the County Commissioner Kitui, refuting the claims and giving reasons behind the arrest of the 1<sup>st</sup> defendant.
15. He states that despite the letter written by the said lady he was again alerted in April 2017 that the 2<sup>nd</sup> defendants publications known as "Nairobiian" had run a story at page 11 on a full page headed;  
"County Commissioner has gone kuku over my wife- clerk".
16. The plaintiff says that he was shocked when he read the publication adding that the defendant shared the story through its official Facebook page without bothering to contact him to verify the claims.
17. The plaintiff testified that the defendants were out to tarnish his name and have him sacked from his employment. He tendered the impugned letter dated 28<sup>th</sup> March 2017 authored by the 1<sup>st</sup> defendant as Pexb1 and a newspaper article by the 3<sup>rd</sup> defendant of 31<sup>st</sup> March 2017.
18. He stated under Cross examination that the letter dated 28/3/2017 (P exb1) was authored by one Dennis Mulinge (1<sup>st</sup>) the person who was complaining that his wife was having affairs with him and that as a public officer his actions are often under public scrutiny. He further conceded that Mr. Mulinge was his junior though not working under him but in another subcounty and that in his letter he sought the intervention of County Commissioner and the Ministry of Interior because his marriage was reportedly at stake and that the report carried by the 3<sup>rd</sup> defendant was on what replica of a letter dated 28<sup>th</sup> March 2017 by Dennis Mulinge. He also said the letter by Mulinge's wife refuting the claims was unsigned but insisted that the allegations contained in the impugned letter by Mulinge were untrue. He stated that the right to inform the public does not extend to publishing falsehoods.
19. Daisy Kimathi (PW2) a witness availed by the plaintiff testified that he was a digital marketer helping clients market their services & products online. Her attempt to tender electronic evidence regarding social media report's that carried out the impugned story met stiff resistance from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' lawyers over failure to comply with the law of evidence and the objections was sustained by this court. The plaintiff therefore closed his case without the said evidence on social media reports.
20. The 2<sup>nd</sup> defendant on its part opted not to call any witness in his defence.



21. The 3<sup>rd</sup> defendant called Kitavi Mutua (DW1) who confirmed that he was the author of the impugned story carried by the 3<sup>rd</sup> defendant. He stated that the story was carried by the Daily Nation Newspaper on 31<sup>st</sup> March 2017 and the story was headed;

“man accuses his boss of wrecking marriage”.

He pleaded justification for authoring the article because he said he conducted investigations from the 1<sup>st</sup> defendant who confirmed to him that he wrote a letter dated 28<sup>th</sup> March 2017. He stated that the 1<sup>st</sup> defendant was a person he personally knew because he worked in Kitui Town.

22. He further told this court that it is the 1<sup>st</sup> defendant who actually called him over phone and told him that he had story he wanted published and that he went and met him whereupon he gave him a copy of the said letter dated 28<sup>th</sup> March 2017 addressed to the County Commissioner and the Cabinet Secretary with Interior.
23. He further testified that when he got the copy of the letter he contacted the plaintiff whom he knew as the Deputy County Commissioner Lower Yatta and that the plaintiff reportedly told him he had no comments over the allegations contained in the letter. He stated that he also contacted the County Commissioner then, who reportedly told him that his role was just to forward the letter to the Cabinet Secretary Ministry of Interior.
24. The witness stated that he contacted the plaintiff and the County Commissioner because the story touched a public officer. He justified publication of the story because in his view it was in public interests to do so because the public were entitled and had the right to know their leaders and their character. He denied knowledge of any circulation of the story in the social media through he conceded that the 3<sup>rd</sup> defendant had social media platform at the time where its stories were posted as well.
25. He further denied any knowledge of the 3<sup>rd</sup> defendant sharing the story with other media houses but added that the 3<sup>rd</sup> defendant has no control of its stories published in the newspapers being picked by other media groups.

26. Submissions.

In his written Submissions dated 11<sup>th</sup> September 2023 and were filed on 25<sup>th</sup> September 2023, the Plaintiff submits that the statements made against him were published by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants without authentication. The Plaintiff faulted the 1<sup>st</sup> Defendant for failing to participate in court proceedings and the 2<sup>nd</sup> Defendant for failing to call witnesses.

27. He submits that the publications amount to defamation as they referred to him in a negative light and that they were published by the defendants. He submits that the statements published on the Nairobiian were malicious and he has referred to the case of Phinehas Nyagah vs Gitobu Imanyara (2013) eKLR where the court expressed itself on what constitutes malice as follows;

Malice here does not necessarily mean spite or ill-will but recklessness itself may be evidence of malice. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts.

28. He further submits that the 3<sup>rd</sup> Defendant’s allegation that the publication was made in public interest was false as the matter involved a private person. With regards to damages sought, the Plaintiff submits that he should be awarded damages in a bid to hold the Defendants accountable for their actions.



29. In his view the defendant published the statements that made reference to him without establishing their authenticity adding that the same were unfounded/unproved crafted to portray the him in negative light as being corrupt and unethical for engaging in adultery and therefore morally unsuitable to hold a public office. He seeks the following reliefs;
- a. An apology and retraction of the story in similar prominence as the initial story.
  - b. General damages for malicious falsehood
  - c. Exemplary damages
  - d. Damages for psychological and emotional distress
  - e. Costs and interest of the suit
  - f. Any other remedy deemed fit by this court.
30. 2<sup>nd</sup> defendants' submissions
- The 2<sup>nd</sup> defendant made written submissions in response to the plaintiffs submissions through learned counsel M/S Echessa & Bosire Advocates.
- It is submitted on behalf of the 2<sup>nd</sup> Defendant that its publication only contained details of undisputed letter which was sent to the County Commissioner, Kitui County by the 1<sup>st</sup> Defendant and which accused the Plaintiff of having an extra-marital relationship with the 1<sup>st</sup> Defendant's wife. Counsel submits that the Plaintiff admitted that the 1<sup>st</sup> Defendant had accused him of having the extra-marital affair.
31. 3<sup>rd</sup> Defendants Written Submissions
- The 3<sup>rd</sup> defendant through learned counsel M/S/ Seme Kamau & Maema Advocates have made extensive written submissions dated 27<sup>th</sup> October 2023. For the interest of judicial time, I will summarise the submissions.
32. On whether the article by the 3<sup>rd</sup> Defendant was defamatory, it is submitted that the contents of its article was true because the authenticity of the impugned letter remained unchallenged as such, the publication was justified. The cases of Paul Owour vs Star Publication Limited (2020) eKLR and Stephen Thuo Muchina vs Wainana Kiganya & 2 Others (2012) have been cited to the effect that a fair comment is justified. It is also submitted that the 3<sup>rd</sup> Defendant genuinely believed that the letter authored by the 1<sup>st</sup> Defendant was true and factual in substance and cites the case of Jacob Mwanto Wangora vs Hezron Mwando Kirorio (2017) eKLR where the court found that statements containing information that was within a party's personal knowledge was a fair comment.
- The 3<sup>rd</sup> defendant further pleads justification of what it published arguing that it published the contents of a letter written by the 1<sup>st</sup> defendant out of public interest and fair comment. It contends that it published knowing that it as true and factual in substance. It relies on the decision of Jacob Mwanzo Wangera -vs- Hezron Mwando Koroma (2017) Eklr where the court held that a defendant is not required to prove the accuracy of every minute detail of the publication so long on what is reports is substantially true.
33. Counsel submits that there was no of evidence demonstrating that the article by the 3<sup>rd</sup> Defendant lowered the Plaintiff reputation as the Plaintiff failed to call a witness to testify to the same. Several decisions where the need to call an independent witness to testify on the damage of a plaintiff's reputation have been cited as follows Miguna Miguna vs Standard Group Limited & 4 Others (2016)



eKLR, Stephen Thuo Muchina vs Wainana Kiganya & 2 Others (2012) eKLR, and Daniel Ochienku vs The Standard Limited & Anor (2018) Eklr

34. It has been submitted that malice was not demonstrated and that the publication was made as a matter of public interest and lastly that the 3<sup>rd</sup> Defendant enjoy qualified privilege for newspaper reporting. The cases of Ann Wairimu Njogu vs Radio Africa Limited (2027) eKLR, Nation Newspapers Ltd vs Gibendi (2002) eKLR and Francis Cheronu Ngeny & 11 Others vs Sammy Kiprop Kilach (2017) eKLR have been cited where it was held that malice needs to be proved in defamation cases, adding that qualified privilege is a defence only if the maker of a defamatory statement can show that they acted honestly and without malice.

35. It is submitted that the plaintiff has failed to prove that the publication it carried was tainted with malice or was out to damage his reputation arguing that there is no evidence tendered to show that his reputation had suffered as a result of the publication.

36. Analysis and determination

This Court has highlighted both the plaintiff's case as well as the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The 1<sup>st</sup> defendant for the record never entered appearance in this matter.

37. The case before me revolves around an impugned letter dated 28<sup>th</sup> March 2017 reportedly written by the 1<sup>st</sup> defendant (that fact is undisputed here). The letter was written to the Cabinet Secretary Ministry of Interior through the County Commissioner Kitui and the 1<sup>st</sup> defendant was complaining about the plaintiff accusing him of engaging in extra-marital affairs with his wife. The 2<sup>nd</sup> & 3<sup>rd</sup> defendants who are media houses are being faulted for publishing the story without first establishing its veracity. The plaintiff claims that the 1<sup>st</sup> defendant's wife had in fact wrote a response to the impugned letter dated 28<sup>th</sup> March 2017 but despite refuting the allegations, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants went ahead to publish the story. As observed above the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have both denied that they published defamatory story and pleaded justification stating that the story was factual.

Before I devolve into the facts or evidence laid before me, I will first look at the tort of defamation and what it entails.

38. Defamation is Black Law Dictionary 9<sup>th</sup> Edition is defines as follows;

i. "the act of harming the reputation of another by making a false statement to a 3<sup>rd</sup> person. If the alleged defamation involves a matter of public concern the plaintiff is constitutionally required to prove both the statement's falsity and the defendant's faults.

ii. A false written or oral statement that damages ones reputation"

39. Advanced oxford Dictionary 12<sup>th</sup> edition defines to defame as to:

"damage the good reputation of another"

40. Courts have dealt with the tort of defamation and have made several observations about a defamation.

41. Odunga J. (as he then was) indicated as follows in the case of Musikari Kombo v Royal Media Services Ltd [2014] eKLR

"Defamation is a tort and 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 which tend to make him be shunned or avoided. The defamatory statement is one which has tendency to injure the reputation of the person to whom it refers by lowering him/her in the estimation



of the right thinking members of society generally and in particular to cause him/her to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem and typical examples are an attack upon the moral character of the plaintiff attributing to him/her any form of disgraceful conduct such as crime, dishonesty, cruelty and so on. Publication is the communication of the words to at least one other person other than the person defamed. Publication to the plaintiff alone is not enough because defamation is an injury to one's reputation and reputation is what other people think of a person and not his/her own opinion of himself/herself. An action for defamation is essentially an action to compensate a person for the harm done to his/her reputation. Since defamation is not about publication of falsehoods against a person, it is necessary to show that the published falsehood disparaged the reputation of the plaintiff or tended to lower him/her in the estimation of right-thinking members of society generally hence an injurious falsehood may not necessarily be an attack on the plaintiff's reputation. The words must be maliciously published and malice can be inferred from a deliberate or reckless or even negligently ignoring of facts. See *J P Machira vs. Wangethi Mwangi and Nation Newspapers* Civil Appeal No. 179 of 1997".

42. The Court of Appeal in the case of *Musikari Kombo v Royal Media Services Limited* [2018] eKLR referenced its earlier decision in *Nation Media Group & Another vs. Hon. Chirau Mwakwere – Civil Appeal No. 224 of 2010* (unreported) as follows;

The law of defamation is concerned with the protection of a person's reputation. Patrick O'Callaghan in the Common Law Series: *The Law of Tort* at paragraph 25.1 expressed himself in the following manner:

“The law of defamation, or, more accurately, the law of libel and slander, is concerned with the protection of reputation: 'As a general rule, English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbour. It supplies a temporal sanction ...' Defamation protects a person's reputation that is the estimation in which he is held by others; it does not protect a person's opinion of himself nor his character. 'The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit' and it affords redress against those who speak such defamatory falsehoods...”

43. The foregoing ingredients of defamation were reiterated in the case of *John Ward v Standard Limited* [2006] eKLR where the court stated as follows: -

“A statement is said to be defamatory when it has a tendency to bring a person to hatred, ridicule, or contempt or which causes him to be shunned or avoided or has a tendency to injure him in his office, profession or calling. The ingredients of defamation are: -

The statement must be defamatory.

The statement must refer to the plaintiff.

The statement must be published by the defendant.

The statement must be false.”

44. Going by the above legal positions the 4 elements or ingredients which the plaintiff was required to establish and to prove to succeed were as follows;



- i. The allegations must be defamatory
- ii. The allegations must refer to the plaintiff
- iii. The statement must have been published by the defendants
- iv. The statement must be false

45. On the existence of the defamatory statement, the words complained of are said to have been contained in a letter dated 28<sup>th</sup> March 2017 written by the 1<sup>st</sup> Defendant to the County Commissioner of Kitui and are reproduced at Paragraph 7 of the Complaint as follows;

“The person at the center of it is Mr David Saruni (DCC-Lower Yatta) ...Before going into a relationship with my lawfully wedded wife, he, Mr Saruni had prior knowledge that she was married.”

As I have observed the fact that the letter was written by the 1<sup>st</sup> defendant is not denied. All the parties in this suit are in agreement to that effect.

46. On whether the words published by the Defendants, this is also not in dispute. Following the letter by the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants published articles as follows;

- i. On 7<sup>th</sup> April 2017, the 2<sup>nd</sup> Defendant through its publication, the Nairobi Star published an article titled “County Commissioner has gone kuku over my wife”. An excerpt of the article as contained at paragraph 11 of the complaint as follows;

“Dennis Nthiwa Mulinge, 31, who works at Kisumu Deputy Commissioner’s office is accusing Lower Yatta DCC Saruni of “Chewing” his lawfully wedded wife, Eunice Mbithe”

- ii. On 31<sup>st</sup> March 2017, the 3<sup>rd</sup> Defendant published an article in its publication, the ‘Daily Nation’ titled ‘Man accuses boss of wrecking his marriage’. An excerpt of the said article as contained at paragraph 10 of the complaint is reproduced as follows;

“A 31-year-old clerk at the Interior Ministry is accusing his boss of destroying his seven-year marriage after he allegedly eloped with his lawfully wedded wife. Dennis Nthiwa Mulinge is now seeking the intervention of interior Cabinet Secretary Joseph Nkaissery to save his marriage and wants the administrator, Mr Saruni, restrained from seeing his wife”. Kitavi Mutua”.

47. It is also not disputed that the story published referred to the plaintiff. The 3<sup>rd</sup> defendant’s witness (DW1) was explicitly clear that he knew the plaintiff in person and when he got the story he contacted him in Lower Yatta where he was serving as Deputy County Commissioner. It is therefore not disputed that the story regarding the plaintiff having affairs with someone’s wife was published. What is contested here is whether the story was false as contended by the plaintiff or it was true/fair comment as contended by 2<sup>nd</sup> and 3<sup>rd</sup> defendant. That issue is the elephant in the room in this case.

48. The plaintiff alleges that the report published was false and tainted with malice. The law places a burden of proof to whoever alleges. Section 107 of the [Evidence Act](#) states;

Burden of proof.



- i. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- ii. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

49. The plaintiff suggested that the wife to the 1<sup>st</sup> defendant wrote a letter to rebut the allegations made by her husband. Though the letter from the said lady who is at the centre of the whole saga this court finds that the plaintiff seems to agree that the 1<sup>st</sup> defendant who was a colleague working in the same Ministry of Interior though not in the same station, actually wrote the letter to complain about the alleged affair.

50. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not denied that they carried the story in these publications but they plead qualified privilege and justification which provides freedom of expression and need to disseminate information to the public. They plead that they had no malice in the publication stating that the reporting was a fair information on a matter of public interest given that the plaintiff was a public officer.

51. Where a Newspaper publishes an article that is factual or fairly reflective of a situation or report it cannot be liable for defamation because such reports are not defamatory.

52. In the case of Nation Newspaper Ltd vs. Gibendi (2002) 2 KLR 406 Waweru J, held as follows;

“ But the appellant pleaded fair comment on a matter of public interest that is, qualified privilege. To defeat that defence the respondent needed to prove actual malice. Actual or express malice is ill-will or spite or any indirect or improper motive in the mind of the defendant at the time of the publication.

The trial court did not address this issue in its judgment. I must address it here. There was no evidence that in publishing the words complained of the appellant acted from an indirect or improper motive such as spite, ill will or jealousy. Even if it were to be accepted that the reported (DW. 4) was rash or negligent (and I do not think the available evidence establishes this) that would not be sufficient.

From the evidence placed before the trial court, I hold that the respondent failed to prove actual malice on balance on the part of the appellant. The appellant’s defence of fair comment on a matter of public interest therefore succeeded, and the trial court should have so held. That the matter was of public interest there can not be doubt. This was a public school. There was evidence, on balance, that there had been some kind of disturbance and that some teachers in the school had staged a sit-in. the matter was serious enough to be investigated by the District Education Officer. The appellant had a social duty to write and comment upon it”.

53. In the case of Stephen Thuo Muchina v. Wainaina Kiganya & 2 others (2012) eKLR Odunga J (as he then was) held on the defence of qualified privilege:

“Qualified privilege can be rebutted by proof of express malice, and malice in this connection may mean either lack of belief in the truth of the statement or use of the privileged occasion for an improper purpose. Lack of belief in the truth of the statement is generally conclusive as to malice, except in cases where a person is under a duty to pass on defamatory reports by some other person. Mere carelessness, however, or even honest belief produced by irrational



prejudices, does not amount to malice. But an honest belief will not protect the defendant if he uses the privileged occasion for some other purpose other than that for which the privilege is accorded by law: if his dominant motive is spite or if he acts for some private advantage he will be liable. Existence of malice can be evinced by language; If the language used is utterly beyond or disproportionate to the facts; however, it does not follow that merely because the words are excessive malice must be inferred. It can also appear from the relations between the parties before or after publication or from the conduct of the defendant in the course of the proceedings themselves, as, for example insisting on the defence of justification while nevertheless making no attempt to prove it...However mere pleading of justification is not itself evidence of malice even though the plea ultimately fails. It may be deduced from the mode of publication where the dissemination of the statement is wider than is necessary. When a defamatory communication is made by several persons on an occasion of qualified privilege, only those against whom express malice is actually proved are liable”.

54. The 2<sup>nd</sup> defendant’s article was titled (County Commissioner has gone kuku over my wife” ) and the excerpt complained of stated;

“Dennis Nthiwa Mulinge, 31, who works at Kisasi Deputy Commissioner’s office is accusing Lower Yatta DCC Saruni of “Chewing” his lawfully wedded wife, Eunice Mbithe”

55. This court finds that though the 2<sup>nd</sup> defendants report was carried out in a flowery and sensationalized language one cannot state that the same was outside the letter authored by the 1<sup>st</sup> defendant. The plaintiff in his evidence as a matter of fact never trained his guns on the 2<sup>nd</sup> defendant. The thrust of his case was directed at the author of the report (Kitavi Mutua) and the 3<sup>rd</sup> defendant.
56. The 3<sup>rd</sup> defendant’s impugned publication/article was titled; “man accuses boss of wrecking his marriage”. The excerpt complained of stated:

A 31-year-old clerk at the Interior Ministry is accusing his boss of destroying his seven-year marriage after he allegedly eloped with his lawfully wedded wife. Dennis Nthiwa Mulinge is now seeking the intervention of interior Cabinet Secretary Joseph Nkaissery to save his marriage and wants the administrator, Mr Saruni, restrained from seeing his wife”. Kitavi Mutua

The plaintiff while testifying acknowledged that the 1<sup>st</sup> defendant authored the letter that kickstarted the reports carried by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant was indeed his junior working for ministry of Interior and Junior to him. The 3<sup>rd</sup> defendants witness Kitavi Mutua (DW1) testified in this court and explained on how he got the story. The witness in my view appeared to be a credible journalist because he was straight forward in his answer under cross-examination. He was firm that he knew both the 1<sup>st</sup> defendant and the plaintiff and that when the 1<sup>st</sup> defendant alerted him about the marital issues he had with his wife, he contacted both the plaintiff and the County Commissioner Kitui and though he provided no evidence to back up that fact, his credibility is demonstrated by the fact that what was published reflected what the letter authored by the 1<sup>st</sup> defendant contained. It has not been shown that the defendant’s acted with malice.

57. This court finds that the plaintiff based on what is laid before has failed to demonstrate that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants acted maliciously or were out to disparage his character. In any event no evidence was



tendered to show that as a result of the publication, the plaintiff failed any disciplinary case or that his reputations was tainted by the reports published. The publication was in my view a fair comment and there is no demonstration that the same were falsehoods. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants have demonstrated that they acted in good faith based on a letter authored by a Public Officer.

In the premises, this court finds that the plaintiff has failed to prove his case against the defendants to the required standard in law and the same is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2024**

**Hon. Justice R. K. Limo**

**JUDGE**

