



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.135 OF 2019

ERICK KIMATHI.....1ST PLAINTIFF

JUSTINE KENDI.....2ND PLAINTIFF

ANTHONY WAMBUGU.....3RD PLAINTIFF

EXECUTIVE SUPER RIDES LIMITED.....4TH PLAINTIFF

DRIVERS UNIVERSE COMPANY LIMITED.....5TH PLAINTIFF

-VERSUS-

BENJAMIN WAMBUA NDOLO.....DEFENDANT

RULING

1. The plaintiffs/applicants in this instance have brought the Notice of Motion dated 14th January 2022 supported by the grounds set out in its body and the facts deponed in the supporting affidavit. The applicant sought for the orders that this court hold and declare that the defendant is in contempt of the court and be committed to civil jail or attachment of his properties for disobeying court orders made on 15th July 2021.

2. At the time of writing this ruling, there was no response and this application was treated as unopposed.

3. In his affidavit filed in support of the motion dated 14/01/2022, Mr. Eric Kimathi, stated that the defendant has on various occasions maliciously published defamatory statements regarding the plaintiffs, who filed this suit and obtained an interim order of injunction against the defendant from publishing or disseminating the said offending statements.

4. The plaintiffs depones that the defendant continued to generate more defamatory statements on his twitter account under the user name @BenjiNdolo and that said words meant and were understood to mean of defaming the plaintiffs which are similar manner as the words the defendant had been barred by way of injunction from publishing.

5. The plaintiffs aver that the defamatory comments are being communicated to millions of people throughout the world therefore posing a serious threat to the reputation of the plaintiffs and various individuals who work with the plaintiffs.

6. In Contempt of court is that conduct or action that defies or disrespects authority of court. *Black's Law Dictionary 9th Edition*, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

7. Order 40 rule (3) of the Civil Procedure Rules (2010) provides that in cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release. This application has therefore invoked this court's powers in terms of Order 40 rule (3).

8. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in

the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.

9. In the present application, it has not been sufficiently demonstrated that the defendant deliberately disobeyed court orders or at all. Contempt proceedings are a serious undertaking because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty. It should not, therefore, be taken lightly.

10. In the end therefore, the Motion dated 14th January, 2022 is hereby allowed on merit and Consequently;

That the defendant is found to be in contempt of the court and convicted. He is hereby ordered to personally appear before this court on 24th may 2022 to mitigate before sentencing.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi

this 25th day of March, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant