



**Mwau & another v Nation Media Group Ltd & 2 others (Civil Case 268 of 2005) [2024] KEHC 8773 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8773 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL CASE 268 OF 2005  
AN ONGERI, J  
JUNE 27, 2024**

**BETWEEN**

**JOHN HARUN MWAU ..... 1<sup>ST</sup> PLAINTIFF**

**AFRICONT PRODUCTION LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NATION MEDIA GROUP LTD ..... 1<sup>ST</sup> DEFENDANT**

**WILFRED KIBORO ..... 2<sup>ND</sup> DEFENDANT**

**WANGETHI MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The two plaintiffs in this case John Harun Mwau And Africont Production Ltd (hereafter referred to as 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs respectively) sued Nation Media Group Ltd, Wilfred Kiboro And Wangethi Mwangi (hereafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively) seeking the following remedies;
  - i. Exemplary and aggravated damages for defamation General damages for defamation.
  - ii. Special damages of loss of kshs.1,303,940,000,000.00 or US \$17,157,105.00 and other special damages to be particularized at the hearing hereof.
  - iii. 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 plaintiff and/or his companies, in any manner whatsoever.



- iv. Enter a declaratory judgment that the defendants' acts or posting and broadcasting the false criminal allegations against the plaintiffs internationally over the internet-world wide web was/ is malicious and in extreme bad faith.
  - v. Enter a declaratory judgment that the defendants' cast of posting and broadcasting the false criminal allegations against the plaintiffs internationally over the internet-world wide web was/ malicious and in extreme bad faith.
  - vi. Enter a declaratory judgment that the defendants published statements and words relating to the plaintiffs that are false save for the fact that the 1st plaintiffs the former Director of Kenya Anti corruption.
  - vii. Enter a declaratory judgment that, it is not in the international public interest and is serves no public interest for the defendants to post and to broadcast internationally outside the Kenyan jurisdiction of any allegation against ta Kenyan Citizen.
  - viii. Costs of the sit and interest on (i) and (ii) above.
  - ix. Such further orders or remedies as this honourable court would deem just and expedient to grant.
2. The plaintiffs averred in their plaint dated 8/3/2005 amended on 5/6/2006 that at all material times, the Plaintiff and his companies are international buyers, purveyors, procurers and agents in the indentation of goods and supplies.
  3. That on March 11, 2004, once the Defendants had discovered that the 1<sup>st</sup> Plaintiff had gone to the United States of America to conduct media related business, with the clear intentions to mar, nullify, undermine and to sabotage the plaintiff's business, the defendants on page 6 of their Daily Nation of March 11, 2004 published, invented and fabricated a falsified news article which they knew to be false, malicious and injurious to the Plaintiffs concerning and maligning the Plaintiffs of criminal activities in the following words:

“Crackdown

Kenya Revenue Authority seizes goods linked to Mwau firm.

A Company associated with former Anti-Corruption Authority Boss Harun Mwau has been implicated in a multimillion-Shillings tax evasion scandal. The scandal was unearthed when a container whose contents had been falsely declared was intercepted at the Mombasa port by officials from the Kenya Revenue Authority and the Weight and Measures Department.

A senior official from the Weights department, Mr. Kepher Ndika said that they seized a 40 foot container "sneaked into the country" with falsely declared goods imported from Dubai by a company allegedly owned by Mr. Mwau-

The container destined for Athi River was declared as carrying readymade textiles, according to shipping documents, however, it was found with music systems, radio communication equipment and assorted car accessories worth millions of shillings.

After verification, we discovered that there were no textiles but only electronic equipment, car alarms, television sets and car antennae among other things, " the official said.



Mr. Ndika said the container belonged to the Inland Container Depot, Pepe, a company linked to Mr. Mwau. According to him, some traders had been taking unfair advantage of the fact that goods were not physically verified at the port

Through such unscrupulous practices, the traders had denied the Government millions of shillings in revenue. This is not the first case, although it is one of the biggest we have this time, he said.

During verification, he said it was not easy to assess the value of the goods to determine the amount of duty the Government would have lost. However, the goods were likely to attract millions of shillings in tax. KRA will work it out and charge the importer accordingly" Mr. Ndika said. He added that yesterday's seizure marked the beginning of the renewed crackdown on tax cheats at the port. "

4. The plaintiff further averred that the Defendants maliciously and with the single purpose to cause the Plaintiff more damage and loss fabricated an article that was false, defamatory, libelous in order for it to be seen and read by the Plaintiffs customers, business associates; family, friends and relatives on their online edition have posted the defamatory article on the internet and on the worldwide web internationally continuously and on a daily basis and even at the time of filing this suit the above stated article could still be read on their website.
5. The said words/publication to the ordinary member of the public and to those who knew/know the Plaintiff, in their natural and ordinary meaning meant and were understood to mean that:
  - i. The Plaintiff and his companies are implicated in a multi-million shilling tax evasion scandal.
  - ii. The plaintiff is corrupt despite being a former boss of the Kenya Anti-Corruption Authority.
  - iii. The Plaintiff and his companies are involved in scandals which were unearthed at the Mombasa Port.
  - iv. The Plaintiff and his companies falsely declared a container at the Mombasa port and was subsequently intercepted by the officials of the Kenya Revenue Authority and the Weights and Measures Department.
  - v. That the Plaintiff and his company had sneaked into the country a 40 foot container.
  - vi. The plaintiff and his companies had/have been taking unfair advantage of the fact that goods were/are not physically verified at the said port.
  - vii. The plaintiff and his companies are involved in unscrupulous practices and through such unscrupulous practices have denied the government of millions of shillings in revenue.
  - viii. The plaintiff and his companies are tax cheats who is being pursued by government authorities.
  - ix. That the plaintiff and his companies have repeatedly engaged in such tax evasion practices and that this was not the first case as there have been others but this was one of the biggest the government officials had intercepted
  - x. The Plaintiff is untrustworthy and lacks integrity.
6. Further to those who do or intend to do business with or those who know/knew the Plaintiff and his companies the said false and defamatory words meant, mean and were/are understood to mean that:
  - a. The Plaintiff and his companies are smugglers and tax evaders.



- b. The Plaintiff and his companies are criminals involved in tax scandals.
  - c. The Plaintiff and his companies made/make false customs declarations to evade paying tax.
  - d. The plaintiff and his companies are untrustworthy and lack integrity.
  - e. The Plaintiff despite being a former Anti-Corruption boss is corrupt.
  - f. The Plaintiff and his companies are involved in criminal activities i.e. tax evasion and use criminal proceeds to do business.
7. Besides being false, defamatory and libelous, the said words were actuated by malice, ill will and spite and went beyond the parameters of objective and responsible journalism.
  8. The Daily Nation has been in publication since 1963 and has 41 years experience in journalism and hence the publication of the defamatory article is a result of malice, spite, ill-will and a vendetta to destroy the Plaintiffs' lives.
  9. The Defendants are fully aware of the fact that the 1<sup>st</sup> Plaintiff is a private person who is law abiding and who has never either by himself or by any of his companies committed any criminal act or scandal whatsoever whether directly or indirectly and the Defendants shall be put to strict proof thereof.
  10. The publication was meant to and indeed injured the Plaintiff in his reputation and character and lowered the Plaintiff in the eyes of the reasonable right-thinking member of the public.
  11. The article was/is meant to subject the Plaintiff and his companies to ridicule, hatred, odium and contempt and to excite adverse opinion and/or feelings against the Plaintiff and his companies both locally and internationally.
  12. The Defendants in publishing the defamatory matter deliberately intended to injure the plaintiff and his companies in a substantial degree by describing the plaintiff and his companies and naming him repeatedly in order to avoid any doubt as to the identity of the Plaintiff and/or his companies both to the ordinary member of the public and those who know/knew the Plaintiff.
  13. As a result of the Defendants' publication and the malice evident in posting the same worldwide via the internet, the Plaintiff lost a solid contract to supply 6 million African tunes and drums, CDs (compact Discs) and 3 million DVDs(videos) featuring African Wildlife to a buyer in the United States of America.
  14. It is a fact and a matter of public notoriety and known and foreseeable by the Defendants that any person who is adversely mentioned in any part of the world as being corrupt or who benefits from the proceeds of crime car, no longer obtain a visa to the USA and cannot trade in either buying or selling in the United States of America and the defendants are well aware of this.
  15. The defamatory article was and is calculated and intended to portray the Plaintiff and his companies to the general public, foreign missions, foreign countries and business associates as persons involved in economic crimes, tax evasion, smuggling and criminals being pursued by government authorities
  16. The Defendants' fabrication, the publishing, broadcasting, the posting and exhibiting of the defamatory world wide was/is malicious, gave and continues to give the Plaintiffs negative exposure and devastating loss of business, contracts and travel expenses



17. By reason of the matters aforesaid, the Plaintiff said that he has suffered in its credit, reputation and character and has been greatly lowered in the estimation of reasonable members of the public and the Plaintiff claims damages.

Particulars of the Plaintiff's Loss And Damage

- a. Loss of business.
  - b. Injury to business reputation.
  - c. Loss of business profits.
  - d. Loss of past, current and future business transactions and opportunities.
  - e. Loss of US\$65 per CD, US\$I .35 per DVD, Air Travel costs, Hotel accommodation amounting ksh.1,303,940,000.00 to US\$17,157,105.00.
18. The defendants filed a defence dated 5/4/2005 amended on 6/2/2007 in which they averred as follows;
19. The defendants admitted that he Daily Nation has been in publication since 1963 but deny that the said publication was defamatory and was a result of malice, spite and went beyond the parameters of objective and responsible journalism.
20. The defendants denied that the words were defamatory, false or libelous as alleged or at all. The defendants also deny that the article is a result of malice, spite, ill will or a vendetta to destroy the plaintiffs' lives.
21. In the alternative and without prejudice to the following the defendants averred that in so far as the said words in the publication consist 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 public figures.

Particulars under order vi rules 6A of the *Civil Procedure Rules*

Particulars of Fact

- a. That a 40 feet container was sneaked into the country.
- b. That officials from the Weights and Measures Department intercepted the said container.
- c. That the said container had wrongly declared goods.
- d. That the 2<sup>nd</sup> plaintiff is a company that imports goods into the country.
- e. That the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff are associated.
- f. That the said container was destined for Pepe Inalnd Container depot.

Particulars of Opinion

That the wrong declarations by traders is unscrupulous.

22. The case proceeded on 9/11/2023. The plaintiff testified as PW 1. He adopted his witness stated dated 21/9/2011 as his evidence in chief and produced a list of documents as exhibits.
23. In the written witness statement, the plaintiff stated that the 2<sup>nd</sup> Plaintiff is one of the companies with which he is associated and in which he is a director and majority shareholder.



24. He said that he was a Member of Parliament for Kilome Constituency and a hardworking indigenous businessman of local and international repute carrying on business locally and internationally. That he carries on the business of inter alia international trade, purveying, procurement and agency in the indentation of goods and supplies.
25. That he has never committed or been found guilty of committing any criminal offence at all or any criminal offence punishable under the Laws of the Republic of Kenya.
26. That on or about the 11<sup>th</sup> day March, 2004, with the knowledge that he had travelled to the United States of America to conduct media-related business, the Defendants, on page 6 of their Daily Nation Newspaper for 11<sup>th</sup> March, 2004, jointly and severally motivated by obvious and clear intentions to mar, nullify, undermine or sabotage his business, falsely and maliciously published, Invented and/or fabricated a news article of and concerning him.
27. In cross examination, the plaintiff said the impugned article did not name the 2<sup>nd</sup> plaintiff. It only stated a company associated to him.
28. The plaintiff said he was a director of Pepe Ltd.
29. PW 1 said he read the article while in the USA and he was then an MP for Kilome.
30. He said he was the founder of Kenya Anti-Corruption Authority.
31. He said as a result of the publication, he lost business and he was denied a visa to the USA.
32. He denied that the reason he was denied a visa to USA was that during Obama government he was mentioned as a Kingpin.
33. The plaintiff called one witness (PW 2) Sammy Mwanyaa Mutwanyaa who adopted his statement dated 10/7/2023 as his evidence in chief.
34. PW 2 stated in the said statement that he has known John Harun Mwau, whom he fondly refer to as Mheshimiwa, for over two decades as an honest, industrious, highly skilled, honorable, law abiding and scrupulous businessman engaged in, amongst many other legitimate ventures.
35. That he hails from Makueni County and he first knew of Hon. John Harun Mwau when he was a child in the early 1990s. That he was introduced to him by his father as young boy, when he contested for the position of the President of the Republic of Kenya in the year 1992 and Member of Parliament for Westlands Constituency.
36. PW2 said that his father was one of his mobilisers during the campaigns and that is when he got to know him better as a law abiding and straightforward businessman.
37. PW2 said was not surprised when he was appointed as the founding Director of the defunct Kenya Anti-Corruption Authority, where he led the fight against corruption, causing jitters in the government circle.
38. On March 11, 2004, PW2 said he came across the impugned article published on the daily Nation Newspaper of the same date at page 6 of the newspaper.
39. That upon reading the said newspaper report and the similar version circulated over the internet, PW2 quickly identified that the article referred to the Plaintiff and identified him by his names, Mr. Mwau and Harun Mwau and his former position held at the Kenya Anti-corruption Authority and he therefore knew, right away, who the article referred.



40. As a result, PW2 said he shunned and avoided the Plaintiff and stopped going to his office, as he did not like to be associated with someone involved in tax evasion and who is being pursued by the Government for smuggling and tax evasion.
41. That from the time the article was written, he shunned the Plaintiff and refused to visit his office, despite having severally visited the office both alone and with his father who was a close friend of the Plaintiff.
42. That it was only in late 2009, when a common friend to my father and the Plaintiff, one Councilor Kilonzo met him at Machakos, and informed him that the Plaintiff had asked him about his family that he informed him that we did not want to associate with him as a result of the Article.
43. That councilor Kilonzo later called him and informed him that after talking to the Plaintiff about the matter, the Plaintiff confirmed the allegations to be false and untrue and that he instituted a case against the Defendants for the false and malicious publications. Later the Plaintiff asked PW2 to be witness in this matter and he agreed to testify.
44. PW2 said he believes that the article greatly lowered the Plaintiff in the estimation of many right-thinking members of the society like himself, who would not want to be involved with persons said to be involved in criminal activities of tax evasion and smuggling.
45. In cross-examination, PW 2 said he knew the plaintiffs through his father who died in 2007.
46. PW 2 also said he knew the plaintiff as a politician and the Head of Anti-Corruption Authority.
47. PW 2 said he read the impugned article and it is not true.
48. The defendants did not call any witnesses to testify in this case.
49. The parties filed written submissions as follows; the plaintiff submitted that it is incontrovertible that the complained publication referred to and identified the plaintiff by his names which are unique and by former position held. The publication was made of and concerning the plaintiff. The identification of the Plaintiff was direct in the article, and any ordinary reasonable thinking member of the society who read the publications dated 11<sup>th</sup> March, 2004 both in print on the Daily Nation and in soft worldwide over the internet and knew or did not know the Plaintiff understood and identified the Plaintiff as the person referred to an identified in the publications.
50. The plaintiff further submitted that the complained of statement read as a whole meant that a company owned by the plaintiff was involved in multi-million tax evasion scandal, made false customs declarations on its imports and that it was the plaintiff and his company involved in the tax evasion scandal. The plaintiff further argued that there was no dispute that the article implicates the plaintiff and his alleged companies in criminal activities.
51. The plaintiff submitted that the statements made by the defendants were false. The plaintiff testified that he is a law-abiding citizen who has never been involved in any criminal activity. The plaintiff did not own the alleged goods or the container and had the Defendants perused the bill of lading, or even tendered the same as evidence before the court, they would clearly show that the owner of the goods had nothing to do with the Plaintiff, and was not connected to the Plaintiff in any way.
52. The plaintiff argued that the publication was made with malice because in this matter there was no evidence linking the plaintiff and his companies to the containers. The defendants acted maliciously in associating the plaintiff to tax evasion and a basic perusal of the bill lading would reveal who was the



consignee or notifying party or clearing agent, who owned the goods and who made the declarations. That further the defendants did not seek the plaintiffs comments concerning the publication.

53. The plaintiff proposed general damages of Kshs 12, 000, 000 and exemplary damages of Kshs 2, 000, 000. In support he cited among others the decision in *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.
54. The Plaintiff's further submits that due to the publication of the defendants' complained of statements, the 2<sup>nd</sup> Plaintiff lost a business contract and all documents concerning the transaction were withdrawn by the American company. In this respect the claim by the 2<sup>nd</sup> Plaintiff of special damages was withdrawn from the suit.
55. The defendants alternatively submitted that the article complained about was based on the remarks made by a senior official from the Weight department, Mr Kepher Ndika. Section 15 of the *Defamation Act* provides;

In any action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.
56. The defendants submit that the plaintiff in this claim did not refute or contest the assertion that he is linked to Pepe Limited, the Inland Container Depot where container was destined. Further, these assertions were made a public official in the course of his duties which is also not refuted or contested. Mr. Kepha Ndika, the senior official from the weights department further expressed his opinion on the issue and stated that some traders were taking advantage of the fact that goods are not physically verified at the port and that was denying the government millions of shillings in revenue.
57. The defendants argued that they have the moral obligation to report and make commentary on incidents of tax evasion more so where the company is linked to a public official or in this case, the founding director of the now defunct Kenya Anti-Corruption Authority. The Defendants contend that the article consist of partly of allegations of fact and partly of expression of opinion and a such the defence of fair comment on a matter of public interest is available.
58. The defendants submitted that the award of damages sought by the Plaintiff lacks judicial basis or justification. In support of their argument, they cited the holding of Lord Hailsham in *Cassel & Co. Ltd v Broome* [1972] 1 ALL ER 801 where it was held that;

“.....properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways - as a vindication of the plaintiff to the public, and as consolation to him for a wrong done. Compensation is here a solatium rather that a monetary recompense for harm measurable in money.”
59. It is the duty of the plaintiffs to prove their case to the required standard in civil cases which is on a balance of probabilities.
60. The issues for determination in this case are as follows;
  - i. Whether the plaintiffs proved their case to the required standard.



- ii. Whether the defendants have a valid defence against the plaintiffs' case.
  - iii. Whether the plaintiffs are entitled to the remedies they are seeking against the defendants.
  - iv. Who pays the costs of this suit?
61. On the issue as to whether the plaintiffs have proved their case, the elements of the tort of defamation are as follows;
- 1. That the defendant made a defamatory statement to a third person.
  - 2. That the statement was false.
  - 3. That the defendant was legally at fault in making the statement; and
  - 4. That the plaintiff suffered harm.
62. I find that the defendants did not deny that they published the impugned article.
63. There is evidence that is not controverted that the impugned publication referred to and identified the plaintiff by his names.
64. I find that the publication was made of and concerning the plaintiff. The identification of the Plaintiff was direct in the article, and any ordinary reasonable thinking member of the society who read the publications dated 11<sup>th</sup> March, 2004 both in print on the Daily Nation and in soft copy worldwide over the internet who knew or did not know the Plaintiff understood and identified the Plaintiff as the person referred to an identified in the publications.
65. There is evidence that the statement read as a whole meant that a company owned by the plaintiff was involved in multi-million tax evasion scandal, made false customs declarations on its imports and the plaintiff and his company were involved in the tax evasion scandal.
66. I find that the plaintiff has proved that the article implicated the plaintiff and his alleged companies in criminal activities.
67. The defendants have no valid defence against the plaintiff' claim.
68. There is no evidence that the article is true
69. In the case of *J. Kudwoli & Ano. v. Eureka Educational & Training Consultants & 2 others* (1993) eKLR the Court stated as follows;
- “Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally, or which tends to make them shun or avoid that person....
- .....A defamatory imputation is one to a man's discredit or which tends to lower him in the estimation of others or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit...”
70. I find that the plaintiffs have proved the tort of defamation to the required standard.
71. On the issue whether the plaintiffs are entitled to the remedies they are seeking against the defendants, the plaintiffs are seeking the following remedies;
- i. Exemplary and aggravated damages for defamation General damages for defamation.



- ii. Special damages of loss of kshs.1,303,940,000,000.00 or US \$17,157,105.00 and other special damages to be particularized at the hearing hereof.
  - iii. 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 plaintiff and/or his companies, in any manner whatsoever.
  - iv. Enter a declaratory judgment that the defendants' acts or posting and broadcasting the false criminal allegations against the plaintiffs internationally over the internet-world wide web was/ is malicious and in extreme bad faith.
  - v. Enter a declaratory judgment that the defendants' cast of posting and broadcasting the false criminal allegations against the plaintiffs internationally over the internet-world wide web was/ malicious and in extreme bad faith.
  - vi. Enter a declaratory judgment that the defendants published statements and words relating to the plaintiffs that are false save for the fact that the 1st plaintiffs the former Director of Kenya Anti corruption.
  - vii. Enter a declaratory judgment that, it is not in the international public interest and it serves no public interest for the defendants to post and to broadcast internationally outside the Kenyan jurisdiction of any allegation against a Kenyan Citizen.
  - viii. Costs of the suit and interest on (i) and (ii) above.
  - ix. Such further orders or remedies as this honourable court would deem just and expedient to grant.
72. I find that the plaintiffs did not adduce evidence that they suffered Special damages or loss of kshs.1,303,940,000,000.00 or US \$17,157,105.00 or any other special damages. The same are not awarded.
73. In the case of *Maritim and another v Anjere* (1990-1994) EA 312, 316, the Court of Appeal held:
- “It is now trite law that special damages must not only be pleaded but must also be specifically proved and those damages awarded as special damages but which were not pleaded in the plaint must be disallowed.”
74. Special damages must be specifically pleaded and proved.
75. On the issue as to whether the plaintiffs are entitled to the injunctive reliefs and declaratory orders, the plaintiffs are seeking declaratory orders and 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 plaintiff and/or his companies, in any manner whatsoever.
76. I find that in this case the injunctive orders sought by the Plaintiffs refer to current and future contemplated defamations.



77. In the case of *Janto Construction Company Ltd v Enock Sikolia & 2 others* [2020] KLR, the court found that the injunctive orders sought by the Plaintiff referred to current and future contemplated defamations and stated as follows;

“In the event the injunction is granted as sought then that will be a complete gag to the Defendants in discharging their duties. How are the Defendants supposed to discern which articles will be defamatory to the Plaintiff? Will the Defendants be able to deal with any matter involving the Plaintiff without the Plaintiff accusing them of defamation? Granting an order in the manner sought will be an impediment to the freedom of expression and against public interest. I therefore decline the invitation by the Plaintiff”.

78. I agree with the above sentiments and I find that it is not possible for this court to ascertain which articles are going to be defamatory to the plaintiffs in this case in order to bar the same.

79. I award the plaintiffs general damages of kshs. 10 million for the tort of defamation.

80. The declaratory orders are also not awarded since the general damages for the tort of defamation awarded are adequate.

81. Exemplary and aggravated damages are also not payable since the general damages are sufficient.

82. In the case of *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKLR, the Court of Appeal stated as follows;

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute”.

83. Judgment be and is hereby entered in favour of the plaintiff against the defendants jointly and severally in the sum of kshs. 10 million together with costs of this suit and interest at court rates from the date of this judgment until payment in full.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE, 2024.**

.....

**A. N. ONGERI**  
**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant

