IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, KIAGE & MURGOR, JJA)

CIVIL APPEAL NO. 69 OF 2005

BETWEEN

NYAMOGO & NYAMOGO ADVOCATES.....APPELLANT

AND

BARCLAYS BANK OF KENYA.....RESPONDENT

(Appeal from the judgment/decree of the High Court of Kenya at Nairobi (Ransley, J) Dated 4th February 2004

in

H.C.C.C. No. 2410 of 1999)

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JUDGMENT OF THE COURT

Introduction.

The appellant ***Nyamogo and Nyamogo Advocates*** filed Nairobi High Court Civil suit number 2410 of 1999 against the respondent ***Barclays Bank (K) Limited.*** The plaint is dated and filed on the 16th day of December, 1999. The appellant's complaint was basically that on the 8th day of June, 1998, the appellant drew a cheque upon the respondent as its banker for Kshs.4,376,402.35 payable to ***Arthur William Ogwayo.*** On order in payment of a business debt due to the said ***Arthur William Ogwayo***; on or about the 3rd of June, 1998 the respondent failed to effect special clearance of the cheque out of which, to the knowledge of the respondent, funds were to be made available to the same ***Arthur William Ogwayo*** who was leaving on a business trip to Southern Africa and who had to leave without the money. By reason of matters complained of, the appellant suffered loss of a customer, loss of credit and reputation and loss of business. In consequence thereof, the appellant claimed from the respondent General damages for breach of contract; for injurious falsehood; for libel and for negligence, costs and interests on the above.

The respondent filed a statement of defence dated the 14th day of January, 2000 basically denying the entire claim.

Thereafter, liability as against the respondent was settled by consent of the parties on the 15th day of May, 2000, vide which the respondent admitted liability for the wrongful dishonor of cheque. There followed a formal proof in which ***Nyamodi Ochieng Nyamogo and Arthur William Ogwayo*** were the only witnesses.

Judgment of the High Court.

Parties filed written submissions. ***P.J. Ransley, J*** in a brief judgment dated the 4th day of February, 2004 delivered himself *inter alia* thus:-

"As I have already said substantive damages can only be awarded under one head of damages; in this case for injurious falsehood. The damages for breach of contract I worked out now in all at Kshs.10,000.00. With regard to injurious false hood, I award a sum of Kshs. 1 million. There is evidence that the cheque was eventually paid to Mr. Ogwayo. The plaintiff will have the costs of the suit and interests on the damages awarded from the date of this judgment."

Grounds of appeal

The appellant was aggrieved by that judgment and filed this appeal citing nine (9) grounds of appeal. These are that, the learned trial Judge erred both in law and in fact:-

(1) In failing to make a finding with respect to the failure of the respondent to effect special clearance of a cheque after payment of their fees.

(2) In making an award in respect of only the breach of contract by dishonor of the plaintiff's cheque and not in respect to the breach of contract by failing to effect special clearance of a cheque.

(3) In considering a fact that was not proved before him by stating that there was evidence that the dishonoured cheque was eventually paid.

(4) By failing to consider the provisions of the Bill of Exchange Act.

(5) In failing to make an award for interest from the date of dishonor of the cheque and not date of judgment.

(6) In failing to consider fully the decision relied on by the appellant's Advocates.

(7) By holding that substantial damages can be awarded under one head of damages namely injuries falsehoods whereas particulars of damages were provided in the plaint and proved.

(8) In failing to make an award in respect of special damages which were proved in evidence before him.

(9) In awarding a nominal amount of only Kshs.10, 000.00 for breach of contract in view of the facts and circumstances of the case and evidence led by the plaintiff."

(10) In consequence thereof, the appellant sought from this appellate court for the setting order of that judgment.

The appellant's submissions

The appellant urged us to fault the learned Judge's findings on the grounds that the learned trial Judge fell into an error when (i) he failed to apply clear principles of law stipulated in **section 57** of the **Bills of Exchange Act Cap 27** Laws of Kenya which clearly stipulates that the amount of damages for breach of contract under this provision is the equivalent of the amount forming the dishonoured bill; **(ii)** when he erroneously awarded nominal damages for breach of contract as opposed to an award of substantial damages (iii) when he took into consideration extraneous unpleaded and un proven matters that the cheque was eventually paid and (iv) when he failed to make an award for special damages which had been pleaded and proved.

Respondent's submissions.

In response, the respondent urged us to affirm the learned trial Judge's decision and dismiss the appellant's appeal on the grounds that the learned trial judge properly directed his mind to factors favouring both and properly awarded damages for both; that the respondent admitted wrong doing and also overtly mitigated the damage caused to the appellant and his client and also apologized in unequivocal terms for the inconvenience the client suffered as a result of their erroneous action; that the libel reached only one person, the appellant's client; and lastly everything that could be done to protect the integrity of the appellant was done in the circumstances of this case.

Turning to the quantum of damages awarded, it was the respondent's arguments that these fell within the threshold acceptable in law for an award of damages under those heads considering the guiding principle that assessment of damages is a matter of the exercise of the court's discretion.

The respondent further urged us to find that no basis had been shown for us to interfere with the award of damages because the appellant was not entitled to a refund of the value of the dishonoured cheque of Kshs.4,376,402.35 as he never lost it; all that happened was that the client did not leave the country with the said amount on account of the error complained of; and the client was paid the value of the said cheque upon rectification of the error; to order the appellant to be paid the value of the dishonoured cheque would amount to an unjust enrichment to the appellant and for this reason Section 57 of the **Bills of Exchange Act Cap 27** laws of Kenya cannot be called into aid on special damages; that the appellant was not entitled to any award under the head of special damages as he neither pleaded nor specifically proved these.

As for interest the respondent argued that the learned trial Judge was entitled to decline the appellant's oral request in his submissions to court for an award of interest at 30% because it was also not pleaded in the plaint; nor proved in evidence and therefore had no basis in law or and; it would have been manifestly excessive if it had been awarded. The correct position in law is that interest awarded on damages at large is usually ordered to run from the date of the award.

The respondent argued that the learned trial Judge properly appraised himself of the case law cited to him as borne out by the judgment and it mattered not that the learned trial Judge did not apply them to his reasoning in the manner requested by the appellant so long as there is proof on the record that they were indeed assessed by the learned trial Judge.

The Appellant's Authorities.

The appellant relied on the decision in the case of ***Kpohror versus Woolwich Building Society [1964] 4 ALLER 119*** for the proposition that a person who was not a trader could recover substantial rather than nominal damages in contract for loss of credit for business reputation resulting from a cheque being wrongly dishonoured by his bank; the case of ***Davidson versus Barclays Bank Limited [1940] 1 ALL ER 316*** for the proposition that the defence of qualified privilege is not available to a bank where there was no matter of common interest connected with the cheque which called for communication in instances where the bank on its own made a mistake of thinking that there were insufficient funds to meet the cheque; the decision in the case of ***Plunkett and another versus Barclays Bank limited [1936] 1 ALL ER 653*** for the proposition that the money standing to the credit of the client account was a debt due from the defendant to the plaintiff and the Garnishee order nisi binds that debt on the defendant's hands.

Respondent's Authorities.

The respondent on the other hand relied on the legal text of ***Ellinger's Modern Banking Law Fourth Edition (E.P.Ellinger, Eva Lomnicka , and Richard Hooley) Oxford University Press*** page 461 for the proposition that a wrongful dishonor of a cheque constitutes a breach of contract on the bank's part and in certain cases the customer may have an additional action in defamation; (ii) Any carelessly composed answer written on a dishonoured cheque is capable of being construed as defamation provided it is susceptible to such an interpretation by a reasonable man; ***Pagets Law of Banking Twelfth Edition Mark Hop Good QC Butter worth page 399*** for the proposition that the credit of a customer may be seriously injured by the wrongful dishonour of a cheque, yet it is rare that a customer will be able to prove special damage. His claim is for general damages in respect of injury to his reputation.

Turning to case law, there is reliance on the decision in the case of ***Gibbons versus West Minister Bank Limited [1939] 3 ALLER 577*** for the proposition that:

"A person who is not a trader is not entitled to recover substantial damages for the wrongful dishonour of his cheque unless the damage which he has suffered is alleged and proved as special damages"; the decision in the case of ***Mbogo and another versus Shah [1968] EA 93*** for the proposition that "***a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision , or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice."***

The decision in the case of ***Shiraku versus Commercial Bank of Africa [1988] KLR67.*** At page 75 this Court made observation thus:-

"To wrongly dishonor any cheque is to do some injury in fact. If that is right then it is not necessary to plead and prove damages. But in ordinary circumstances, the damages will be quite modest. They will be more than nominal damages but not so great as to be excessive.

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It is when the injury is pleaded and proved that damages of substantial amount will be made, but again they must not be excessive..."

On the basis of the above observation the court went on to hold *inter alia* that:-

"***A person who is not a trader is not entitled to recover substantial damages for the wrongful dishonor of his cheque unless the damage which he has suffered is alleged and proved as a special damage....."***

Lastly, there is the decision in the case of ***Salim & another versus Kikaua [1988] KLR 534***. In this case, this Court drew inspiration from the decision in the case of ***Premlata versus Peter Musa Mbiyu [1965] EA 592*** and went on to hold *inter alia* that:-

"According to authorities, interest on general damages should be paid from the date of assessment which is the date of judgment. That is the earliest date when the defendant's liability to pay does arise."

The Mandate of the Court.

This is a first appeal and our mandate is to re-appraise; re-assess and re-analize the evidence on the record before us and arrive at our own conclusion on the matter and give reasons either way. See the case of ***Sumaria & Another versus Allied Industries Limited [2007] 2KLR1***. The only caveat being that in the discharge of its aforesaid mandate, this Court should be slow in moving to interfere with a finding of fact by a trial court unless it was based on no evidence, it was based on a misapprehension of the evidence or the judge had been shown demonstrably to have acted on a wrong principle in reaching the finding he did. See also ***Musera versus Mwechelesi & another [2007] 2KLR 159*** .

We have on our own in obedience to the above mandate revisited the record, re-assessed, re-evaluated and re-analyzed it in the light of the above rival arguments and are able to make the following determination in the appellant's complaints;

Determination of issue No.1

On the facts as they were before the learned Judge, there was no need for the learned Judge to specifically mention the respondent's failure to so accord the said cheque special clearance as the respondent's failure to do so was part of the wrong doing for which the respondent admitted liability. It was in order for the learned judge just to note that liability had been admitted. There was therefore no obligation on the learned judge to interrogate again in his judgment the factual base forming the admission of liability. We find no merit in this complaint. The same is dismissed.

Determination of issue No.2

The scanty evidence on this issue is what we have gleaned from the testimony on oath of **Nyamodi Ochieng Nyamogo** on behalf of the appellant. This is what he said:-

"As the client was leaving for South Africa he left without this cheque. He instructed me to pay the money to his wife and transfer to Swaziland.

...

Received two replies. The letter of 24th June, 1998 admitted his error and apologized eventually we paid our client..."

When cross examined by ***Mr. Majanja,*** PW1 had this response to make:-

"The cheque I do not know if it was represented. On the face of it, it was not represented. We paid Mr. Ogwayo the money."

Mr. Authur William Ogwayo who gave evidence in the formal proof as PW2 had

this to say:-

"I went and my trip reluctantly asked Mr. Nyamogo to pay the sum to my wife for onward transmission to me....

From the testimony of PW1 he was not sure whether the cheque had been represented or not. On the above representations there was nothing before the Judge for him to rule out the possibility of the cheque having been represented and paid. Second, PW1 admits they paid their client. There was however no mention that they eventually paid their client from other sources. In the premises, the learned trial Judge was therefore entitled on the facts before him to assume that payment to the appellant's client was made from the value of the same cheque that had previously been dishonoured. We find no merit in this complaint and it is accordingly dismissed.

Determination of issue No.3

There was no specific pleading for the application of the provisions of **section 57** of the **Bills of Exchange Act Cap 27** Laws of Kenya in the appellant's plaint.

The relevant portions of section 57 of the Act provides *inter alia* thus;-

"57 where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be as follows....

By reason of the words "***shall be deemed to be liquidated"*** denotes that any party wishing to avail itself of that provision has to lay its claim in the manner liquidated claim is laid, that is by being specifically pleading it with particulars, and then specifically proving it.

There was no specific prayer by the appellant that the quantum of damages payable to them on account of the dishonoured cheque should be based on its value as stipulated by **section 57** of the Bill of Exchange Act (supra). As mentioned, this arose in PW1's testimony. It appears clearly that it arose from the conversation PW1 had with one ***Ojiambo*** of the respondent over the contents of a letter of 30/3/1999, that ***Mr. Ojiambo*** of Kaplan & Stratton had written to PW1.

The content of that correspondence is what formed the basis of the appellant's testimony in court when he made the oral request to the court that the measure of damages, payable to the appellant should be based on the value of the dishonoured cheque.

The framing of the prayers in the plaint by the appellant left room for the learned judge to exercise his discretion in determining the measure of damages payable. Paragraph 5 of the plaint simply indicated this as the amount forming the dishonoured cheque. Paragraph 10 gave particulars of the loss with no particularization, whereas the reliefs in paragraph 15 were prayed for in general terms.

In the result, we find nothing wrong in the mode of approach adopted by the learned trial judge when assessing damages payable herein.

Determination of issue No.4

With regard to interest payable paragraph 15(e) of the appellant's prayer was for.

"(e) Costs and interest on the above."

"And the court awarded interest on damages awarded from the date of this judgment"

Section 26 of the Civil Procedure Act cap 21 Laws of Kenya provides:

26(1) Where and in so far as a decree is for the payment of money, the court may in the decree order interest at such rate as the court may deem reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

2 ....."

It was correctly submitted by the respondent that the appellant did not plead any specific measure of interest that he intended applied to any resulting figure that may be adjudged in their favour. The position in law on unpleaded issues has been crystallized by case law numerously pronounced by this Court. The predecessor of this Court in the case of ***Captain Harry Gandy versus CAS Par Air Charters Limited [1956] Volume XXII EACA 139, Sinclair vice-president*** *inter alia* had this to observe at page 140 paragraph 3:-

"The object of pleadings is of course to ensure that both parties shall know what are the points in issue between them, so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent. As a rule relief not founded on the pleadings will not be given..."

After citing the decision of ***Scrutton L.J in Blay versus Pollard and Morris [1930] 1.K.B. 682-*** he added the following:-

"Cases must be decided on the issues on the record and if it is desired to raise other issues they must be placed on the record by amendment..."

This position was approved and applied by the same predecessor of this Court in the decision in the case of ***Odd Jobs versus Mubia [1970] EA 476. Law, J.A*** (as he then was), at page 478 paragraph 9-11 had this to say:-

"On the point that a court has no jurisdiction to decree on an issue which has not been pleaded, the attitude adopted by this Court is not as strict as appears to be that of Courts in India. In East Africa the position is that a Court may allow evidence to be called and may base its decision on an unpleaded issue if it appears from the cause followed at the trial that the unpleaded issue has in fact been left to the court for decision..."

PW1 in his testimony to court asked for interest at commercial rates. Even if this Court were to take it that this request removed the appellant's claim from the rule on strict compliance with ones pleadings and then placed it into the category of matters falling for the court's adjudication by virtue of these having been raised in the course of the trial, testified upon and submission made thereof, the question is whether the learned trial Judge was bound by PW1's request for interest at commercial rate. He was not.

In the case of ***Salim & another versus Kikava (supra)*** this Court revisited and confirmed the provisions of **section 26** of the Civil Procedure Act (supra) that interest on damages assessed at large starts running from the date of assessment as the date when liability arises. We find no reason as to why the learned trial judge should have departed from a path well beaten as regards awarding of interest on damages at large. The judge was right and we affirm that stand.

Determination of issue number 5.

The learned trial Judge specifically made reference in the body of the judgment to two of the authorities cites by the appellant remedy ***Timwood Products Limited versus Bank of Baroda (supra)*** and the decision in ***Kpohror versus Wool Wich Building Society*** (supra).

The decision in ***Kpohror (supra)*** which is a 1996 decision simply re-echoed the principle earlier on enunciated in the earlier decision of ***Gibbons (*****supra)** that "a person who is not a trader is not entitled to recover substantial damages for the wrongful dishonor of his cheque unless the damage which he has suffered is alleged and proved as special damages; the decision of **Davidson (supra**) simply disallowed the defence of qualified privilege where the bank of its own elects to engage in a communication on a matter of alleged common interest. Whereas in the ***Plunkett & another case*** (supra) it simply stated inter alia that where the bank had satisfied a debt in obedience to a Garnishee order leaving insufficient

funds in the clients account resulting in the cheque presented to the said account being referred to the drawer; the words "***refer to drawer***" in the circumstances were held not to be "***a libel."***

The learned trial Judge drew out general principles of law as applying to the matter before him, namely damages for breach of contract arising from claims based on a dishonoured cheques under this head where the claimant is not a trader, he is only entitled to nominal damages, where some loss has been occasioned to the claimant beyond nominal damages substantial damages has to be claimed as a special damage. The decision of **Tim Wood properties case** (supra) was distinguished by the learned Judge because the award of **Kshs. 80,000.00** had been awarded as a special damage. The learned trial Judge also took into consideration the fact that the cheque was eventually paid to ***Mr. Ogwayo.***

The funds forming the dishonoured cheque were never meant for the benefit of the appellant. ***Mr. Ogwayo*** himself in his testimony said he had wanted to sever completely the client advocate relationship with the appellant but his wife, intervened and in fact he thereafter gave some business to the appellant after the incident subject to his appeal. The fact of total loss of client is therefore ruled out. On the basis of the above, the learned Judge opined that in the circumstances of the facts before him, the appellant could only recover under injurious falsehood. Damages for libel and negligence were discounted. None of the case law assessed above was shown to have factored in damages for negligence. In fact, in the appellant's own authority of ***Plunkett and another (supra),*** the holding is inter alia that "**word refer to drawer**", does not amount to libel". In the result, we find no fault in the learned trial Judge's discounting of the negligence as he was within the principles of case law assessed and applied by him.

Determination of issue No.6

The complaint on failure to award substantial damages is related to the complaint against the award of nominal damages and will therefore be dealt with together.

Determination of issue No.7

This relates to the complaint on the learned trial judge's failure to make provision for an award of special damages. ***Shiraku case (supra)*** is explicit on this, that such loss must be alleged and proved as a special damage. See also the case of ***Hann versus Singh [1985] KLR 716*** for the proposition that special damages must not only be specifically claimed but also strictly proved. The appellant failed to do so.

Determination of issue number 8.

The head of loss of credit received an award of K**shs.1, 000,000.00**, while the head for breach of contract attracted an award of nominal damages of only **Kshs.10, 000.00.**

The principles that guide this Court in determining whether to interfere or not to intervene in the superior court's exercise of discretion on the assessment of damages and why now form a well trodden path. ***Sir Charles New Bold* P.** in the case of ***Mbogo & another versus Shah [1968] EA 93*** at page 96 paragraph G-H had this to say:-

"For myself, I like to put it in the words that a court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion misdirected himself in some matter and as a result has arrived at a wrong decision or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of that discretion and that as a result there had been misjustice"

See also the reiteration of this principle by this Court in the decision in the case of ***Butler versus Butler [1984] KLR 225*** wherein it was held *inter alia* that:-

"The assessment of damages is more like an exercise of discretion by the trial judge and an appellate court should be slow to reverse the trial judge unless he has either acted on wrong principles or awarded so excessive or so little damages that no reasonable court would; or he has taken into consideration matters he ought not to have considered, and in the result arrived at a wrong decision."

In addition to the above principles learned counsel for the respondent drew the Court's attention to the provisions of **section 16A (1)** of the Defamation Act cap 36 laws of Kenya. It provided:-

"In any action for libel the court shall assess the amount of damages payable in such amount as it may deem just. Provided that where the libel is in respect of an offence punishable by death, the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings"

The appellant's claim as set out in the plaint on the record is basically that by reason of matters averred to therein the appellant suffered loss of a customer; loss of credit and reputation and loss of business.

In paragraph 11, 12, 13 the appellant averred thus:-

"11. The plaintiff aver and will prove at the hearing hereof that the defendant's actions were calculated to cause pecuniary damage to the plaintiff in their trade.

12. By reason of the matters aforesaid, the plaintiff has been seriously injured and suffered general loss on their said business.

13. The plaintiff further averred and will prove at the hearing hereof that by the malicious publication of the said words on the face of the cheque, the plaintiff has been greatly injured in its credit, reputation and has been brought into a scandal Odium and contempt"

All the above averments indicate that the appellant's claim was laid at large. The case law assessed above indicates that any claim beyond the injury to reputation had to be pleaded as a special damage. By this was meant that the actual loss should be calculated and claimed. The fact that the customer ***Ogwayo*** gave away to other advocates some of the briefs which should have been monopolized by the appellant though admitted in the oral testimony of PW1 and PW2 was not enough to quantify and prove the actual loss. This should have been tabulated and claimed as such. We find no merit in the appellant's complaint that an award for substantial damages should have been made in his favour.

As for nominal damages, in the decision in ***Gibbons versus West Minister Bank Limited [1939]3ALLER 577***, It was held inter alia that

"***The plaintiff not being a trader was entitled only to nominal damages in respect of the wrongful dishonor of a cheque by her bank."***

Grabbe JA. in the case of ***Kanji Naran Patel versus Noor Essa and another [1965]EA484*** at page 487 paragraph G-I had this to say:-

"Nominal damage is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term nominal damage does not mean small damages. The extent to which a person has a right to recover what is called by the compendious phrase damages but may also be represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances and it certainly does not in the smallest degree suggest that because they are small, they are necessarily nominal damages.

In the earlier case of Beumont versus Great head [1846] 2C.B. 494, Maule, J. [1846] 2C.B. at P.499) spoke of nominal damages as a sum that may be spoken of but that has not existence in point of quantity" and as a "mere peg on which to hang costs."

In ***Kimakia Co-Operative Society versus Green Hotel [1988] KLR 242,*** this Court held *inter alia* that where damages are at large and cannot be quantified, the court may have to assess damages upon some conventional yardstick. But if a specific loss is to be compensated and the party was given a chance to prove the loss and he did not he cannot have more than nominal damages.

Applying the above to the rival arguments herein on normal damages, we are of the view that the appellant's claim does not fall into the category of claims that qualify for nominal damages only because the appellant was not merely seeking to negative a right but was saying that by the reason of his professional standing as a firm of advocates dishonor a cheque payable on its behalf had repercussion on their professional standing. Authority for this is the decision in the case of ***Kpohror versus Woolwich Building Society (supra)*** wherein it was held *inter alia* that:

"***A person who was not a trader could recover substantial rather than nominal damages in contract for loss of credit or business reputation resulting from a chaque being wrongly dishonoured by his bank";*** In **Gibsons case (supra)** and the **Shiraku case (supra)** nominal damages were awarded because the claimants were not trading. The appellant was trading as a firm of advocates. They were therefore in business. Their claim falls outside the nominal damages bracket but with a caveat that any intended award of damages, should not be so high because if alleged heavy losses were involved then these should have been quantified and claimed as special damages. The court has no quarrel with the appellant's assertion that the reputation of the appellant as a professional firm of advocates meant everything. But we also wish to add that as observed elsewhere damage to the reputation of this firm was minimized by matters in controversy being confined to the appellant, the respondent and the appellant's then affected client.

The award to that a firm of advocates with capacity to handle briefs worth millions should have been something beyond nominal damage, but not so high considering the other head of damages was also related to this head. We would award **Kshs. 500,000.00**.

In the result, we partially allow the appeal. We affirm the award of 1 million (**Kshs. 1,000,000.00)** for injurious falsehood but set aside the award of **Kshs.10, 000.00** nominal damage and substitute it with an award of **Kshs.500, 000.00** as damages for breach of contract. The appellant will have half the costs of this appeal.

Dated and Delivered at Nairobi this 8th day of May, 2015.

R.N. NAMBUYE

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JUDGE OF APPEAL

P.O. KIAGE

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JUDGE OF APPEAL

A.K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR