



**Imports By Kairo Limited & another v Wambui (Civil Suit E194 of 2022)
[2023] KEHC 1299 (KLR) (Civ) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT E194 OF 2022

JK SERGON, J

FEBRUARY 24, 2023

BETWEEN

IMPORTS BY KAIRO LIMITED 1ST PLAINTIFF

CLEMENT KIMANI 2ND PLAINTIFF

AND

JOSEPH KAIRU WAMBUI DEFENDANT

RULING

1. This ruling is the outcome of two applications. The first application is the motion dated October 7, 2022 and the second one is dated October 13, 2022 and that both applications seek for similar orders and were taken out by the plaintiffs/applicants. The first application sought for the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. That the defendants /respondents herein either by himself, his servants, agents, assigns or any other person spreading the posts or circulating the same be restrained by an interim injunctive order of the court from defaming spreading and continuing to defame the plaintiffs/ applicants pending the hearing and determination of the suit.
 - v. That pending the hearing and determination of this suit the defendant be ordered to relinquish login details of the 1st plaintiffs social media accounts details known as “Imports by Kairo”



- vi. That pending hearing and determination of this suit the defendant be restrained by an order of this court not to engage any competing business under the name Kai and Karo or any other name pending the hearing and determination of this suit.
 - vii. That this Honourable Court be pleased to give such directions as it deems fit for the expeditious hearing and determination of the application on priority basis.
 - viii. That the costs of this application be provided for.
2. The second application is the motion dated October 13, 2022 which sought for the following orders:
- i. Spent.
 - ii. Spent.
 - iii. That pending the interparties hearing and determination of the notice of motion application dated October 7, 2022, this honourable court be pleased to grant interim injunctive orders as against the respondent from further defaming the applicant and its directors.
 - iv. That pending the hearing and determination of the Notice of motion application dated October 7, 2022 defendant be restrained by temporary restraining orders of the court from using the 1st plaintiff's social media account known as "Imports by Kairo" on Facebook, twitter and Instagram.
3. In opposing the said motions, the respondent filed the replying affidavit of advocate Joseph Kairu Wambui, to which Clement Kimani rejoined with his further affidavit sworn on November 25, 2022.
4. When the parties came for interparties hearing, they chose to rely on the averments made in their respective affidavits.
5. I have considered the grounds set out on the face of the motions and the facts deponed in the rival affidavits and brief oral arguments and authorities cited.
6. A brief background of the matter is that the plaintiffs/applicants instituted a suit against the respondent by way of the plaint dated October 6, 2022 and sought for inter alia, various forms of damages and an order for permanent and mandatory injunctions against the respondent, arising out of the tort of defamation.
7. The crux of the matter is that the defendant/respondent made false and damaging utterances against the plaintiffs in a post on his social media accounts and that the posts were full of false, libelous and malicious claims.
8. The germane principles on interlocutory injunctions were stated by the Court of Appeal in East Africa in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA as follows:
- i. The applicant must first establish a prima facie case with a probability of success.
 - ii. The applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.



- iii. Where there is doubt on the above, then the balance of convenience should tilt in favour of the applicant.
9. The above principles were restated in the case of *Micah Cheserem v Immediate Media Services & 4 others* [2000] eKLR cited by the respondents and in respect to defamatory claims, thus:
- “Firstly, the applicant must establish a prima facie case with a probability of success. Secondly, the applicant must show that he or she stands to suffer irreparable loss that cannot be adequately compensated by way of damages. Thirdly, where the court is in doubt, then the balance of convenience should tilt in favour of the applicant.”
10. Under the first principle, it is the position of the applicants that they have demonstrated prima facie case with a likelihood of success through its pleadings supported with the evidence filed
11. The applicants state that the career of the 2nd plaintiff/applicant is at risk considering the ongoing defamatory posts that have since been highly publicized destroying his good name and the name of the companies associated with him.
12. The applicants further state that since all of the customers whose orders were to be placed are recalling and canceling the orders and demanding a refund of their money, the first plaintiff/ applicant now runs the risk of going out of business because there are no new customers because they have been led to believe that the defendant/respondent was the overall management and that he has since opened a new company Kai and Karo Ltd and that Imports by Kairo Ltd is no longer in business or is unable to conduct business.
13. The applicants avers that the respondent did not make any monetary contribution towards the growth of the company, it is for this reason that he has resorted to damage the company’s reputation as he does not stand to lose anything, he however stands to gain customers and clients from the 1st plaintiff who lost trust on the commercial viability of the 1st plaintiff.
14. The applicants contend that the comments made to the general public as a result of the respondents publications are self-evident of the successful objective fulfilled by the defendant/respondent who intended to maliciously malign the plaintiffs into bad light to gain commercial credibility and benefit his new entity Kai and Karo Ltd by scandalizing and disparaging the reputation of the plaintiffs.
15. In response, the defendant/respondent states that Kai and Karo Limited is a creation of four directors and its existence has nothing to do with the imminent downfall of the 1st plaintiff and indeed the 2nd plaintiff consistently states that he was only a salesman, which position does not preclude him in any way from operating a company in direct or incidental competition with the 1st plaintiff/applicant.
16. The respondent avers that the statements made were as a matter of general advice to young people who wished to partner with others to do business and that he has had several partners in the course of earning a livelihood and it is instructive that there have been a few pitfalls here and there, that should this advice in anyway offend the 2nd plaintiff/applicant then he tenders his humble apologies to him.
17. The respondent further avers that when he made public his exit from the 1st plaintiff/applicant, he had no control over the responses that would be elicited and believed that the 2nd plaintiff/applicant had a right to follow up on the individual members of the group that bullied him and made negative comments and took sanctions against him, including reporting to the police and has chosen to satanize him instead.



18. Having considered the arguments by the respective parties together with the annexed documents and pleadings filed, I am of the view that on the face of it, the aforementioned impugned publication(s) would cause any reasonable person to perceive the applicant unfavorably.
19. It is not in dispute that the impugned statements were made by the respondent and/or his representatives. It is also noteworthy that whether the said publication was defamatory of the applicant and whether the defences pleaded by the respondents will stand can only be investigated at the trial stage.
20. After considering the material placed before this court, I am satisfied that the applicant has established a prima facie case with a probability of success.
21. In respect to the second principle on irreparable damage/loss, the applicant stated that around December 2021, the volumes of sales decreased drastically, his auditors were concerned and informed me that there was great discrepancies and abnormalities on the volume of sales and books did not look good and had a debt of Kshs.3,000,000/= which he is yet to pay to date.
22. The applicants aver that in order to sway public sympathy and win over the 1st plaintiff/applicant's clients the defendant resorted to completely tarnish the reputation and discredited the legitimacy of the plaintiffs both as a company dealing with the importation of vehicles and also painting him as a director who is untrustworthy, with a questionable character and one who wanted to kill him.
23. On his part, the respondent that no evidence has been placed before this court to qualify my move to disassociate himself with the 1st plaintiff/applicant translates to me running the business to the ground and that being the able and efficient director he claims to be the exit of a mere salesman should at no point have affected the running of the company.
24. Upon considering the rival positions above and upon studying the material which was placed on the record, I am of the view that one's reputation is invaluable and once tarnished, cannot adequately be compensated by way of damages. In this regard, I am of the opinion that the applicant is more likely than not to continue suffering irreparable loss unless granted an interlocutory injunction restraining the respondents from making further publications of a similar nature.
25. Having come to the view that the applicant has satisfied the first two (2) principles warranting an interlocutory injunction, it would be fair to state that the applicants stand to suffer a greater inconvenience if the injunction is not granted in comparison to the inconvenience that would befall the respondents were the same to be allowed. It therefore follows that the balance of convenience tilts in favour of the applicants.
26. In retort, the respondent state that the applicants have not presented any sufficient reasons to warrant the granting interim orders.
27. I therefore find that the applicants will continue to be exposed to ridicule and contempt if the statements continue to be accessible on the various platforms.
28. Consequently, I am convinced that the present circumstances would entitle the interim injunction sought.
29. In conclusion therefore, I find the Motions dated October 7, 2022 and October 13, 2022 to be meritorious. It is allowed this giving rise to issuance of the following orders:
 - i. Pending the hearing and determination of this suit, an order of Temporary Injunction be and is hereby issued to restrain the Respondent whether by himself and/or through his servants,



agents and/or assigns or any other person from spreading the posts or circulating or continuing circulate the defamatory material against the plaintiffs.

- ii. Costs of the Motion shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2023.

.....

J. K. SERGON

JUDGE

In the presence of:

.....**for the 1st Plaintiff/Applicant**

.....**for the 2nd Plaintiff/Applicant**

.....**for the Defendant**

