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OUR REF:

05/CIV/6175/14

YOUR REF:

TBA

DATE:

13<sup>th</sup> March 2014

1. **Group Managing Editor**  
Radio Africa  
Lion Place  
Waiyaki Way  
P.O. Box 74497-0200  
Nairobi
2. **The Editor**  
The Star  
Lion Place  
Waiyaki Way  
P.O. Box 74497-0200  
Nairobi
3. **Oliver Mathenge**  
The Star  
Lion Place  
Waiyaki Way  
P.O. Box 74497-0200  
Nairobi
4. **The Secretary General**  
Consumers Federation of Kenya (COFEK)  
Meky Place, Block F, Suite 45  
Ngong Road/Ring Road, Kiliman Junction  
P.O Box 28053-00200  
Nairobi



Dear Sirs,

**RE: DEFAMATORY ARTICLE PUBLISHED AND DISTRIBUTED IN 'THE STAR' OF  
TUESDAY, 4<sup>TH</sup> FEBRUARY, 2014**

We act for Mr. Asava Kadima, (hereinafter referred to as "our Client") and have instructions to address you as hereunder, with regards to the defamatory statements made, published and distributed in your article in The Star of 4<sup>th</sup> of February 2014, Edition No. 1989 ("the said Article").

PIN: P051172732P

Please Quote Our Ref

VAT: 0014413W

Dr. John P.N. Simba, OGW, MBS | Rose M. Simba | Benard M. Murunga | Maruti A. Khamala | Penninah Munyaka  
Janet Sang-Wokabi | Eva K. Kaimenyi | Paul K. Wathuta | Grishon N. Thuo | Caroline W. Muchiri | June W. Nderitu | Kajuju Marete

In the said Article, you wrote and published various allegations concerning our Client, which were either wholly false and without any basis whatsoever or which amount to serious misrepresentation of fact. The said Article was wholesomely founded on a letter dated 28<sup>th</sup> January 2014, from the Consumers Federation of Kenya (“COFEK”), allegedly addressed to the Transport Secretary, Michael Kamau, seeking the revocation of the appointment of the new Managing Director of the Kenya Airports Authority (“KAA”), one Lucy Mbugua.

Our instructions are that the said allegations were written, published and distributed recklessly and negligently, without regard to the substantial loss, damage and potential material injury that would be occasioned on our Client.

The false and malicious allegations were accorded undue prominence and published in the front page, more specifically in page 1 of the said edition, under the Spotlight segment, with the scandalous headline “KAA boss appointment questioned by Cofek.”

The said Article contained, *inter alia*, the following allegations:-

1. That the Office of the Transport Secretary took over the recruitment process from our Client.
2. That our Client was an appointee of the KAA Board of Directors.
3. That our Client was somehow involved in the recruitment of the Managing Director of the KAA, which recruitment was allegedly shrouded in mystery.

Our specific instructions are that each of the outlined allegations, whether taken singularly or collectively, are false and are devoid of any foundation in fact because:-

1. Both of you knew, and/or ought to have known, that our Client was never responsible for the recruitment process of the new Managing Director of the KAA.
2. Both of you knew, and/or ought to have known, that our Client was not an appointee of the KAA Board.
3. Both of you knew, and/or, or ought to have known, that our Client was seconded from the Ministry of Transport, by the Permanent Secretary, to assist in managing the recruitment process, and not was not party to the actual recruitment process.
4. Both of you knew, and/or or ought to have known, that the COFEK is not and has never been involved in the recruitment process at the KAA.
5. Your allegations and misrepresentations of, concerning and attributed to our Client are baseless, and unfactual.



6. It is patently clear that the allegations and misrepresentations of, concerning or attributed to our Client are misleading, malicious and ultimately, false.

The said Article, in its ordinary and natural meaning, or by innuendo could only mean, *inter alia*, that our Client:-

1. Is a saboteur who hijacked the recruitment process from the Board of the KAA.
2. Was appointed by the Board of the KAA and thus presided, in part, in the recruitment process that was 'shrouded in mystery.
3. Does not abide by the internal procedures of his appointing authority.
4. Is a dishonest individual as he was appointed by the Board of the KAA, despite still being on the payroll of the Kenya Railways Training Institute.

It follows from the foregoing that your various allegations of and concerning our Client are patently false and misleading, and must have been calculated to cause extreme prejudice to our Client, as they in fact did. In writing, publishing and distributing the said Article, you knew, or ought to have known, that the contents thereof were false and that their publication and distribution to the millions of your readership in Kenya and around the globe, would occasion irreparable damage to our Client in the estimation of his employer, the Board of KAA, and all right-thinking members of society.

The said Article has most grievously injured the reputation of our Client as a law-abiding, honourable and respectable person who has due regard to laid-down procedure as outlined by his employer, and as a natural consequence thereof, our Client's continued employment and standing has been greatly jeopardized. These consequences were, or ought to have been, within your contemplation as you wrote, published and distributed the said Article. However, having decided that the quick profit to be made from the writing, publishing and distribution of the said Article far outweighed your ethical exercise of prudence, you chose to ignore the said consequences.

The said Article contained scandalous, dramatic and attention-grabbing phrases such as "...the office of the Transport Secretary took over the recruitment process from Mr. Kadima of the Railway Training Institute", "...who had been appointed by the KAA board" and "...such an important recruitment...was shrouded in mystery." In so doing, you sought to achieve, and did in fact achieve the tripartite objectives of inciting the outrage of the Permanent Secretary, Ministry of Transport and Infrastructure, against our Client; jeopardizing our Client's employment with the Railway Training Institute; and attracting large-scale, nationwide readership of your newspaper offering.



In writing, publishing and distributing the said defamatory Article, you ignored and disregarded the professional, ethical and moral obligation you shoulder, to authenticate and verify the accuracy of the allegations contained in the said Article before publishing. A phone call to our Client would have revealed that he was never in charge of driving the recruitment process, and thus, could never have had the process taken over from our Client, by the Office of the Transport Secretary.

Worried that such endeavour would have resulted in nulling your story, you chose to ignore it, resulting in inaccurate, slanted and misrepresentative reporting.

It is patent that our Client was never offered an opportunity to comment on and clarify any of the allegations made in the said Article. Had such an opportunity been availed to our Client, he would easily have clarified the facts, thus avoiding the publication of the false and damaging allegations. This deliberate omission to authenticate the contents of the said Article is an unequivocal manifestation of the blatant malice actuated on your part. Having thereby breached your professional and ethical obligation owed to our Client, our Client holds you, jointly and severally, accountable.

As a result of the allegations contained in the said Article, our Client has suffered, and continues to suffer loss and damage of his reputation. Further, our Client's prospects of continued employment by his employer, the Railway Training Institute stand threatened from immature termination.

In this regard, the damage to his reputation is incalculable and irredeemable.

In view of the foregoing, our instructions are to DEMAND from you, AS WE HEREBY DO, that:-

1. You immediately cease and desist writing, publishing or distributing any further material defamatory of our Client.
2. A full, unreserved and unqualified retraction in writing of the said Article.
3. The publication in your newspaper namely **The Star**, of a full, unreserved, and unconditional apology as approved by us on behalf of our Client and at your expense, in the same prominent manner as the said Article.
4. A full and unconditional admission of liability in writing, after which, we can determine the issue of the quantum of damages payable to our Client.
5. An unconditional undertaking, in writing, not to publish any material defamatory of our Client, now or in the future.



TAKE NOTICE that if you do not comply with the terms of this Demand Notice on or before close of business on 21<sup>st</sup> March, 2014 we have the requisite instructions to institute the legal proceedings against you, jointly and severally, for:-

- a) Injunctive orders restraining you from further publishing or causing to be published any defamatory statements against our Client.
- b) Exemplary damages.
- c) Costs of, and incidental to, the suit.

Yours faithfully,  
SIMBA & SIMBA

PAUL K. WATHUTA  
<mailto:paul@simba-advocates.com>

cc. Client

