

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....APPLICANT/PLAINTIFF

VERSUS

THE STANDARD GROUP LIMITED.....1ST DEFENDANT


JEROTICH SEII.....2ND DEFENDANT

CERTIFICATE OF URGENCY

I, **APOLLO MBOYA**, an Advocate of the High Court of Kenya and the Applicant/Plaintiff herein, do hereby certify that this matter is extremely urgent and ought to be heard expeditiously for the following reasons: -

- 1) The Defendants is a media company and activists respectively with substantial number of followers in social media through their twitter handles [@SpiceFMKE](#) and [#HumnityKe@JerotichSeii](#) and other Social Media Platforms where the Defendants published defamatory tweets against the Applicant/Plaintiff.
- 2) The 1st Defendant has several Radio and Television channels including **Spice FM Radio** and **KTN Television** in which it broadcasts both television and radio programmes where it broadcasted and televised the video of the 2nd Defendant making defamatory statements against the Applicant/Plaintiff.
- 3) The 2nd Defendant has in a series of tweets published several allegations concerning the Plaintiff and Judicial Officers, which are false, unsubstantiated, baseless and unsupported and therefore defamatory of the Plaintiff.

DATED at NAIROBI this 2nd day of October 2020


APOLLO & COMPANY
ADVOCATES FOR THE APPLICANT/PLAINTIFF

DRAWN & FILED BY:

Apollo & Co. Advocates

Kindaruma Court, Suite B2

Kindaruma Road - Kilimani

P.O. BOX 2073 - 00100

NAIROBI.

Membership No :105/4299/000

Tel: 0733725482

Practice Number: LSK/2020/00048

E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

TO BE SERVED UPON:-

1. **The Standard Group Limited,**
The Standard Group Centre,
Mombasa Road,
P. O. Box 30080 - 00100,
NAIROBI
Email: corporate@standardmedia.co.ke

2. **Jerotich Seii**
Po.O.Box 76120-00508
NAIROBI
Email: jerotichsh@gmail.com

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....APPLICANT/PLAINTIFF

VERSUS

THE STANDARD GROUP LIMITED.....1ST DEFENDANT

JEROTICH SEII.....2ND DEFENDANT

NOTICE OF MOTION

(Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Cap 21 of the Laws of Kenya, Order 5 Rule 17 , Order 40 Rules 1,2 & 4, and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the Law)

TAKE NOTICE that this Honourable Court will be moved onday of.....2020 at 9.00 O'clock in the forenoon or soon thereafter as Counsel for the Plaintiff/ Applicant may be heard on an application for **ORDERS:-**

1. **THAT** the application be certified as urgent and heard *ex-parte* in the first instance.
2. **THAT** pending the *inter parte* hearing and determination of this Application and suit, an Injunction do issue restraining the Defendants by themselves, servants, agents or proxies from further publishing or causing to be published in any of their twitter handles including [@SpiceFMKE](#) ,[#SwitchOffKPLC@JerotichSeii](#) and [#HumnnityKe@JerotichSeii](#) , KTN **Television** or any other media platform any statements and videos defamatory or otherwise of or concerning the Plaintiff or any Judicial Officer.
3. **THAT** pending the *inter parte* hearing and determination of this Application and suit, the Defendants pull down all the impugned publication and videos in their twitter handles and in any other media platform making reference to the Applicant.
4. **THAT** leave be granted to the Plaintiff to serve the Defendants by way of substituted service through their twitter handles [@SpiceFMKE](#) and [#HumnnityKe@JerotichSeii](#) and email addresses

corporate@standardmedia.co.ke and jerotichsh@gmail.com respectively on account of the Covid-19 Pandemic.

5. **THAT** the costs of this Application be borne by the Defendants.

WHICH APPLICATION is based on the following grounds:-

- a) The Defendants is a media company and activists respectively with substantial number of followers in social media through their twitter handles [@SpiceFMKE](https://twitter.com/SpiceFMKE) and [@HumnityKe](https://twitter.com/HumnityKe) and other Social Media Platforms.
- b) The 1st Defendant is a media company with several Radio and Television channels including **Spice FM Radio** and **KTN Television** in which it broadcasts both television and radio programmes.
- c) The 2nd Defendant has in a series of tweets published several statements of allegations of or concerning the Plaintiff and Judicial Officers, which are false, unsubstantiated, baseless and unsupported and therefore defamatory of the Plaintiff.
- d) The tweets and broadcast of the Defendants have been viewed by thousands and elicited numerous comments that have further aggravated the defamation.
- e) The Defendants have failed to apologise and withdraw the defamatory tweets and broadcast and the Plaintiff has suffered and continue to suffer substantial damage to his reputation.
- f) There is a likelihood that the Defendants will continue publishing defamatory tweets and statements in various platforms with a view to besmirch, disparage and ruining the Plaintiff's reputation in the estimation of right-thinking members of the society.

g) The Plaintiff do not know the whereabouts of the 2nd Defendant for purposes of effecting personal service of this application and the summons to enter appearance in the wake of the Covid-19 Pandemic.

WHICH APPLICATION is further supported by the annexed affidavits the Plaintiff and such other grounds as shall be adduced at the hearing of this application.

DATED at NAIROBI this 2nd day of October 2020


APOLLO & COMPANY
ADVOCATES FOR THE APPLICANT/PLAINTIFF

DRAWN & FILED BY:

Apollo & Co. Advocates

Kindaruma Court, Suite B2

Kindaruma Road - Kilimani

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NAIROBI.

Membership No :105/4299/000

Tel: 0733725482

Practice Number: LSK/2020/00048

E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. _____ OF 2020

APOLLO MBOYA.....APPLICANT/PLAINTIFF

VERSUS

THE STANDARD GROUP LIMITED.....1ST DEFENDANT

JEROTICH SEIL.....2ND DEFENDANT

SUPPORTING AFFIDAVIT

I **APOLLO MBOYA** a resident of Nairobi, within the Republic of Kenya and of Post office Box Number 2073-00100 **Nairobi** in the afore-stated Republic do hereby make oath and state as follows:-

1. **THAT** I am the Applicant/Plaintiff herein and as such conversant with the material facts of this matter, thereby competent and duly authorized to swear this Affidavit.
2. **THAT** I was one of the petitioners in the **Nairobi High Court Petition No. 6 of 2018** which was filed in court on 11th January 2018. The parties were heard and determined by a Consent Court Order which was adopted as a judgment of the Court on 22nd October 2018. Attached and Marked **AM-1** is the Court Order.
3. **THAT** on 9th December 2019, the second Defendant together with **Eva Mutua, James Gitau, Wanjeri Nderu, Fred Asira and Victor Innocent Otieno** who were not party to the suit made an application to be enjoined in the concluded matter with a view to upset the consent order. The ruling of the application is coming up on 5th November 2020 before Justice **Weldon Korir**.
4. **THAT** I was one of the petitioners in the **Nairobi High Court Petition No. 59 of 2018** which was filed in court on 19th February 2018. The parties were heard and determined by a Consent Court Order which was adopted as a judgment of the Court on 15th November 2018. Attached and Marked **AM-2** is the Court Order.

5. **THAT** by application filed on 7th November 2018, one **Gitson Energy Limited** who was not party to the suit made application supported by various affidavits including of the 2nd Defendant seeking to be enjoined in the concluded matter.
6. **THAT** by a ruling delivered on 13th June 2019, **Justice J.A Makau** dismissed the application for being scandalous, vexatious, frivolous and an abuse of the court process and awarded costs to the petitioners and the respondents in the suit. Attached and Marked **AM-3** is copy of the Ruling
7. **THAT** the prospective interested party has applied for review of the said Ruling with the court has faxed the date of 21st January 2021 to deliver ruling on the application for review.
8. **THAT** on 19th, December 2019, **Spice FM Radio** and broadcasted in **KTN Television**, uploaded a tweet and published or caused to be uploaded, broadcasted, tweeted and published in the twitter handle [@SpiceFMKE](#) and radio program the words:

"#SwitchOffKPLC campaigner .@JerotichSeii discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. .@EricLatiff @EricLatiff @nduokoh @NjeriThorne."

Attached and Marked **AM-4** is copy of the tweet
9. **THAT** on the said broadcast and video in **Spice FM Radio** and **KTN Television** uploaded on the twitter handle [@SpiceFMKE](#), the 1st Defendant broadcasted the words of one 2nd Defendant to the effect:

"...Apollo Mboya settled the case out of court... We have heard that allegedly money was poured somewhere between 60 to 75 m..."

Attached and Marked **AM-4(a)** is copy of the video (to be provided with the leave of court)
10. **THAT** the 2nd Defendant on 2nd September 2020 on her twitter handle [#HumnityKe@JerotichSeii](#) wrote and posted the words:

"Msaliti @MboyaApollo in action almost 2yrs ago.

Nothing Changed. For. Electricity. Consumers.

His bank balance did.

*Today, he nothing more than a liability for @KenyaPower
@EPRA_Ke @EnergyMinK @StateHouseKenya -& perhaps the
Judiciary."*

Attached and Marked **AM-5** is copy of the tweet

11. **THAT** the 2nd Defendant has in a series of tweets published several statements of allegations of or concerning me, which are false, unsubstantiated, baseless and unsupported and therefore defamatory.

12. **THAT** on 31st August 2020 after being served with the letter of demand, the 2nd Defendant using her twitter handle [#HumnnityKe@JerotichSeii](#) tweeted as follows:

"@MboyaApollo

1. Shame on you

*2. I was born ready 3. Your days on the roll of advocates are numbered
You have our affidavits from PETs 6 & 59. Semeni cross examination.
James Gitau,*

*@WanjeriNderu @hotshotcreative@eva_m_mutua @KingFredAsira. Let's
do this. #SwitchOffKPLC"*

Attached and Marked **AM-6** is copy of the tweet

13. **THAT** on 2nd August 2019, the 2nd Defendant using her twitter handle [#SwitchOffKPLC@JerotichSeii](#) tweeted as follows:

"...We will, in court, see how sh75M was paid out to kill Pets 6 & 59"

Attached and Marked **AM-7** is copy of the tweet

14. **THAT** the 2nd Defendant has relentlessly been scandalizing and harassing me, court and judicial officers using social media including in respect of the ruling dated 13th June 2019 in respect of **Petition 59 of 2018** in which she

alleges in her tweet using the twitter handle [#SwitchOffKPLC@JerotichSeii](#) as follows:

“For less than 1 min judgment, why not have the ruling ready to enable movement to the Court of Appeal? Or is Justice Makau busy retrofitting the ruling to reflect his decision? Sh 2.14T in capacity charges for energy cartels is enough to make one bend the pen.”

Attached and Marked **AM-8** is copy of the tweet

15. **THAT** several acquaintances brought to my attention several tweets and video by the defendants and upon reading and listening to them, I realized that it contained factual inaccuracies and made defamatory statements of and concerning me.

16. **THAT** the said tweets and video were not only false and malicious but were also highly defamatory of me as a person and an Advocate for which I downloaded for the purposes of this suit.

Attached and Marked **AM-9** is Certificate of Electronic Print-Out

17. **THAT** the tweets and broadcast of the Defendants have been viewed by thousands of Radio listeners, television viewers and retweeted where they elicited numerous comments that have further aggravated the defamation given the wide circulation.

18. **THAT** my character, reputation, image and good standing has been infinitely injured in my professional capacity.

19. **THAT** at no time did the publishers contact me to verify any issue before publishing and circulating the said malicious and defamatory words.

20. **THAT** the Defendants knew that once the said defamatory words were published in twitter, broadcasted on radio and television and on the world-wide-web, the same would be available for access, and must in fact have been accessed, by extremely large numbers of readers in Kenya and beyond.


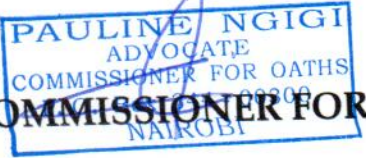
21. **THAT** the 1st Defendant derived substantial commercial gain by promoting their radio, television and twitter handles to millions of readers, followers, listener and viewers both within and without this jurisdiction who had free,

open and unhindered access to the defamatory and malicious words
aforementioned.

22. **THAT** what is deponed herein is true to the best of my knowledge,
information and beliefs save wherein otherwise stated.

SWORN at NAIROBI by the said)
APOLLO MBOYA)
This ..^{2nd}.....day of...^{Oct.} 2020)

BEFORE ME:)



COMMISSIONER FOR OATHS)



DEPONENT

DRAWN & FILED BY:

Apollo & Co. Advocates
Kindaruma Court, Suite B2
Kindaruma Road - Kilimani
P.O. BOX 2073 - 00100
NAIROBI. **Membership No :105/4299/000**
Tel: 0733725482 **Practice Number: LSK/2020/00048**
E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

TO BE SERVED UPON:-

- 1. The Standard Group Limited,**
The Standard Group Centre,
Mombasa Road,
P. O. Box 30080 – 00100,
NAIROBI
Email: corporate@standardmedia.co.ke
- 2. Jerotich Seii**
Po.O.Box 76120-00508
NAIROBI
Email: jerotichsh@gmail.com

AM-1

This is the Exhibit marked "AM-1"
 Referred to in the Annexed Affidavit / Declaration
 of Apollo Mboya
 Sworn / Declared before me this 2nd Oct 2018
 Day of Oct 2018 at Nairobi
 in the Republic of Kenya
 Commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 6 OF 2018

- IN THE MATTER OF: THE CONSTITUTION OF KENYA ARTICLES 1, 2,3, 10,19, 20,21, 22, 23, 24, 25, 27,28, 35,46, 73,74,75,232, 258AND 259
- IN THE MATTER OF: FOURTH SCHEDULE (DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENT, PART 2-COUNTY GOVERNMENTS PARAGRAPH 8(e).
- IN THE MATTER OF: VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOM
- IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013
- IN THE MATTER OF: CONSUMER PROTECTION ACT, 2012
- IN THE MATTER OF: THE ENERGY ACT
- IN THE MATTER OF: THE ENERGY MANAGEMENT REGULATIONS 2012
- IN THE MATTER OF: KENYA POWER & LIGHTING COMPANY LIMITED

BETWEEN

APOLLO MBOYA..... 1ST PETITIONER
 ELECTRICITY CONSUMERS SOCIETY OF KENYA.....2ND PETITIONER

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....1ST RESPONDENT
 ENERGY REGULATORY COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AUDITOR GENERAL.....4TH RESPONDENT

IN COURT ON 22ND OCTOBER 2018
BEFORE THE HON. MR. JUSTICE E. C. MWITA

ORDER

THIS MATTER coming up for mention for directions on 22nd October 2018 before the Hon. Mr. Justice E. C. Mwita **AND UPON HEARING** Counsel for the Petitioner, Counsel for the 1st Respondent, Counsel for the 2nd Respondent, Counsel for the 3rd Respondent and Counsel for the 4th Respondent:-

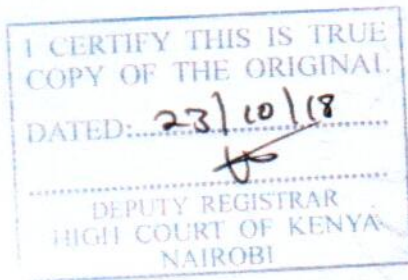
IT IS HEREBY ORDERED CONSENT:

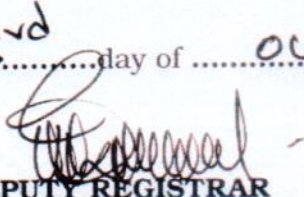
1. **THAT** the terms of the consent letter dated 19th October 2018 and filed in court on 22nd October 2018 be and are hereby adopted as order of this Court. That is:
 - i) The 1st Respondent undertakes to be its customer for consumption of electricity in accordance with the Electricity Tariffs approved by the 2nd Respondent and the charges for fuel cost charge and foreign exchange fluctuations adjustments prescribed by the 2nd Respondent in the Kenya Gazette. Where such billing is based on an estimate the customer shall be entitled to have the bill reviewed against the actual meter reading upon request.
 - ii) The 1st Respondent agrees to allow its customers who may have issues relating to their bills following the migration to the integrated customer management system (InCMS) system in Nairobi and its environment in September 2017 and the County wide roll out in November 2017 within a period of 30 days from the date of this consent to raise their queries with the 1st Respondent.
 - iii) During the 30 day period referred to in (ii) above the 1st Respondent will have a moratorium suspending disconnection of electricity for all such customers as will have raised queries with regard to their bills. The 1st Respondent shall publish the paid moratorium in at least two daily newspaper with countrywide circulation electronic media and all its communication platforms.
 - iv) The 1st Respondent do establish billing query counter across its commercial offices country wide to establish its customers have their billing issues resolved promptly pursuant to no.(ii) above.

- v) The 2nd Respondent will accord the Petitioner, ELECTRICITY CONSUMERS SOCIETY OF KENYA, an opportunity to make presentation at public forum that the 2nd Respondent would be holding for purposes of articulating and ventilating Electricity Consumers concerns.
- vi) a) The 1st Respondent will on its own behalf and thereof the 2nd Respondent pay the Petitioners costs to be agreed or taxed by the taxing officer of the Court.
- b) The 1st and 2nd Respondents do discuss and agree on the apportionment of the paid costs as between them
- vii) This consent settle all the disputes between the parties herein.

GIVEN under my Hand and the Seal of this Honourable Court this **22nd** day of **October, 2018**.

ISSUED at **Nairobi** this **23rd** day of **October** **2018**.




DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

AM-2

Office copy

This is the Exhibit marked "Am-2"
Referred to in the Annexed Affidavit/Declaration
of Apollo Mboya
Sworn/Declared before me this 2nd
Day of Oct 2018 at Nairobi
in the Republic of Kenya
Commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 59 OF 2018

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 1, 2, 3, 10, 19, 20, 21, 27, 35, 46, 73, 74, 201, 202, 206, 213, 214, 220, 225, 227, 232, 258, 259 AND PARAGRAPH 8(E) OF THE FOURTH SCHEDULE (DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL AND THE COUNTY GOVERNMENT)

IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOM

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

IN THE MATTER OF THE ENERGY ACT, NO.12 OF 2006

IN THE MATTER PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, NO.33 OF 2015

IN THE MATTER OF PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012

IN THE MATTER OF NATIONAL GOVERNMENT LOANS GUARANTEE ACT NO. 18 OF 2011

IN THE MATTER OF CONSUMER PROTECTION ACT, 2012

IN THE MATTER OF 2018 BUDGET POLICY STATEMENT

- BETWEEN -

- APOLLO MBOYA1ST PETITIONER
- ELECTRICITY CONSUMERS SOCIETY OF KENYA.....2ND PETITIONER
- AND -
- CABINET SECRETARY OF THE NATIONAL TREASURY.....1ST RESPONDENT
- MINISTRY OF ENERGY.....2ND RESPONDENT
- CENTRAL BANK OF KENYA.....3RD RESPONDENT
- KENYA POWER & LIGHTING COMPANY LIMITED.....4TH RESPONDENT
- ENERGY REGULATORY COMMISSION5TH RESPONDENT
- KENYA ELECTRICITY TRANSMISSION COMPANY LTD6TH RESPONDENT
- ATTORNEY GENERAL7TH RESPONDENT

AND

GITSON ENERGY.....INTERESTED PARTY

IN COURT ON 15TH NOVEMBER 2018
BEFORE THE HON. LADY JUSTICE W. A. OKWANY

ORDER

THIS PETITION Coming up for mention for further directions on 15th November 2018 before the Hon. Lady Justice W. A. Okwany **AND UPON READING** the consent letter dated 15th November 2018 and filed on the same date and adopted as the Order of this Court **AND WHEREAS** the Consent Letter signed by Ms Appolo & Co. Advocates for the 1st & 2nd Petitioners, The Attorney General Advocate for the 1st, 2nd and 7th Respondents, Ms Amolo & Gacoka Advocates for the 3rd Respondent, Ms Robson Harris & Co. Advocates for the 4th Respondent, Ms Munyao, Muthama & Kashindi Advocates for the 5th Respondent and Ms Cheptumo & Co. Advocates for the 6th Respondent **AND UPON HEARING** the Petitioner in Person, Counsel for the 1st, 2nd and 7th Respondent, Counsel for the 3rd Respondent, counsel for the 4th Respondent, Counsel for the 5th Respondent, Counsel for the 6th Respondent and Counsel for Interested Party:-

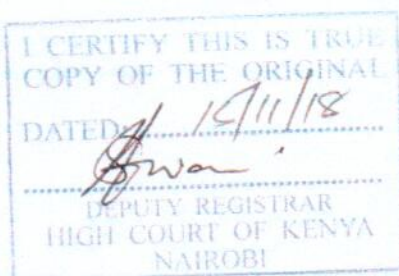
IT IS HEREBY ORDERED BY CONSENT:

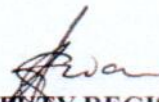
The suit herein be and is hereby marked as fully settled in the following terms:

1. **THAT** the 2nd, 4th, 5th & 6th Respondents herein confirm that in discharging their obligations and /or duties in respect of the energy sector, they will strictly comply with the provision of the Constitution and the Energy Act, 2006 and any other legislation concerning the energy sector.
2. **THAT** the bills rendered to the electricity consumers shall conform with the tariffs as duly approved under the Energy Act and relating to their consumption.
3. **THAT** the 2nd Petitioner, ELECTRICITY CONSUMERS SOCIETY OF KENYA has the liberty to make presentations at public forums for the purposes of articulating and ventilating electricity consumers' concerns.
4. **THAT** the consent herein settles all the disputes before this Honourable Court by the parties herein with no order as to costs.

GIVEN under my Hand and the Seal of this Honourable Court this 15th day of November, 2018.

ISSUED at Nairobi this 15th day of November 2018.




DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

PENAL NOTICE

TAKE NOTICE that any party served with this Order and disobeys the same shall be guilty of contempt of Court and liable to imprisonment for a term not exceeding (6) months or both fine and imprisonment.

AM-3

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO.59 OF 2018

Referred to in the Annexed Affidavit / Declaration
Am-3
Pollo Mbaye

Sworn / Declared before me this 20th day of Oct 2020 at Nairobi in the Republic of Kenya

Commissioner for Oaths

**IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES
1,2,3,10,19,20,21,27,35,46,73,74,201,202,206,213,214,220,225,227,23
2,258,259 AND PARAGRAPH 8(e) OF THE FOURTH SCHEDULE
(DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL
GOVERNMENT AND THE COUNTY GOVERNMENT)**

**IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS AND
FREEDOM**

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREESOMS) PRACTICE AND
PROCEDURE RULES, 2013**

**IN THE MATTER OF THE ENERGY ACT, NO. 12 OF 2006
IN THE MATTER OF PUBLIC PROCUREMENT AND ASSET
DISPOSAL ACT, NO.33 OF 2015**

**IN THE MATTER OF PUBLIC FINANCE MANAGEMENT ACT NO.
18 OF 2012**

**IN THE MATTER OF NATIONAL GOVERNMENT LOANS
GUARANTEE ACT NO.18 OF 2011**

IN THE MATTER OF CONSUMER PROTECTION ACT, 2012

IN THE MATTER OF 2018 BUDGET POLICY STATEMENT

BETWEEN

APOLLO MBOYA.....1ST PETITIONER

ELECTRICITY CONSUMERS SOCIETY OF KENYA.....2ND PETITIONER

AND

**CABINET SECRETARY OF THE NATIONAL
TREASURY.....1ST RESPONDENT**

MINISTRY OF ENERGY.....2ND RESPONDENT

CENTRAL BANK OF KENYA.....3RD RESPONDENT

KENYA POWER & LIGHTING COMPANY LTD.....4TH RESPONDENT

ENERGY REGULATORY COMMISSION.....5TH RESPONDENT

KENYA ELECTRICITY TRANSMISSION COMPANY LTD.....6TH RESPONDENT

ATTORNEY GENERAL.....7TH RESPONDENT

RULING

1. The Prospective Interested party **GITSON ENERGY LIMITED** through an application dated 17th December 2018 and filed on 15th January 2019 brought to court pursuant to section 3, 3A of the Civil Procedure Act; Order 51 of Civil Procedure Rules and all enabling provisions of the law seeks the following orders:-

- a) THAT this matter be certified as urgent, service be dispensed with and be heard *ex-parte* in the first instance.
- b) THAT this court be pleased to stay consent orders entered on 15th November, 2018, pending the hearing of the application dated 19th February 2018.
- c) THAT the hearing of this application be consolidated with the hearing of application dated 19th February 2018.
- d) THAT this court be pleased to make any orders and grant any reliefs that it deems fit in exercise of this inherent discretion.
2. The application is premised on the grounds on the face of the application *inter alia*:- that the application is under certificate of urgency dated 7/11/2018; that on 8th November 2018 the Applicant was instructed to serve the application to all parties to the suit entered on 15th November 2018 the other parties to the petition entered into a consent to settle the petition without first disposing off the application. The application is further supported by supporting affidavit by James Gitau, sworn on 17th December 2018.

3. The Respondents are all opposed to the application. The petitioner filed grounds of opposition dated 19th February 2019 raising 7 grounds of opposition and a Replying affidavit dated 8th April 2019. The 1st, 2nd and 7th Respondents filed grounds of opposition dated 18th April 2019 Raising 9 grounds of opposition. Similarly the 4th Respondent filed grounds of opposition dated 22nd February 2019 raising 6 grounds of opposition. The 5th Respondent also filed grounds of opposition dated 25th March 2019 setting out 7 grounds of opposition. The 6th Respondent is opposed to the application.

4. I have very carefully considered the prospective interested party's application, the Respondents grounds of opposition and Replying affidavits, counsel rival written submissions, as well as the oral submissions made before the court, and from the above the issues for consideration can be summed up as follows:-

a) Whether the circumstances justify the joinder of the prospective Interested Party/Applicant in the instant proceedings?

b) Whether the Honourable court had become functus officio as at the time of filing the application?

c) Whether the consent order dated 15th November 2018 should be set aside by the Honourable Court?

d) Whether the prospective interested party is guilty of non-disclosure of material facts with respect to Nairobi High Court Judicial Review No. 324 of 2018 Gitson Energy Ltd vs Cabinet Secretary of National Treasury and 5 others?

e) Whether the application dated 11/12/2018 is misconceived and an abuse of the court process?

A) Whether the circumstances justify the joinder of the prospective Interested Party/Applicant in the instant proceedings?

- 5.** The Applicant in this matter is seeking to be heard on its application dated 7/11/2018 citing its right to be heard under Article 50 of the Constitution of Kenya; urging that the parties consent order dated 15th November 2018 has locked the prospective interested party out of the suit.
- 6.** The law gives court power to enjoin any party to a suit in exercise of its discretion at any stage of the proceedings and court can even do so even without a party applying; but this must be done before delivering of a judgment. In doing so however, the circumstances must justify the joinder, in the claim and defence before trial court, and

which must raise a doubt as to which of the party is liable in the final outcome of the dispute.

7. Upon perusal of the court file, it is evident, that the matter was heard and determined by a consent order which the court adopted as a judgment of the court on 15th November 2018. Once the consent was adopted as judgment of this court, it meant, that there was no pending proceedings to warrant an entertainment of the applicant's application to be enjoined. The application had been filed on 7/11/2018 and the same was on 8/11/2018 before court, which court set the hearing of the suit on 15/11/2018 in presence of the Applicant who did not attend hearing on 15/11/2018. The recording of the consent order, in my view, meant the Applicant's application was spent and there is nothing pending hearing.

8. In the case of **Edward Acholla vs Sogea Satom Kenya Branch & 2 others [2014] eKLR, the Industrial Court** held;

"Consent becomes a judgment or order of the court once adopted as such. Once consent is adopted by the court, it automatically changes character and becomes a consent judgment or order with contractual effect and can only be set

aside on grounds which would justify setting aside, or if certain conditions remain unfulfilled, which are not carried out."

9. I find in this matter, the Applicant was not a party to the suit over which a consent order and subsequent judgment was made. A party seeking to be enjoined in a suit must do so at any time during the pendency of the suit but not after the suit has been concluded, as joining a party after conclusion of the suit cannot serve any useful purpose. Similarly a pending application if not determined before recording a consent order; as the intended party is not a party in the suit, the application serves no purpose and is deemed in my view as spent (**Lilian Wairimu Ngatho & another vs Moki Savings Co-operative Society Limited & another (2014) eKLR.**)
10. The court by an order issued on 12th January 2018 the court invited any joinder of parties, however the Applicant did not file any application till 8th November 2018 and court did on 8th November 2018, in presence of the Applicant reserve the hearing of the Applicant's application. On 15th November 2018 the Applicant and his counsel did not attend to prosecute its application, which is a clear evidence of indolence on the Applicant's part

and lack of interest in participating in the instant proceedings. That a consent was issued on the same day, adopted by consent and upon entering judgment closed all the pending proceedings before the court. The Applicant in its present application has not offered any reasonable explanation on account of its indolence in filing the application so late and its subsequent failure to attend court on 15th November 2018. I find "*Equity aids the Vigilant and not the indolent*". Secondly I am alive to the principle, that no suit shall be defeated by reason of misjoinder or non-joinder of a party.

11. Upon considering the above I am satisfied the circumstances of this case do not justify the joinder of the prospective Interested Party/Applicant in the instant proceedings.

B) Whether the Honourable court had become functus officio as at the time of filing the application?

12. There is no dispute in this matter a consent order was issued on 15th November 2018 fully settling the dispute and before the Applicant had been joined as a party to the proceedings. The court upon entering judgment had

fully determined the suit and there was nothing else pending determination. The present application was filed when there were no pending proceedings as the consent judgment was entered on 15th November 2018. The court therefore has become *functus officio* as the court has no further authority to hear or determine any matter attendant on any proceeding in the instant petition.

- 13.** In supporting the above paragraph in the case of **Raila Odinga & 2 others vs Independent Electoral & Boundaries Commission & 3 others [2013] eKLR** where the Honourable Court in considering the concept of *functus officio* cited the case **Jersey Evening Post Limited vs A1 Thani [2002] JLR 542 at 550** where in the doctrine was aptly summarized as follows:

"A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its

ruling on adjudication must be taken to a higher court if that right is available."

14. In view of the above, I am satisfied, that upon entry of judgment in this matter, following parties consent, the court become *functus officio*. The proceedings in this matter were fully concluded and court had performed all its duties as required upon pronouncing itself on the matter when it determined the matter and pronounced its final decision on the matter.

C) Whether the consent order dated 15th November 2018 should be set aside by the Honourable Court?

15. The consent order made on 15th November 2018 was made before the Applicant was enjoined as a party to the proceedings. The Applicant has never been enjoined as a party to this matter to date. The consent order binds all the parties since it has become a judgment of the court. The circumstances under which a consent order can be set aside is now settled. The circumstances under which a consent judgement can be set aside was set out in the case of **Timothy Manyara & 144 others vs**

Pyrethrum Board of Kenya (2005) eKLR where the court observed as follows;

The law on setting aside of consent judgment is as set out in the **Brook Bond Liebig (T) Limited vs MALLYA [1975] E.A** that:

"The circumstances in which a consent judgment may be interfered with were considered by this court in **Hirani vs Kassam [1952], 19 E.A.C.A 131**, where the following passage from Seton of judgments and Orders, 7th Edition, Vol. I,p. 124 was approved:-

"Prima facie, any order made by fraud or collusion, or by an agreement contrary to the policy of the court...or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement" in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them...and cannot be varied or discharged unless obtained"

- 16.** For the purpose of considering a proper consent in the sense of the law, I find it is the one in which it is made in the presence and with consent of all parties in a matter

and/or their counsel. That such a consent binds all parties to the proceeding, or action and those claiming under them. In this matter the Applicant was not a party at the time the consent was entered into but is now seeking to be joined for the purposes of setting aside the consent order in question. A consent order can only be applied to be set aside by the parties who made the same but not by strangers to the consent order, as is the case of the Applicant. It is my finding, that a stranger cannot seek to set aside consent order in which it was not a party. The consent order of 15th November 2018 cannot in my view be set aside on the Applicant's application being not a party to it and not a party in the suit.

D) Whether the prospective interested party is guilty of non-disclosure of material facts with respect to Nairobi High Court Judicial Review No. 324 of 2018 Gitson Energy Ltd vs Cabinet Secretary of National Treasury and 5 others?

- 17.** The petitioner and the 4th Respondents contend, that the prospective Interested Party/Applicant is guilty of material non-disclosure pertinent to the **Nairobi High Court Judicial Review No. 324 of 2018 Gitson Energy Limited vs Cabinet Secretary of National Treasury**

& 5 others filed on 7th August 2018 after the institution of the instant petition, in which it is seeking similar prayers to those in these settled proceedings.

18. In the case of **Brinks-MAT Ltd vs Elcombe [1988] 3 ALL ER 188**, the Court set out what the court has to consider to be material non-disclosure as follows:-

"In considering whether there has been relevant non-disclosure and what consequence the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following. (i) The duty of the applicant is to make a full and fair disclosure of the material facts. (ii) The material facts are those which it is material for the Judge to know in dealing with the application made; materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers. (iii) The Applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries. (iv) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on the circumstances of the case including (a)

The nature of the case which the applicant is making when he makes the application. (b) The order for which application is made and the probable effect of the order on the defendant, and (c) The degree of legitimate urgency and the time available for the making of inquiries....."

19. The prospective Interested party/Applicant has not contested the existence of Judicial Review No. 324 of 2018, in which he is said to be seeking similar prayers to those in these concluded proceedings. I find that the petitioner and Respondents have established material non-disclosure by the prospective Interested Party/Applicant and as such, a party who has deliberately refused, and neglected to disclose material facts, relevant to a matter pending before court is guilty of non-disclosure and should be deprived of any advantage he may derive by that breach of duty. The Applicant contention, that in the present application he is after right to fair hearing cannot stand in view of the existence of Judicial Review 324 of 2018, as he has another forum and opportunity to ventilate its grievances, which matter the parties have submitted is still on going. In view of the foregoing, I find and hold due to concealment, misrepresentation and non-disclosure of material facts by

the Applicant, the applicant stands deprived of any advantage he delve by that breach of duty. The Applicant would not be prejudiced by any adverse orders in this matter as it has right to fair hearing and an opportunity to ventilate its case in the **Judicial Review No.324 of 2018.**

E) Whether the application dated 11/12/2018 is misconceived and an abuse of the court process?

20. The prospective Interested Party/Applicant in its application dated 17th December 2018 seek to stay consent orders entered on 15th November 2018 pending hearing of the application dated 19th February 2018 and prays that this application be consolidated with the application dated 19th February 2018. The petitioner and the Respondents contended, that there is no pending application or any application dated 19th February 2018, that can be stayed or be consolidated with present application. The Applicant has not attached such an application or exhibited the same to the court. The Applicant has not disclosed the nature of the said

application. That upon perusal of the court file I found that there was none at all.

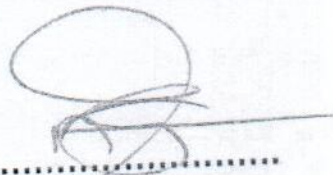
21. In absence of existence of pending application dated 19th February 2018, the basis of seeking stay in this matter as well as consolidation, I find the application is not based on any pending matter before this court. The application is hanging in the air and cannot stand. I find that the application is misconceived and an abuse of the court process.

22. The upshot is that the application is without merits. I proceed to make the following orders:-

a) The application dated 17th December 2018 is scandalous, vexatious, frivolous and an abuse of the court process and same is accordingly dismissed.

b) Costs of the application to the Petitioner and the Respondents to be borne by the prospective Interested Party/Applicant.

Dated, signed and delivered at Nairobi this 13th day of June, 2019.



.....
**J.A. MAKAU
JUDGE**

AM-4

← Tweet



SpiceFM

@SpiceFMKE

This is the Exhibit marked "Am-4"
 Referred to in the Annexed Affidavit/Declaration
 of Apello Njaye
 Sworn/Declared before me this 2nd
 Day of Oct 2020 at Kenya
 in the Republic of Kenya
 Commissioner for Oaths

#SwitchOffKPLC campaigner .@JerotichSeii discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. .@EricLatiff .@EricLatiff .@nduokoh .@NjeriThorne



3,700 views

9:06 · 19 Dec 19 · Twitter Web App

92 Retweets and comments 122 Likes



Tweet your reply

AM-4(A)

AM-5



Home

This is the Exhibit marked "Am-5"
 Referred to in the Annexed Affidavit / Declaration
 of Apollo Mboya
 Sworn / Declared before me this 2nd
 Day of Oct 2018 at Nairobi
 in the Republic of Kenya
 Commissioner of Oaths



#HumanityKe @JerotichSaini
 Msaliti @MboyaApollo in action almost 2yrs ago.

Nothing. Changed. For. Electricity. Consumers.

His bank balance did.

Today, he is nothing more than a liability for
 @KenyaPower @EPRA_Ke @EnergyMink
 @StateHouseKenya - & perhaps the
 Judiciary.

So: we fight on!

#SwitchOffKPLC

 **Apollo Mboya, HSC** @.. · Oct 22, 2018
 Electricity Consumers @KenyaPower
 ,High Court has today issued this order. 1
 KPLC to bill only in accordance with
 Gazzeted Tariffs 2. Moratorium on
 disconnection of electricity in Ker
 30 days as they sort their mess 3.
 Electricity Consumers Society to



AM-6



#HumanityKe
@JerotichSeii

This is the Exhibit marked "Am-6"
Referred to in the Annexed Affidavit / Declaration
of Apolls Mhaya
Sworn / Declared before me this 2nd
Day of Oct 2020 at Nairobi
in the Republic of Kenya
Commissioner for Oaths

@MboyaApollo

1. Shame on you
2. I was born ready
3. Your days on the roll of advocates are numbered

You have our affidavits from
PETs 6 & 59.

Semeni cross examination.

James Gitau, @WanjeriNderu
@hotshotcreative
@eva_m_mutua
@KingFredAsira. Let's do this.

AM-7



Thread

This is the Exhibit marked "Am-7"
 Referred to in the Annexed Affidavit / Declaration
 of Apolo Mabey
 Sworn / Declared before me this 2nd
 Day of Oct 2019 at Nairobi
 in the Republic of Kenya
 Commissioner for Oaths

Martha Karua Retweeted



#SwitchOffKPLC

@JerotichSeii

WaKenya: our lawyer Mr. Elvis Abenga is being threatened & has had to relocate his family. @DCI_Kenya is aware. The evil cartels are working overtime but our affidavits have been filed. We will, in court, see how Sh75M was paid out to kill PETs 6 & 59.

(thread)

#SwitchOffKPLC

10:07 · 02 Aug 19 · Twitter for Android

305 Retweets 396 Likes



Tweet your reply



AM-8



#SwitchOffKPLC

17.6K Tweets



This is the Exhibit marked "....."
Referred to in the Annexed Affidavit/Declaration



Sworn/Declared before me this.....
Day of.....20.....at.....
in the Republic of Kenya
.....
Commissioner for Oaths

Show this thread



#SwitchOffKPLC @JerotichSeii · 4h

5. For a less than 1min judgement, why not have the ruling ready to enable movement to the Court of Appeal? Or is Justice Makau busy retrofitting the ruling to reflect his decision? Sh2.14T in capacity charges for energy cartels is enough to make one bend the pen.

#SwitchOffKPLC



King Fred Asira and 3 others



Show this thread



AM-9

This is the Exhibit marked "Am-9"
Referred to in the Annexed Affidavit / Declaration
of Apollo Mboya
Sworn / Declared before me this 2nd
Day of Sept 2020 at Nairobi
Republic of Kenya
Commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....PLAINTIFF
VERSUS
THE STANDARD GROUP LIMITED.....1ST DEFENDANT
JEROTICH SEII.....2ND DEFENDANT

CERTIFICATE OF ELECTRONIC PRINT-OUT

I, Apollo Mboya of ID No10384575 using my Samsung Tablet has extracted on the dates indicated the following:

11th August 2020

1. 19th, December 2019, tweet by Spice FM Radio and Television broadcasted in KTN Television, in the twitter handle @SpiceFMKE with the words:
"#SwitchOffKPLC campaigner .@JerotichSeii discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. .@EricLatiff @EricLatiff @nduokoh @NjeriThorne."

2. Video uploaded in the twitter handle @SpiceFMKE on 19th, December 2019

2nd September 2020

3. 2nd September 2020 tweet in the twitter handle #HumnnityKe@JerotichSeii with the words:
"Msaliti @MboyaApollo in action almost 2yrs ago. Nothing Changed. For. Electricity. Consumers. His bank balance did."

Today, he nothing more than a liability for @KenyaPower @EPRA_Ke @EnergyMinK @StateHouseKenya -& perhaps the Judiciary."

4. 31st August 2020 tweet in the twitter handle [#HumnnityKe@JerotichSeii](#) with the words:

"@MboyaApollo

1. Shame on you

2. I was born ready 3. Your days on the roll of advocates are numbered You have our affidavits from PETs 6 & 59. Semeni cross examination. James Gitau,

@WanjeriNderu @hotshotcreative@eva_m_mutua

@KingFredAsira. Let's do this. #SwitchOffKPLC"

5. 2nd August 2019, tweet in the twitter handle [#HumnnityKe@JerotichSeii](#) with the words:

"...We will, in court, see how sh75M was paid out to kill Pets 6 & 59"

14th July 2019

6. Tweet in the twitter handle [#SwitchOffKPLC@JerotichSeii](#) with the words:

"For less than 1 min judgment, why not have the ruling ready to enable movement to the Court of Appeal? Or is Justice Makau busy retrofitting the ruling to reflect his decision? Sh 2.14T in capacity charges for energy cartels is enough to make one bend the pen."

The same has been extracted from the original tweets and footage and certified as true extract of the original

DATED at NAIROBI this *2nd* day of *OCTOBER* 2020


APOLLO MBOYA

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....PLAINTIFF

VERSUS

THE STANDARD GROUP LIMITED.....1ST DEFENDANT

JEROTICH SEII.....2ND DEFENDANT

PLAINT

(FAST TRACK)

1. The Plaintiff is an adult Kenyan residing and working for gain in Nairobi County within the Republic of Kenya as an Advocate of the High Court of Kenya. The Plaintiff's address for service for the purposes of this suit is care of **Apollo & Company Advocates, Kindaruma Court, Suit B2, Kindaruma Road-Kilimani, P.O. Box 2073-00100 Nairobi.**

2. The 1st Defendant is a Limited Liability Company incorporated as such pursuant to the Companies Act CAP 486, Laws of Kenya, with its registered office in Nairobi within the Republic of Kenya and was at all material times the proprietor, broadcaster and distributor of **Spice FM Radio** - a radio cum television station, **KTN Television** and in control of the twitter handle [@SpiceFMKE](#) with a very wide listenership, viewership and readership both within and without this jurisdiction. Service of summons upon the Defendant will be effected through the Plaintiff's Advocates offices aforesaid.

3. The 2nd Defendant is an adult Kenyan residing and working for gain in Nairobi County within the Republic of Kenya was at all material times the owner and in control of the twitter handles [#SwitchOffKPLC@JerotichSeii](#)

and [#HumnityKe@JerotichSeii](#). Service of summons upon the Defendant will be effected through the Plaintiff's Advocates offices aforesaid.

4. On 19th, December 2019, **Spice FM Radio** and Television broadcasted in **KTN Television**, uploaded a tweet and published or caused to be uploaded, broadcasted, tweeted and published in the twitter handle [@SpiceFMKE](#) and radio program the words:

"#SwitchOffKPLC campaigner .@JerotichSeii discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. .@EricLatiff @EricLatiff @nduokoh @NjeriThorne."

5. On the said broadcast in **Spice FM Radio** and **KTN Television** uploaded on the twitter handle [@SpiceFMKE](#) , the 1st Defendant broadcasted the video of the 2nd Defendant stating that:

"...Apollo Mboya settled the case out of court.... We have heard that allegedly money was poured somewhere between 60 to 75 m..."

The Plaintiff shall apply for the leave to play the said video in Court.

6. The 2nd Defendant on 2nd September 2020 on her twitter handle [#HumnityKe@JerotichSeii](#) wrote and posted the words:

"Msaliti @MboyaApollo in action almost 2yrs ago.

Nothing Changed. For. Electricity. Consumers.

His bank balance did.

Today, he nothing more than a liability for @KenyaPower @EPRA_Ke @EnergyMinK @StateHouseKenya -& perhaps the Judiciary."

7. The Plaintiff states that the 2nd Defendant has in a series of tweets published several statements of allegations of or concerning the Plaintiff, which are false, unsubstantiated, baseless and unsupported and therefore defamatory of the Plaintiff.

8. The Plaintiff states that on 31st August 2020 after being served with the letter of demand, the 2nd Defendant using her twitter handle [#HumnnityKe@JerotichSeii](#) tweeted as follows:

"@MboyaApollo

1. Shame on you

*2. I was born ready 3. Your days on the roll of advocates are numbered
You have our affidavits from PETs 6 & 59. Semeni cross examination.*

James Gitau,

*@WanjeriNderu @hotshotcreative@eva_m_mutua @KingFredAsira. Let's
do this. #SwitchOffKPLC"*

9. The Plaintiff states that on 2nd August 2019, the 2nd Defendant using her twitter handle [#SwitchOffKPLC@JerotichSeii](#) tweeted as follows:

"...We will, in court, see how sh75M was paid out to kill Pets 6 & 59"

10. The Plaintiff states that the 2nd Defendant has relentlessly been scandalizing and harassing the Plaintiff, court and judicial officers including in respect of the ruling dated 13th June 2019 in respect of **Petition 59 of 2018** in which she allege in her tweet using the twitter handle [#SwitchOffKPLC@JerotichSeii](#) as follows:

*"For less than 1 min judgment, why not have the ruling ready to enable
movement to the Court of Appeal? Or is Justice Makau busy retrofitting
the ruling to reflect his decision? Sh 2.14T in capacity charges for energy
cartels is enough to make one bend the pen."*

11. The tweets and broadcast of the Defendants have been viewed by thousands of Radio listeners, television viewers and retweeted where they elicited numerous comments that have further aggravated the defamation.
12. The Plaintiff states that the said tweets, publication and broadcast were not only false and malicious but were also highly defamatory of the plaintiff, his character, reputation and good standing as a person, an Advocate, a former State Counsel, Former Chief Executive of the Law Society of Kenya, Former Commissioner of the Law Reform Commission with the Head of State Commendation.
13. The Plaintiff further states that the Defendants in writing, publishing, broadcasting and uploading the same in their twitter handles, the same was actuated by malice and given the wide circulation of the broadcast in radio, television and the World Wide Web, tweets, retweets and comments, which has infinitely injured his professional capacity and image.
14. The said tweets, retweets, publication and broadcast were widely distributed in this jurisdiction and elsewhere. At the material time, Defendants had millions of readers, followers and viewers both within and without this jurisdiction who had free, open and unhindered access to the defamatory and malicious words aforementioned. The Honourable Court will therefore be asked to infer that extremely large numbers of readers, listeners and viewers of the said tweets, publication and broadcast.
15. Further and in the alternative, the Defendants knew or ought to have known that once the said publications, broadcast and tweets were on the world-

wide-web, the same would be available for access, and must in fact have been accessed, by extremely large numbers of readers in Kenya and beyond.

16. In their natural and ordinary meaning, the said words meant and were understood to mean that:-

16.1 The Plaintiff is a person who is engaged in criminal activities of bribery.

16.2 The plaintiff by virtue of being an Advocate of the High Court of Kenya and officer of the court, the Plaintiff has misconducted himself.

16.3 The Plaintiff is involved in economic sabotage and is a liability to Kenya Power and Lightning, Energy Petroleum Regulatory Authority, State House (*Residence of the President of the Republic of Kenya*) and the Judiciary.

16.4 The Plaintiff thrives on the misery of electricity consumers.

16.5 The Plaintiff has unfairly and unjustly enriched himself.

16.6 The Plaintiff is dishonest, corrupt and not morally an upright person

AND the Plaintiff claims general damages for libel.

17. The Plaintiff states that by falsely and maliciously tweets, publishing and broadcasting the said defamatory words, the Defendants' sole intent was that the same be consumed by the general public; and knew or ought to have reasonably known that the allegations against the Plaintiff were untrue and non-factual.

18. In consequence the Plaintiff's reputation has been seriously damaged and has suffered considerable distress and embarrassment.

19. The Plaintiff will rely on the following facts and matters in support of his claim for damages, including exemplary damages.

19.1 The Defendant wrote, tweeted, published and broadcasted or caused to be written, tweeted, published and broadcasted the said words when it knew or ought to have known the same were defamatory and injurious to the Plaintiff.

19.2 The Defendant wrote, tweeted, published and broadcasted or caused to be written, tweeted, published and broadcasted the said words with the reckless disregard as to whether or not they were defamatory or injurious to the Plaintiff.

19.3 The Defendant wrote, tweeted, published and broadcasted or caused to be written, tweeted, published and broadcasted the said words without taking any or sufficient precautions or steps to establish whether they were true.

19.4 The Defendant wrote, tweeted, published and broadcasted or caused to be written, tweeted, published and broadcasted the said words with the primary aim of embarrassing the plaintiff, smearing his reputation, assailing his character and image in society in general as well as in his capacity as an Advocate and officer of this Honourable Court.

19.5 The Defendant wrote, tweeted, published and broadcasted or caused to be written, tweeted, published and broadcasted the said words having calculated that the benefit to them in terms of increased circulation,

viewership and twitter following would outweigh any compensation payable to the Plaintiff.

AND the Plaintiff claims exemplary damages for malicious libel.

20. By reason of the wide circulation of the Defendants' offending tweets, publication and broadcast both nationally and internationally on the World Wide Web, the Plaintiff's reputation and image, credit, integrity and status as *an Advocate and law abiding citizen* has been substantially damaged and injured and the Plaintiff has been embarrassed and his standing lowered in the eyes of professional colleagues and ordinary persons for which he holds the Defendant liable in damages.
21. Without prejudice to the foregoing the Plaintiff states that the Defendants denied him a right of rebuttal or comment and made the said statements indifferent as to whether the information it was imparting to the whole world was true or not or whether or not it was injurious to the Plaintiff whose reputation was of little, if any, consequence for which reason the Plaintiff seeks exemplary damages.
22. By virtue of the foregoing, the Plaintiff has suffered loss and damage to his reputation and calling which depends mainly, if not solely on his integrity for sustenance and continuation.
23. Subsequent to the said tweets, publication and broadcast, the Defendant has, and the Plaintiff is now apprehensive that it will continue, in the practice of making malicious and extremely damaging publications about and against him.

24. The Plaintiff states that the said tweets, publication and broadcast was not only false and malicious but it by innuendo sought to improperly associate the Plaintiff with a criminality.
25. Without prejudice to the foregoing the Plaintiff states that the Defendants' acts in their entirety are in any event malicious falsehoods for which they are liable in damages to the Plaintiff.
26. Despite demand and notice of intention to sue, the Defendants have failed and refused to comply with the demand, has unreasonably failed to retract the offending words in the publication and has stubbornly refused to tweet, publish and broadcast a suitable correction and apology to the Plaintiff.
27. The cause of action arose in Nairobi County within the jurisdiction of this Honourable Court and the Plaintiff confirms that there is no suit pending and there have been no other or previous proceedings in any other court of law on the same subject matter between the parties in the suit.

REASONS WHEREFORE the Plaintiff prays for judgment against the Defendant for:-

- i. An order that the Defendants do make amends and withdraw the offending tweets, publication and broadcast and render a suitable apology acceptable to the Plaintiff to be published in the same manner.
- ii. General damages for libel.
- iii. Exemplary damages for malicious libel and falsehood.

iv. A permanent injunction restraining the Defendants whether by themselves, its agents, proxies or otherwise, from further publishing or causing to be published in any platform the said or similar defamatory material of and concerning the Plaintiff.

v. Costs of this suit.

DATED at NAIROBI this 2nd day of October 2020


APOLLO & COMPANY
ADVOCATES FOR THE PLAINTIFF

DRAWN & FILED BY:

Apollo & Co. Advocates

Kindaruma Court, Suite B2

Kindaruma Road - Kilimani

P.O. BOX 2073 - 00100

NAIROBI.

Membership No :105/4299/000

Tel: 0733725482

Practice Number: LSK/2020/00048

E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

TO BE SERVED UPON:-

1. The Standard Group Limited,

The Standard Group Centre,

Mombasa Road,

P. O. Box 30080 - 00100,

NAIROBI

Email: corporate@standardmedia.co.ke

2. Jerotich Seii

Po.O.Box 76120-00508

NAIROBI

Email: jerotichsh@gmail.com

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....PLAINTIFF

VERSUS


THE STANDARD GROUP LIMITED.....1ST DEFENDANT

JEROTICH SEII.....2ND DEFENDANT

VERIFYING AFFIDAVIT

I **APOLLO MBOYA** a resident of Nairobi, within the Republic of Kenya and of Post office Box Number 2073-00100 **Nairobi** in the afore-stated Republic do hereby make oath and state as follows: -

1. **THAT** I am the Plaintiff herein and as such conversant with the material facts of this matter, thereby competent and duly authorized to swear this Affidavit.
2. **THAT** I have instructed the Firm of **Apollo & Co. Advocates** to institute and act on my behalf in this Suit.
3. **THAT** I have read and understood the contents of this Plaint and state that it is true to the best of my knowledge.
4. **THAT** what is deponed herein is true to the best of my knowledge, information and beliefs save wherein otherwise stated.

SWORN at NAIROBI by the said)
APOLLO MBOYA)
This *2nd*.....day of *October* 2020)
BEFORE ME)

COMMISSIONER FOR OATHS)



DEPONENT

DRAWN & FILED BY:

Apollo & Co. Advocates

Kindaruma Court, Suite B2

Kindaruma Road - Kilimani

P.O. BOX 2073 - 00100

NAIROBI.

Membership No :105/4299/000

Tel: 0733725482

Practice Number: LSK/2020/00048

E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

TO BE SERVED UPON:-

1. The Standard Group Limited,

The Standard Group Centre,

Mombasa Road,

P. O. Box 30080 - 00100,

NAIROBI

Email: corporate@standardmedia.co.ke

2. Jerotich Seii

Po.O.Box 76120-00508

NAIROBI

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. OF 2020

APOLLO MBOYA.....PLAINTIFF

VERSUS


THE STANDARD GROUP LIMITED.....1ST DEFENDANT

JEROTICH SEII.....2ND DEFENDANT

LIST OF WITNESSES

1. APOLLO MBOYA
2. Any Other to be identified with the leave of court

DATED at NAIROBI this *2nd* day of *October* 2020


APOLLO & COMPANY
ADVOCATES FOR THE PLAINTIFF

DRAWN & FILED BY:

Apollo & Co. Advocates
Kindaruma Court, Suite B2
Kindaruma Road - Kilimani
P.O. BOX 2073 - 00100

NAIROBI. **Membership No :105/4299/000**
Tel: 0733725482 **Practice Number: LSK/2020/00048**
E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

TO BE SERVED UPON:-

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WITNESSES STATEMENT

I, APOLLO MBOYA, care of Post Office Box 2073-00100 Nairobi within the Republic of Kenya would like to state as follows: -

1. I am male adult of sound mind, an Advocate of the High Court of Kenya and the Plaintiff herein residing in Nairobi within the Republic of Kenya.
2. I was one of the petitioners in the **Nairobi High Court Petition No. 6 of 2018** which was filed in court on 11th January 2018. The parties were heard and determined by a Consent Court Order which was adopted as a judgment of the Court on 22nd October 2018.
3. On **9th December 2019**, the second Defendant together with one **Eva Mutua, James Gitau, Wanjeri Nderu, Fred Asira and Victor Innocent Otieno** who were not party to the suit made an application to be enjoined in the concluded matter with a view to upset the consent order. The ruling of the application is coming up on **5th November 2020** before **Justice Weldon Korir**.
4. I was one of the petitioners in the **Nairobi High Court Petition No. 59 of 2018** which was filed in court on **19th February 2018**. The parties were heard and determined by a Consent Court Order which was adopted as a judgment of the Court on 15th November 2018.

5. By application filed on 7th November 2018, one **Gitson Energy Limited** who was not party to the suit supported by various affidavits including of the 2nd Defendant, sought to be enjoined in the concluded matter with a view to upset the Court Order.

6. By a ruling delivered on 13th June 2019, **Justice J.A Makau** dismissed the application for being scandalous, vexatious, frivolous and an abuse of the court process and awarded costs to the petitioners and the respondents in the suit. The prospective interested party has applied for review of the Ruling.

7. On 19th, December 2019, **Spice FM Radio** broadcasted which was also **televised** in **KTN Television**, uploaded a tweet and published or caused to be uploaded and published in the twitter handle [@SpiceFMKE](#) the words:

[#SwitchOffKPLC](#) campaigner [@JerotichSeii](#) discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. [@EricLatiff](#) [@EricLatiff](#) [@nduokoh](#) [@NjeriThorne](#).

8. On the said broadcast in **Spice FM Radio** and **KTN Television** uploaded on the twitter handle [@SpiceFMKE](#) , the 1st Defendant circulated a video in which the 2nd Defendant stated as follows:

“...Apollo Mboya settled the case out of court.... We have heard that allegedly money was poured somewhere between 60 to 75 m...”

9. The 2nd Defendant, using her twitter handle [#HumnnityKe@JerotichSeii](#) on 2nd September 2020 wrote and posted the words:

“Msaliti [@MboyaApollo](#) in action almost 2yrs ago.

Nothing Changed. For. Electricity. Consumers.

His bank balance did.

Today, he nothing more than a liability for [@KenyaPower](#) [@EPRA_Ke](#) [@EnergyMinK](#) [@StateHouseKenya](#) -& perhaps the Judiciary.”

10. The 2nd Defendant has in a series of tweets published several statements containing allegations of or concerning me, which are false, unsubstantiated, baseless and unsupported and therefore defamatory.
11. On 31st August 2020 after being served with the letter of demand, the 2nd Defendant using her twitter handle [#HumnnityKe@JerotichSeii](#) tweeted as follows:
“@MboyaApollo
1. Shame on you
2. I was born ready 3. Your days on the roll of advocates are numbered
You have our affidavits from PETs 6 & 59. Semeni cross examination.
James Gitau,
@WanjeriNderu @hotshotcreative@eva_m_mutua @KingFredAsira. Let's do this. #SwitchOffKPLC”
12. On 2nd August 2019, the 2nd Defendant using her twitter handle [#HumnnityKe@JerotichSeii](#) tweeted as follows:
“...We will, in court, see how sh75M was paid out to kill Pets 6 & 59”
13. The 2nd Defendant has relentlessly been scandalizing and harassing me, the court and judicial officers using social media including in respect of the ruling dated 13th June 2019 in respect of **Petition 59 of 2018** in which she alleges in her tweet using her twitter handle [#SwitchOffKPLC@JerotichSeii](#) as follows:

“For less than 1 min judgment, why not have the ruling ready to enable movement to the Court of Appeal? Or is Justice Makau busy retrofitting the ruling to reflect his decision? Sh 2.14T in capacity charges for energy cartels is enough to make one bend the pen.”
14. Several acquaintances brought to my attention several tweets by the defendants and upon reading them and listening and watching the video, I realized that it contained factual inaccuracies and made defamatory statements of and concerning me.

15. The said tweets and video were not only false and malicious but were also highly defamatory of me as a person and an Advocate.
16. The tweets and broadcast of the Defendants have been viewed by thousands of Radio listeners, television viewers and retweeted where they elicited numerous comments that have further aggravated the defamation given the wide circulation.
17. My character, reputation, image and good standing has been infinitely injured in my professional capacity.
18. At no time did the 1st Defendant contact me to verify any issue before publishing and circulating the said malicious and defamatory words.
19. The Defendants knew that once the said defamatory words were published in twitter, broadcasted on radio and television and on the world-wide-web, the same would be available for access, and must in fact have been accessed, by extremely large numbers of readers in Kenya and beyond.
20. The 1st Defendant derived substantial commercial gain by promoting their radio, television and twitter handles to millions of readers, followers, listener and viewers both within and without this jurisdiction who had free, open and unhindered access to the defamatory and malicious words aforementioned.

That is all I wish to State

DATED at NAIROBI this 2nd day of October 2020



APOLLO MBOYA

DRAWN & FILED BY:

Apollo & Co. Advocates

Kindaruma Court, Suite B2

Kindaruma Road - Kilimani

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NAIROBI.

Membership No. :105/4299/000

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Practice Number: LSK/2020/00048

E-mail: apollo@aca.co.ke (OUR REF: ACA/2/20)

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**LIST OF
DOCUMENTS**

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VERSUS

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JEROTICH SEII.....2ND DEFENDANT

PLAINTIFF LIST OF DOCUMENTS

(As provided in the Supporting Affidavit of the Applicant/Plaintiff)

1. **Nairobi High Court Petition No. 6 of 2018** Court Order adopted as a judgment of the Court on 22nd October 2018.
2. **Nairobi High Court Petition No. 59 of 2018** Court Order adopted as a judgment of the Court on 15th November 2018.
3. **Nairobi High Court Petition No. 59 of 2018** Ruling dated 13th June 2019
4. 19th, December 2019, tweet by **Spice FM Radio** and broadcasted in **KTN Television**, in the twitter handle [@SpiceFMKE](#) with the words:

"#SwitchOffKPLC campaigner .@JerotichSeii discusses the possibility that a prominent advocate could have been bribed as much as 75 million to facilitate an out-of-court settlement with Kenya Power. .@EricLatiff @EricLatiff @nduokoh @NjeriThorne."
5. Video uploaded in the twitter handle [@SpiceFMKE](#) on 19th, December 2019 (leave of court to sought to be play the same court)
6. 2nd September 2020 tweet in the twitter handle [#HumnnityKe@JerotichSeii](#) with the words:

***"Msaliti @MboyaApollo in action almost 2yrs ago.
Nothing Changed. For. Electricity. Consumers.
His bank balance did.***

Today, he nothing more than a liability for @KenyaPower @EPRA_Ke @EnergyMinK @StateHouseKenya -& perhaps the Judiciary."

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"For less than 1 min judgment, why not have the ruling ready to enable movement to the Court of Appeal? Or is Justice Makau busy retrofitting the ruling to reflect his decision? Sh 2.14T in capacity charges for energy cartels is enough to make one bend the pen."

10. Certificate of Electronic Print-Out

DATED at NAIROBI this *2nd* day of *October* 2020



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