



REPUBLIC OF KENYA



**Gichihi & 4 others v Waigwa (Civil Suit E135 of 2022)
[2022] KEHC 12253 (KLR) (Civ) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12253 (KLR)

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

CIVIL

CIVIL SUIT E135 OF 2022

JK SERGON, J

AUGUST 5, 2022

BETWEEN

ALLEN GICHIHI 1ST PLAINTIFF
CHARLES WAMAE 2ND PLAINTIFF
PRESTONE WAWIRE 3RD PLAINTIFF
CAXSTONE KIGATA 4TH PLAINTIFF
JANEIRENE MAINA 5TH PLAINTIFF

AND

AMBROSE NDUNGU WAIGWA DEFENDANT

RULING

1. The subject matter of this ruling is the motion dated 2 July 8, 2022 taken out by the plaintiffs whereof they sought for inter alia; that pending the hearing of this suit, an order of injunction do issue to restrain the defendant by himself, his followers on tweeter and any other social media platform or agents from publishing and or causing to be published, tweeted, retweeted, posting or reposting all articles referring to the plaintiffs and the firm of Wamae & Allen Advocates and in particular

Pending the hearing of this suit an order do issue restraining the defendant, whether by himself, his followers on Twitter and any other social media platform or agents or otherwise howsoever, from publishing and/or causing to be published, tweeting, retweeting, posting or reposting all articles referring to the plaintiffs and the firm of Wamae & Allen Advocates and in particular



- i. Any tweets surrounding the complaint filed against him with the Office of Data Protection Commissioner and the pending complaint filed before the Advocates Disciplinary Tribunal for professional misconduct.
- ii. An order directing the defendant to immediately remove all innuendoes and tweets whatsoever now or in future alleging sexual harassment by the plaintiffs posted on 27th July 2022 and all subsequent dates thereafter stating as follows

Ambrose Waigwa

@Waigwamkuu

Sexual harassment in law firms is a thorny issue that women are conditioned to never speak about through threats, sideshows and shenanigans. Three counsel shared with me in chilling details how a partner robbed their dignity on separate non- related occasions when they were young

9:48 am 27 Jul 2022 – Twitter Web App

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Replying to @ Waigwamkuu

Weinstein, but eventually, justice was achieved. It started with one person speaking out, and soon #MeToo became a phenomenon too big to be ignored.

Have a good day folks and do to others what you would like done to you.

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9:58am 27 July 2022 – Twitter Web App

From the world wide web, all search engines such as Goggle, Bing, DuckDuckGo, Yahoo and any other search engines where the articles may be searched, all links making reference to the articles that appear in any search engine, their blogs and social platforms such as Facebook, WhatsApp, Telegram, Instagram and Twitter and to remove all past, present and future references to the plaintiffs and the firm of Wamae and Allen Advocates in any manner whatsoever and any other articles connected and related to the plaintiffs and their firm from all internet search engines and social media platforms and any printed media.

2. The applicants also sought for costs.



3. The plaintiffs filed in support of the motion the affidavit sworn by Prestone Wawire. When the motion was served upon the defendant, the defendant failed to file a response. However, Mr. Onderi, learned advocate for the defendant was permitted to make oral submissions on points of law in response to oppose the plaintiffs' application.
4. I have considered the grounds stated on the face of the motion dated July 28, 2022. I have also considered the facts deponed in the supporting affidavit sworn by Prestone Wawire plus the rival oral submissions made by learned counsels.
5. Mr. Allen Gichuhi, learned advocate who is also the 1st plaintiff made arguments on behalf of the plaintiffs in support of the motion. It is the submission of the plaintiffs that the defendant is a former employee of the plaintiffs' firm of advocates known as Wamae and Allen Advocates.
6. It is pointed out that the defendant who has over 16,000 followers on twitter has published and continues to publish defamatory articles containing libelous contents against the plaintiffs in the worldwide web and his twitter page since July 25, 2022 following his posting of a complaint that the plaintiffs lodged against him with the officer of the Data Protection Commissioner for serious breach of obtaining confidential information in violation of sections 72(3) and 72(4) of the [Data Protection Act](#).
7. The plaintiffs further stated that the defendant's defamatory tweets posted on July 27, 2022 at 9.28am titled "Sexual Harassment in Law Firms" is being retweeted and posted in various social media platforms and is a direct libelous attack on the plaintiffs in retaliation for the complaint that had been lodged against him for data breach.
8. The plaintiffs also averred that on diverse dates between 25th and July 27, 2022 the defendant actively attacked them on his twitter page and caused several Kenyans on twitter(KOT) to maliciously attack their law firm and directly besmirch the characters of the plaintiffs to inter alia that some of the plaintiffs are guilty of sexually harassing employees.
9. It is also stated that the defendant has threatened to continuously besmirch the partners of the law firm by twice repeating on his twitter page on 27th July, 2022 at about 7.00am. It is the submission of the plaintiffs' learned advocate that unless the orders sought are granted the plaintiffs would suffer irreparable loss as their clients have begun enquiring about the allegations contained in the tweets thus affecting the law firm's reputation and causing mental anguish to the partners, associates and employees of the firm.
10. In response to the plaintiffs' submissions Mr. Onderi, learned advocate appearing for the defendant argued to oppose the application stating that the plaintiffs have relied on unsubstantiated allegations.
11. It is also Mr. Onderi's submission that the plaintiffs' suit is based on innuendo and on commentaries made by undisclosed persons. The defendant urged this court to balance the freedom of expression protected in article 33 (1) of [the Constitution](#) with the private right not to be defamed. This court was urged to hold that the application does not meet the conditions necessary for issuance of a mandatory order of injunction.
12. Having considered the material placed before this court plus the rival oral submissions and the authorities cited, it is apparent the facts outlined in the supporting affidavit sworn by Prestone Wawire have not been controverted since the defendant failed to file a replying affidavit. It is clear from the facts deponed in the supporting affidavit that the defendant has not denied that he posted the tweets on his twitter page.



13. A cursory look at those tweets in the absence of any material controverting the facts seem to suggest that the plaintiffs are guilty of sexual harassment and that they are also guilty of professional misconduct. There is also an uncontroverted averment on the part of the plaintiffs that their clients have started to make inquiries about the contents of the damaging tweets which have been posted in social media.
14. There is no doubt that the plaintiffs have sought for inter alia a mandatory order of injunction. The defendant has urged this court not to grant the order at an interlocutory stage since it is not permissible in law. I find the defendant's submission to be wrong. A mandatory order of injunction can be issued at an interlocutory stage and also at the conclusion of the case. The conditions necessary to be present before granting an order of injunction were restated in the case of *Giella =vs= Cassman Brown & Co. Ltd* (1973) E.A 358.
15. The court may grant a mandatory order of injunction in defamation cases in the clearest possible cases. The court must be satisfied that the words or matter complained of are libelous and manifestly defamatory.
16. I have already stated that the defendant did not controvert the averments made in the affidavit filed in support. I am satisfied that the plaintiff has established a prima facie case with a probability of success. The contents of the tweets appear to be defamatory.
17. This court has also been beseeched to balance the competing interests obtaining in this matter. The defendant's advocate averred that the court should take note that the defendant's freedom of expression is protected under article 33(1) of *the Constitution*.
18. It is pointed out that under article 33(3) of *the Constitution* provides that the exercise of the right of freedom of expression is subject to respect of the rights and reputation of others. In this instant case the plaintiffs are stating that the defendant has done tweets that may destroy their reputation and that of their law firm.
19. I am satisfied that the plaintiffs are entitled to approach the court for the available remedies in law. I am further convinced that unless an order of injunction is granted and the defendant ordered to remove the offensive tweets, the plaintiffs and their law firm will be exposed to irreparable damage and loss of business and reputation which I shudder say, cannot be compensated in monetary terms.
20. In the end, I find the motion dated July 28, 2022 to be meritorious. It is allowed.

Pending the hearing of this suit an order do issue restraining the defendant, whether by himself, his followers on Twitter and any other social media platform or agents or otherwise howsoever, from publishing and/or causing to be published, tweeting, retweeting, posting or reposting all articles referring to the plaintiffs and the firm of Wamae & Allen Advocates and in particular
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DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 5TH DAY OF AUGUST, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the Defendant/Applicant

