



REPUBLIC OF KENYA



KENYA LAW
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**Motsepe v Gaitho (Civil Suit E196 of 2021)
[2022] KEHC 12284 (KLR) (19 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL SUIT E196 OF 2021
JK SERGON, J
AUGUST 19, 2022**

BETWEEN

PATRICE TLHYOPANE MOTSEPE PLAINTIFF

AND

FRANCIS GAITHO DEFENDANT

RULING

1. Patrice Thlopane Motsepe, the plaintiff/applicant took out the motion dated August 3, 2021 whereof he sought for the following orders:
 - i. This application be certified urgent and heard ex parte at first instance with respect to prayers 2 and 3 below.
 - ii. A temporary injunction order do issue restraining the defendant whether by himself, his employees, servants and/or agents or any such related persons from publishing, causing to be published, republishing, and/or disseminating, distributing or otherwise reproducing or in any way circulating whether partially or in its totality any scandalous, libelous or defamatory statement, article regarding the plaintiff or his position as president of the Confederation of Africa Football (CAF) on twitter account handle “@francisgaitho” or any other website and/or on any media platform including print media and/or social media, in any interviews, forum or any other platform pending the hearing and determination of this application.
 - iii. An urgent date be set for the interpartes hearing of this application.
 - iv. A temporary injunction order do issue restraining the defendant whether by himself, his employees, servants and/or agents or nay such related persons from publishing, causing to be published, republishing, and/or disseminating,



distributing or otherwise reproducing or in any way circulating whether partially or in its totality any scandalous, libelous or defamatory statement/article regarding the plaintiff or his position as President of the Confederation of Africa Football (CAF) on twitter account handle “@francisgaitho” or any other website and/or on any media platform including print media and/or social media, in any interviews, forum or nay other platform pending the hearing and determination of this suit.

- v. The plaintiff be at liberty to apply for such further or other orders and/or directions as this honourable court may deem fit and just to grant.
 - vi. The costs of this application be provided for.
2. The plaintiff/applicant filed the affidavit he swore in support of the application. The applicant was granted leave to prosecute the motion exparte when the defendant failed to file a response to the motion despite having been served.
 3. I have considered the grounds stated on the face of the motion dated August 3, 2021 and the facts deponed in the supporting affidavit. The applicant avers that on diverse dates between March and August 2021, the defendant caused to be published various defamatory statements concerning him in form of tweets posted on his twitter handle account “@francisgaitho”.
 4. He averred that the allegations made by the defendant were ironic, malicious and were made with ill intent as the information posted is non-existent. The plaintiff gave a summary of the offending tweets published by the defendant as follows:
 - a. On or about March 22, 2021: “Patrice Motsepe was “selected” to ensure his silence and complicity whenever an infringement on the African continent is propagated by Europe, because of his 2023 political interests. (...)”
 - b. On May 13, 2021: “(...) Patrice Motsepe has sold and betrayed Africa”.
 - c. On May 13, 2021: “Football conman & FIFA President Gianni Infantino (aka w01) & CAF President Patrice Motsepe (impimpi) have remodeled colonialism around the extraction of financial resources and political capital through African football, whilst hoodwinking journalists with meagre donations”.
 - d. On May 13, 2021: “Impimpi: is a term used to denote traitors in the pursuit of freedom and independence in South Africa. CAF President Motsepe adopted the name “Patrice” claiming inspiration by Congo’s icon against colonialism, despite his glaring house-nigger mindset. He should drop the name”.
 - e. On May 19, 2021: the defendant in response to a tweet regarding South African President Cyril Ramaphosa tweeted that “(...) meanwhile brother in-law is taking instructions on how to run CAF from Gianni infantine and has allowed 7 individuals from Zurich to start taking over the institution and hijack jobs meant for Africans (...)”
 - f. On June 5, 2021: “In one week it will be exactly three (3) months since Motsepe bought the CAF Presidency. I hope journalists will be analyzing his 100 days in office”.



- g. On June 20, 2021: “Patrice Motsepe is a conman. His Forbes listing is fake . (...)”
 - h. On June 22, 2021: “It’s unfortunate that as part of his 100-dry achievements, Patrice Motsepe exposed his cluelessness whilst touting a failed European project as his primary objective. A conman hell embezzle more money than Ahmand and in the process send African football to the dogs”.
 - i. On July 22, 2021: “CAF President Patrice Motsepe is such an idiot, that he’s now allowed FIFA to directly recruit service providers and event organizers for the Africa Cup of Nations 2022. I’ve met dumb people in my life but Patrice Motsepe takes the cake”.
 - j. On July 31, 2021: “To illustrate the colossal arsehole that CAF President Patrice Motsepe is, he ignored Coudjoe’s Armakwaa’s email regarding his legitimate concerns, yet Coudjoe was at the time of his candidacy over-excited at the prospect of his presidency in the spirit of ‘Ubuntu’.
 - k. On July 31, 2021: “in his infinite stupidity, (...) President Patrice Motsepe approved for his office to be renovated to the tune of thousands of dollars but ignore the plight of unpaid staff and service provides (...)”
5. It is the plaintiff’s submission that the words used by the defendant are in their natural meaning meant or were understood to mean that the plaintiff is in general a corrupt and immoral person as well as unethical in the performance of his duties as President of the Confederation of African Football (CAF).
 6. It is said that the defamatory tweets were and are still accessible to millions of the users on the internet and the plaintiff avers that his business partners and stakeholders in CAF are concerned about the allegations in the defamatory tweets and are now contacting him raising their concerns about the allegations in the offensive tweets.
 7. It is the plaintiff’s submission that unless an order of injunction is granted against the defendant, he will continue to suffer irreparable loss since the defendant is likely to continue to publish the same about the plaintiff.
 8. Having considered the material placed before this court and having taken into account the fact that the defendant failed to respond to the instant motion, I am satisfied that the plaintiff has established a *prima facie* case with high chances of success. I am also convinced that unless the order sought is granted the plaintiff/applicant will suffer irreparable loss which cannot be compensated in monetary terms.
 9. In the end, I find the plaintiff’s motion dated August 3, 2022 to be meritorious. The same is allowed in terms of prayer 4 (iv hereinabove). Consequently, a temporary order of injunction do issue restraining the defendant whether by himself, his employees, servants and/or agents or any such related persons from publishing, causing to be published, republishing, and/or disseminating, distributing or otherwise reproducing or in any way circulating whether partially or in its totality any scandalous, libelous or defamatory statement/article regarding the plaintiff or his position as President of the Confederation of Africa Football (CAF) on twitter account handle “@francisgaitho” or any other website and/or on any media platform including print media and/or social media, in any interviews, forum or any other platform pending the hearing and determination of this suit.
 10. Costs to abide the outcome of this suit.



DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
19TH DAY OF AUGUST, 2022.

.....

JK SERGON

JUDGE

In the presence of:

..... **for the plaintiff**

..... **for the defendant**

