



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. E018 OF 2022**

PEVANS EST AFRICA LIMITED.....1<sup>ST</sup> PLAINTIFF/APPLICANT  
 MILESTONE GAMES LIMITED.....2<sup>ND</sup> PLAINTIFF/APPLICANT  
 RONALD KAMWIKO KARAURI.....3<sup>RD</sup> PLAINTIFF/APPLICANT  
 NIKOLOV GUERASSIM NIKOLOV.....4<sup>TH</sup> PLAINTIFF/APPLICANT  
 GENE GRAND.....5<sup>TH</sup> PLAINTIFF/APPLICANT

**-VERSUS-**

THE NATION MEDIA GROUP LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
 JOHN KAMAU.....2<sup>ND</sup> DEFENDANT/RESPONDENT  
 FINANCE UNCOVERED LTD.....3<sup>RD</sup> DEFENDANT/RESPONDENT  
 PAUL WAFULA .....4<sup>TH</sup> DEFENDANT/RESPONDENT  
 PAUL WANDERI NDUNGU .....5<sup>TH</sup> DEFENDANT/RESPONDENT  
 GOOGLE LLC .....6<sup>TH</sup> DEFENDANT/RESPONDENT  
 YOUTUBE LLC .....7<sup>TH</sup> DEFENDANT/RESPONDENT  
 GOGLE KENYA LIMITED .....8<sup>TH</sup> DEFENDANT/RESPONDENT

**RULING**

1) This ruling is the outcome of two applications. The first application is the motion dated 31<sup>st</sup> January 202 taken out by the plaintiffs whereof they sought for the following ordera:

- i. .... spent*
- ii. .... spent*
- iii. .... spent*

*iv. That pending the hearing and determination of this suit, there be and is hereby issued a temporary injunction restraining the respondents, jointly and severally, either by themselves, their servants and/or agents from writing authoring, publishing, republishing, broadcasting and/or referring to the applicants in any manner whatsoever adverse to the applicant’s reputation and standing and which ridicules or portrays the applicants negatively in the eyes of the general public or otherwise defaming the applicants, and more specifically the publications published by the respondents in the issue of 4<sup>th</sup> August, 2021 at page 11 of the*

Daily nation, on 22<sup>nd</sup> July on the front page of the Daily nation, on 22<sup>nd</sup> July, 2021 at page 12 of the Daily nation, on 16<sup>th</sup> July, 2021 at page 2 of the Daily nation, on 1<sup>st</sup> July 2021 at page 7 of the Daily Nation, on 24<sup>th</sup> March, 2021 at page 12 of the Daily nation or words of similar in nature linking the applicants to the contents found at respondents' digital platform identified by Uniform Resource Locator URL:

<https://nation.africa/https://www.financeuncovered.org/>

<https://nation.africa/kenya/business/gamblers-paradise-episode-one-thehouse-always-wins-3665672>

<https://youtube.com/watch?v=CC00ysTRakE>

[https://www.youtube.com/watch?v=NILu\\_c-Erw](https://www.youtube.com/watch?v=NILu_c-Erw)

<https://nation.africa/kenya/business/gamblers-paradise-death-at-a-casino-episode-two-3668520>.<https://nation.africa/>

<https://www.youtube.com/watch?v=VLXCqhYgzPM>,<https://nation.africa/kenya/business/episode-e-a-gamblers-paradise-3669130>,<https://nation.africa/>

<https://www.youtube.com/watch?v=qSuTQGrtGBk>,[https://nation.africa/kenya/audio/sportpesa-a-gamblers-paradise 3510432](https://nation.africa/kenya/audio/sportpesa-a-gamblers-paradise-3510432)

<https://www.natin.africa/kenya/audio/3474276-3474376>,

<https://www.financeuncovered.org/tag/kenya>/<https://www.financeuncovered.org/investigations/how-african-betting-giant-sportpesa-slashed-tax-bills-by-shifting-profits-from-kenya-to-the-uk/>.

v. That pending the hearing and determination of this suit, there be and is hereby issued an order compelling the respondents, jointly and severally, either by themselves, their servants and or agents to remove, take down, pull down, expunge, purge, delete or erase from the Daily Nation, Business Daily, Sunday Nation and/or Nation newspapers and from all of their digital media platforms including print, broadcast, digital platforms and social media or any form or nature whatsoever the publications, republications and broadcasts of the defamatory statements against the applicants more specifically as identified by the Uniform Resource Locators:

<https://nation.africa/https://www.financeuncovered.org/>

<https://nation.africa/kenya/business/gamblers-paradise-episode-one-the-house-always-wins-3665672>.

<https://www.youtube.com/watch?v=CC00ysTRakE>.,

[https://www.youtube.com/watch?v=NIBLu\\_Erw](https://www.youtube.com/watch?v=NIBLu_Erw),

<https://nation.africa/kenya/business/gamblers-paradise-death-at-a-casino-episode-two-3668520>,<https://nation.africa/>

<https://www.youtube.com/watch?v=VLXCqhYgzPM>,<https://nation.africa/kenya/business/episode-3-a-gamblers-paradise3669130>,<https://nation.africa/>

<https://www.youtube.com/watch?v=qSuTQGrtGBk>,[https://nation.africa/kenya/audio/sportpesa-a-gamblers-paradise 3510432](https://nation.africa/kenya/audio/sportpesa-a-gamblers-paradise-3510432)

<https://nation.africa/kenya/audio/3474376-3474376>,

<https://www.financeuncovered.org/tag/kenya>/<https://www.financeuncovered.org/investigations/how-african-betting-giant-sportpesa-slashed-tax-bills-by-shifting-profits-from-kenya-to-the-uk/>,

vi. .... spent

vii. The cost of this application be borne by the defendants/ respondents.

2) The aforesaid motion is supported by the affidavit of Ronald Kamwiko Karauri.

3) When served with the aforesaid motion, the 5<sup>th</sup> defendant filed the motion dated 15<sup>th</sup> February 2022, the second application, whereof he sought for the following orders:

i. .... spent

ii. This application be heard and determined in priority to or together with the plaintiffs' application by way of notice of motion dated 31<sup>st</sup> of January 2022.

*iii. This honourable court be pleased to formally acknowledge and declare that the ex parte order is sued by this honourable court on the 3<sup>rd</sup> day of February 2022 has automatically lapsed as against the 5<sup>th</sup> defendant applicant Paul Wanderi Ndungu, by operation of the law.*

*iv. In the alternative to prayer 3 above, this honourable court be pleased to discharge, vary and or set aside item 3 of the order issued by this honourable court on the 3<sup>rd</sup> day of February 2022, as against the 5<sup>th</sup> defendant applicant Paul Wanderi Ndungu.*

*v. That the costs of this application be provided for.*

4) The aforesaid motion is supported by the affidavit deponed by Paul Wanderi Ndungu.

5) The other defendants did not deem it fit to respond to the motion dated 31<sup>st</sup> January 2022. In principle, the motion dated 15<sup>th</sup> February 2022 was treated as a response to the motion dated 31<sup>st</sup> January 2022. Parties were directed to file written submissions. At the time of writing this ruling, none of the parties had filed their submissions.

6) I have considered the grounds stated on the face of the motion dated 31<sup>st</sup> January 2022 and the facts deponed in the supporting affidavit. I have also taken into account the grounds stated on the motion dated 15<sup>th</sup> February 2022 plus the facts deponed in the supporting affidavit.

7) It is the averment of the applicants in the first motion that they provide the leading online gaming platform, sportpesa, that is enjoyed by the global community worldwide with operations in Kenya, Tanzania, South Africa, Italy, Ireland, the Isle of Man and the UK where it operates in conjunction with TPG.

8) The plaintiffs/applicants further aver that the defendants/ respondents have from 31<sup>st</sup> December 2021 falsely and maliciously published, republished, broadcasted, authored and printed defamatory statements concerning the plaintiffs/ applicants through their publications in the Daily Nation, Business Daily, Sunday Nation and or Nation Newspapers and their digital and social platforms as identified in the application and the plaint.

9) It is pointed out that the defendants/respondents clearly identified the applicants as the subject of their publications and broadcasts by publishing the applicants names, logos, activities, their backgrounds, occupations, nationalities and their photos on the defamatory publications and videos in the subject documentary depicting the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants' faces, photos and images and indicating that the applicants were either the main object of the said defamatory publications or broadcast and or significant part of the publications sought to explicate stories of a scandalous nature.

10) The applicants further aver that the publications were understood to mean in their natural and ordinary meaning **inter alia** that the applicants are involved in tax evasion, violation of the tax laws, tax dodging, money laundering and embezzlement of funds and overcharging their services.

11) It is also stated that the publication depicted the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants as persons lacking in integrity and persons of devious minds, unreasonable, immoral, unethical and perverse persons.

12) The applicants also aver that the 1<sup>st</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents disseminated and are still disseminating the defamatory publications and broadcasts through their online search engines, websites and digital platforms which can be downloaded and stored in other formats permanently and can be accessed and shared widely.

13) The 5<sup>th</sup> defendant on the other hand through the motion dated 15<sup>th</sup> February 2022 beseeched this court to dismiss the applicants' motion. This court is urged to declare that the exparte orders issued by this court on 3<sup>rd</sup> February 2022 automatically lapsed against the 5<sup>th</sup> defendant by operation of law.

14) This court is further beseeched to discharge, vary and set aside part of the order issued on 3<sup>rd</sup> February 2022 as against the 5<sup>th</sup> defendant.

15) It is the 5<sup>th</sup> defendant's submission that the applicants have approached the court with unclean hands. He pointed out that there exists other suits involving the parties herein and touching on the subject matter of this suit which the applicants have failed to make a full disclosure. The respondent pointed out that the exparte orders were served outside the three days' period provided for under order 40 rule 4(3) of the Civil Procedure Rules.

16) Having considered the rival arguments, it is clear that the 5<sup>th</sup> respondent has not denied the assertion that he published the matter said to be defamatory of the plaintiffs. The 5<sup>th</sup> defendant has urged this court to formally set aside the exparte orders issued on 3/2/2022 because the same were served outside the three (3) days provided for under Order 40 rule 4(3) of the Civil Procedure Rules.

17) It is apparent that if an order is no served within the period provided, under Order 40 rule 4(3) of the Civil Procedure Rules, the order automatically lapses which appears to be the case in the instant matter. The court does not have to make a declaration on it since it happened by operation of law.

18) However, despite the fact that the exparte order lapsed by operation of law, the court still retains the power to still re-issue the order upon hearing the application interpartes.

19) I have already outlined the sort of orders the applicants are seeking to be granted. The defendants/respondents have not specifically responded to the plaintiff's application save for the 5<sup>th</sup> defendant who filed the motion dated 15<sup>th</sup> February 2022 which application specifically sought for the exparte order to be set aside.

20) The aforesaid application did not respond to the motion dated 31<sup>st</sup> January 2022. The application dated 31.1.2022 therefore remains unopposed. I find the most appropriate order to grant at this stage is the prohibitory order sought in prayer 4 (now prayer iv). I, however find it inappropriate to grant the mandatory order of injunction sought in prayer 5 (now prayer v).

21) In the end, I find the 5<sup>th</sup> defendant's motion dated 15<sup>th</sup> February 2022 to be without merit, the same is dismissed. The plaintiff's motion dated 31.1.2022 partially succeeds. Consequently, it is allowed giving rise to issuance of the following orders:

**i. There be and is hereby issued a temporary injunction restraining the respondents, jointly and severally, either by themselves, their servants and/or agents from writing authoring, publishing, republishing, broadcasting and/or referring to the applicants in any manner whatsoever adverse to the applicant's reputation and standing and which ridicules or portrays the applicants negatively in the eyes of the general public or otherwise defaming the applicants, and more specifically the publications published by the respondents in the issue of 4<sup>th</sup> August, 2021 at page 11 of the Daily nation, on 22<sup>nd</sup> July on the front page of the Daily nation, on 22<sup>nd</sup> July, 2021 at page 12 of the Daily nation, on 16<sup>th</sup> July, 2021 at page 2 of the Daily nation, on 1<sup>st</sup> July 2021 at page 7 of the Daily Nation, on 24<sup>th</sup> March, 2021 at page 12 of the Daily nation or words of similar in nature linking the applicants to the contents found at respondents' digital platform identified by Uniform Resource Locator URI:**

[https://nation .africa/https://www.financeuncoverd.org/](https://nation.africa/https://www.financeuncoverd.org/)

<https://nation.africa/kenya/business/gamblers-paradise-episode-one-thehouse-always-wins-3665672>

<https://.youtube.com/watch?v=CC00ysTRakE>

[https://www.youtube.com/watch?v=NILu\\_c-Erw](https://www.youtube.com/watch?v=NILu_c-Erw)

<https://nation.africa/kenya/business/gamblers-paradise-death-at-a-casino-episode-two-3668520>.<https://nation.africa/>

<https://www.youtube.com/watch?v=VLXCqhYgzPM>,<https://nation.afira/kenya/business/episode-e-a-gamblers-paradise-3669130>,<https://nation.afria/>

<https://www.youtube.com/warch?v=qSuTQGrtGBk>,[https://nation.afria/kenya/audio/sportpesa-a-gamblers-paradise 3510432](https://nation.afria/kenya/audio/sportpesa-a-gamblers-paradise-3510432)

<https://www.natin.africa/kenya/audio/3474276-3474376>,

<https://www.financeuncovered.org/tag/kenya><https://ww.finacneuncovered.org/investigations/how-african-betting-giant-sportpesa-slased-tax-bills-by-shifting-profits-from-kenya-to-the-uk/>,

pending the hearing and determination of the suit.

**ii. Costs of the application to abide the outcome of the substantive suit.**

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 25<sup>th</sup> day of March, 2022.

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant