**EA Newspapers (Nation Series) Ltd v Opondo and others**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 29 November 1973

**Case Number:** 31/1972 (4/74)

**Before:** Sir William Duffus P, Spry V-P and Law JA

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**Appeal from:** High Court of Kenya – Madan, J

*[1] Defamation – Identification – Reference to office-bearers a reference to all six – Office-bearers*

*acting as such.*

*[2] Defamation – Innuendo – Criminal offence – Innuendo of special meaning not pleaded or proved.*

*[3] Defamation – Damages – Malice – Same principles as malice negativing qualified privilege.*

*[4] Defamation – Malice – Newspaper not liable for malice of freelance journalist.*

**Editor’s Summary**

The respondents had been the six national office-bearers of an organisation and they were still carrying out these functions at the time of the publication of an article by the appellant stating that the Nairobi officials of the organisation had been sacked. The judge found that they had been libelled and awarded them Shs. 44,000/- each. On appeal the appellant argued that the respondents had not been sufficiently identified as the persons referred to, that an innuendo of identity should have been pleaded, that the words in their natural meaning could not impute criminal offences, and that the finding of malice supporting an award of aggravated damages could not be supported.

**Held –**

(i) the respondents were performing the duties of office-bearers;

( ii) a reference to officials was to the office-bearers;

(iii) a reference by office to six persons must be regarded as a reference to each of them;

(iv) the words were only mildly defamatory, no legal innuendo having been pleaded or proved;

(v) the same principles apply to the question whether there is malice aggravating damage as apply to

the question whether there is malice negativing a defence of qualified privilege (*Puri v. Kenya*

*Farmers’ Association* (1), *Hoare v. Jessop* (2) and *Egger v. Chelmsford* (3) considered);

(vi) the appellant was not responsible for the malice of a freelance journalist and the other findings of

malice could not be supported;

( vii) damages would be reduced to Shs. 10,000/- each.

Appeal allowed in part.

**Cases referred to Judgment:**

(1) *Puri v. Kenya Farmers’ Association* (1946), 22 (2) K.L.R. 1.

(2) *Hoare v. Jessop*, [1965] E.A. 218.

(3) *Egger v. Chelmsford*, [1965] 1 Q.B. 248; [1964] 3 All E.R. 406.