



# **DAMAGE AWARDS IN DEFAMATION CASES AGAINST THE OWNERS AND PUBLISHERS OF NEWSPAPERS; A KENYAN CASE IN COMPARATIVE CONTEXT**

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**Degree Programme:** [BACHELOR OF LAW\(LL.B\)](#) [1]

**Student Names:** MURUNGI D. MWITI

**Student Registration Number:** G34/10165/1999

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### **Abstract**

Although a free press is recognized as a pillar of democracy in the 21<sup>st</sup> century, there are still many diverse and competing postulations about the proper place of the press and the freedom of the press in society. Of the critical questions that still linger is who determines the meaning or the extent of press freedom-the public, media practitioners or the law.

An American judge, **Learned Hand**, once remarked that freedom of the press rests with the people. Once it dies there, no court could bring it back to life again. These words hold a compelling and radical message for Kenyans about their justice system.

In Kenya, freedom of the press is what the courts say it is, and the judiciary's interpretation has baffled many scholars, lawyers and journalists from the standpoint of existing precedents in our law - and this is what I'm evaluating in this dissertation.

Kenyan courts have oscillated unpredictably between more freedom and almost no freedom at all. The burden of proof lies heavily on those seeking to exercise it rather than against those who aim to curtail it. Responsibility has assumed primacy over freedom to the extent that the Kenyan bench is now widely viewed as the first impediment to free speech and the press.

The government in cahoots with the judiciary has used economic strangulation as an effective stymie to deny freedom of the press by allowing courts to grant grotesquely exaggerated sums to compensate for defamation and libel- on politically correct individuals.

The prohibitive penalties and awards given recently may thus serve as an effective stymie to media houses, irrespective of their economic viability. The compensatory nature of the provision is thus emasculated in the dubious awards, which purport to measure the adequate compensation that, in the specific instances, would sufficiently relieve one whose reputation has been so dented. It is against this background that for most observers, the recent high awards of damages to defamation and libel constitute a totally unjustified common law intrusion into a protected constitutional right, and these awards have been pithily described as "judicial tyranny".

In this dissertation, I will strive to examine the Kenyan jurisprudence as laid down in several fundamental court decisions. The rulings are analyzed in comparative context to other countries.

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