

OUR REF: DOAA/DO/56/2024

23RD DECEMBER 2024

YOUR REF: TBA

TO:

Mr. Nelson Andayi Havi
Parklands Road, Park Suites, 3rd Floor
Door Suite No.4
P.O.Box 38422
Nairobi.

'Advance copy sent via WhatsApp'

Dear Mr. Havi,

RE: DEFAMATION OF ADVOCATE DANSTAN OMARI AND THE COMMISSION OF THE TORT OF INJURIOUS FALSEHOOD THROUGH YOUR FACEBOOK PUBLICATION MADE ON THE 22ND DECEMBER 2024.

"You can be sure that on Judgment Day everyone will have to give account of every useless word he has ever spoken." Mathew 12:36.

We have been instructed by **COUNSEL DANSTAN OMARI** (*hereinafter referred to as our client*) who has forwarded to us an excerpt facebook publication made by yourself. In the impugned publication, you have adversely mentioned our client alongside one Mr. Philip Nyachoti as being a person of interest and/or among corrupt advocates that must be removed from the roll of Advocates for allegedly winning all his cases before Justice Alfred Mabeya, whom you have hitherto blamed of corruption, gross misconduct and misbehaviour. It is on the basis of the aforesaid malicious publication that we wish to address you as follows:

1. We are instructed by our client that on 22nd December 2024 you published your thoughts on facebook under your name *Nelson Havi* in which you have falsely accused our client of abetting corruption within the judiciary alongside another advocate on the false representation that he has never lost any case before Justice Alfred Mabeya. In the publication under review you knowingly and maliciously published falsehoods against Our Client who is a an Advocate of the High Court of Kenya of good and many years standing at the bar, the immediate former Managing Partner at Musyoki Mogaka & Co. Advocates, the current managing partner of the firm of Danstan Omari and Associates Advocates and a prolific law lecturer at the Catholic University of Eastern Africa by creating an impression that he has been winning cases under dubious circumstances other than the basis of law and facts, with the clear intention of causing reputational harm to his personal integrity and standing in society. For the avoidance of doubt, you specifically published the following words in the impugned publication where his names captured for your readers to notice:

We will in due course examine why the following Advocates never lose cases before Justice Alfred Mabeya:

1. Philip Nyachoti

2. Danstan Omari.

You can add to the list. You see, for corruption in the Judiciary to end, we must remove

corrupt Advocates from the Roll of Advocates.

2. Our instructions are to specifically address you under the following heads;

A. False and defamatory statements concerning Our Client

3. Your Impugned Article and/or Publication ("the Offending Article") deliberately characterizes our client as a corrupt and sharp legal practitioner who has been conniving with the judge to defeat justice.

4. The Offending Article makes an array of false and defamatory insinuations against Our Client by offering a shallow, skewed and malicious view and unsubstantiated analysis of the matters he has handled before Justice Alfred Mabeya.

a) That Our Client has never lost any case before Justice Alfred Mabeya due to his corrupt engagement and/or dealings with the judge which has led to the breach of his duty and oath as an Advocate of the High Court of Kenya by presiding over the miscarriage of justice.

b) That Our Client may personally be responsible for the denial of justice to deserving litigants/opponents that he has faced before Justice Alfred Mabeya for resulting to other unknown and uncelebrated ways of persuading the judge other than the law and facts;

c) That Our Client is an unworthy to handle his client cases and unable to persuade a judge, to wit Justice Alfred Mabeya without corrupt influences at play.

d) That Our Client is a criminal and certainly in the wrong profession for he has been obtaining favorable decisions before Justice Alfred Mabeya through corrupt dealings with the court.

e) That Our Client is in an unholy professional relationship with Justice Mabeya and that any reasonable litigant opposed to his instructions before Justice Alfred Mabeya should be weary of facing him before the judge as they are certainly destined to lose on their brief however justified the reasons will be.

f) That Our client is a manipulative Advocate of the High Court of Kenya who lacks the necessary communication skills of a lawyer to communicate and persuade his audience but who is skillful at leveraging the power of money or other enticements to shift perceptions on matters he is dealing in court before Justice Alfred Mabeya.

5. It is worth noting that the impugned Publication does not give the basis of such a malicious conclusion that our client has been 'winning all his cases' before Justice Alfred Mabeya under very corrupt and suspicious circumstances. It remains within the realm of conjecture why you singled out our client and branded him as a corrupt practitioner incapable of winning his instructions before the judge on the basis of law and fact. A little due diligence and objectivity in your wild quest for attention would have illuminated your mind to knowing that our client has only appeared before the judge in two matters where he lost one and won the other.

6. Consequently, our client is left with no doubt that the publication is motivated by jealous, ill will, a misguided perception and is made with the aim of ruining and ridiculing his professional journey as a zealous, serious and uncompromising Advocate especially due to his instructions related to various matters he has been handling and his parallel political persuasion especially in the recent past where he publicly supported **Advocate Mukira Ramadhani Abubakar** for the position of President East Africa Law Society where you bitterly lost.
7. **Further** it is therefore, a serious indictment to impute directly or indirectly the competence of our client to represent, advocate and persuade courts and tribunals by causing the publication of the impugned facebook article that has thus far unapologetically misrepresented his to your wide followership-both advocates and the lay people of Kenya and the world as a corrupt practitioner, a criminal and a lawyer who is keen on obtaining favourable ruling as and when an opportunity arises through the use of other means other than persuasion on the basis of law and facts.
8. **Additionally**, our client instructs us that your publication has been a basis of heated conversation in various forums and has thus far received concerning messages from his spouse, children, current and former students, and his professional colleagues at the Faculty of Law at the Catholic University of Eastern African over the content of the impugned publication and its deleterious effects to his business and practice as an Advocate of the High Court of Kenya, a Mentor, a Political Analyst, Law Lecturer and the reputation of the University. This is not only embarrassing but a blatant affront of his constitutional rights and fundamental freedoms as his livelihood and reputation is threatened by such publications.

A. Publication to multiple parties

8. It is common ground that the Offending Article was made on your facebook page on 22nd December 2024 through a publication published at your instance with the clear intention of achieving the widest possible national coverage as a former President of the law Society of Kenya which can be found at <https://www.facebook.com/share/p/UmBeA81e1wWT2nZc>.
9. The Offending Article and/or impugned Publication was widely circulated to various advocate WhatsApp forums with the aim of achieving a wider circulation of the malicious publication therefore, making the defamatory material available to the whole world and our client's professional colleagues.
10. In addition, the Offending Statement has been extensively circulated through multiple social media platforms that enjoy both national and global reach and coverage.
11. It is clear from the selected modes and extent of circulation that there is a malicious and ulterior motive behind the Offending Article and/or impugned Publication and that no effort was spared in trying to give the defamatory utterances the widest coverage possible.

B. Outright Malice

12. In the Offending Statement you make various spurious and reckless conclusions that call to question the competency and moral uprightness of our client in handling his clients' instructions as an Advocate of the High Court of Kenya, a Political analyst, a revered and widely celebrated Law Lecturer by branding him and/or listing him as a person of interest and/or among corrupt advocates that must be removed from the roll of Advocates for allegedly winning all his cases before Justice Alfred Mabeya.
13. The Offending Statement is clearly part of a repeated attempt to discredit Our Client reputation as a distinguished lawyer by painting him as unethical legal practitioner who may not be well suited to advocate the concerns of his clients devoid of corrupt dealings.
14. The trend of publishing the offending Article is one that manifestly points to the malicious intention of:
- i. Advancing your own selfish agenda without any due regard for the truth and/or reputation of our client;*
 - ii. Faulting our clients numerous clients who include current and former judges, magistrates and Kadhis, Senior political leaders be it the Deputy President of the Republic Of Kenya, Governors, Senators, Members of National Assembly and County Assembly, Ministers and Principal Secretaries for choosing him over the other advocates as he is unethical and unable to win arguments before the Judge or any other judicial officer without corrupt dealings;*
 - iii. Casting aspersions on Our Client's integrity and leadership acumen as the Managing Director of the firm of Danstan Omari & Co. Advocates as well as his professional reputation and suitability to continue caring and advocating for the different causes and agendas that his clients have given him the honour to handle and deal.*
 - iv. Seeking to achieve the ulterior motive of provoking Our Client's clients withdrawal of the professional services that they have given him the honour to deal and the termination of his contract as a Law Lecturer at the Catholic University of Eastern Africa and to discredit his analysis as a law lecturer, advocate and political analyst in the numerous Television shows and Radio programs that he is often involved and engaged.*

B. Reputational Harm to our client

15. Our Client is a highly respected Advocate of the High Court of more than a decade standing in the bar, a former public servant having been a High School Teacher, Deputy Headmaster and a Children Officer, a Law Lecturer at the Catholic University of Eastern Africa and a celebrated columnist at the Star Newspaper and an analyst at both Television and Radio Stations-Nationally and Internationally. A fact that is demonstrable of his erudite professional competence.
16. Our client's persuasive skills and integrity have earned him international repute as he does commentaries and analysis to various international and local media houses which include the BBC, VOA, Radio Deutsch Wela, Chinese GTCV, The Guardian, Radio Tanzania, Citizen TV, KTN News and KTN Home, K24, TV47, KBC and Nation Television.

17. Our client's persuasive skills and integrity have been instrumental to elaborating and thoroughly explaining to the Kenyan public numerous national debates on our local radio stations which include Citizen Radio, Milele Radio, Radio Maisha, Radio Jambo, Ghetto Radio, Egesa FM, Gatembe FM, Minto FM, Seito FM et cetera.
18. Since the Publishing of the Offending Article, Our Client has been the subject of spite, public odium by his opponents who continue to disparage his good repute and is now treated with suspicion by many of his professional colleagues as well as individuals and groups that previously respected and regarded him highly.
19. As a result of the deliberate scheme to malign his otherwise stellar reputation which your publication has attracted so many comments and reactions, Our Client has suffered and continues to suffer even more loss and damage to both his personal, professional reputation and standing both as a revered Law Lecturer at the Faculty of Law at the Catholic University of Eastern Africa, a mentor to his former and present students, a distinguished Legal Practitioner and a Political analyst within the community due to your wrongful actions as this means that the quality of his analysis is questionable as his persuasive skills and integrity have been put to doubt through his characterization as a corrupt law practitioner.
20. It is clear from the totality of the foregoing that the overarching objective was to create malicious falsehoods aimed at maligning Our Client so as to deviously orchestrate stunted growth within the legal profession and possibly his fall as a distinguished Advocate of the High Court of Kenya.
21. The unfair treatment of our Client can no longer be trivialized, or placed beyond remedy.
22. We have stated enough.

ACCORDINGLY, our instructions are to **DEMAND** from you, as we hereby do, that you confirm to us in writing, within the next **SEVEN DAYS** that you shall immediately, but in any event not later than **SEVEN DAYS** from the date hereof, that you:

- i. Publish an unqualified **RETRACTION** of ALL the defamatory statements and an unconditional apology that should achieve larger prominence than the Offending Article by causing a publication of the apology in a whole page of a newspaper with nationwide circulation.
- ii. That you accept liability for the defamatory statements published in the impugned facebook article; and
- iii. Compensation for our client's otherwise damaged reputation.

TAKE NOTICE THAT, unless an unconditional apology, liability and compensation is made to Our Client together with an unqualified retraction of all defamatory statements within the next Seven(7) days from the date hereof, we have firm instructions to file Court Proceedings against you without any further reference to you. This shall be at your own peril as to costs on a full indemnity basis and other consequences attendant thereto.

For the avoidance of any doubt, Our Client reserves the right to refuse any retraction or apology should such retraction and apology be deemed unsatisfactory and contrary to the requirements stated above.

Be notified accordingly.

Yours Sincerely,



WAMBUI SHADRACK & ASSOCIATES
SHADRACK WAMBUI, CPM (MtI)



WAMBUI SHADRACK & ASSOCIATES
'For Personalized Legal Services'