



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. E222 OF 2020

PRESIDING BISHOP REVEREND JOSEPH

**NTOMBURA MWAINE (suing in his own personal
capacity and as Presiding Bishop and Chairman**

Trustees of Methodist Church in Kenya).....PLAINTIFF/APPLICANT

-VERSUS-

BISHOP MISHECK KANAKE.....1ST DEFENDANT/RESPONDENT

JACOB GITUMA.....2ND DEFENDANT/RESPONDENT

REV. JEREMIAH ANONDO.....3RD DEFENDANT/RESPONDENT

REV.EMMANUEL MAINGI.....4TH DEFENDANT/RESPONDENT

WILLIAM KILONZO.....5TH DEFENDANT/RESPONDENT

HELLEN KAMENCHU.....6TH DEFENDANT/RESPONDENT

REV.JAMES MURIKI.....7TH DEFENDANT/RESPONDENT

DR.GLADYS MWITI.....8TH DEFENDANT/RESPONDENT

GEOFFREY KINOTI

KATHURIMA.....9TH DEFENDANT/RESPONDENT

DR.GERISHON MWITI.....10TH DEFENDANT/RESPONDENT

MARTIN BAARIU MURIUKI.....11TH DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant herein has brought the notice of motion dated 23rd December, 2020 supported by the grounds set out on the body thereof and the facts stated in the affidavit of Joseph Ntombura Mwaine. The applicant sought for the following orders:

i. Spent

ii. Spent

iii. That pending the hearing and determination of this suit an Order of temporary injunction be issued to restrain the defendants/respondents from using, referring, circulating ,publishing ,or causing to be published or circulated the publication titled

iv. “The Untold Shocking Revelation of Anarchy in the Church” dated 1st October 2020 or print or Circulate any new/and or similar defamatory letter, words and/or contents against the Plaintiff/Applicant.

v. That such other or further orders be granted as the interests of justice and circumstances of this case dictate.

vi. That costs for this Application be provided for.

2. The Respondents opposed the application through Replying affidavits deponed to by Dr.Gerishon Mwit, Dr.Gladys K. Mwit, Martin Baariu Muriuki, Reverend James Muriugki, Reverend Charles Akule, Timothy Mutirithia and James Muriungi Rukioya.

3. The Motion was canvassed by way of written submissions.

4. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits supporting and challenging it, and the contending written submissions and authorities cited.

5. A brief background of the matter is that the applicant instituted a suit against the respondents by way of the plaint dated 23rd December, 2020 and sought for *inter alia*, various forms of damages and an order for permanent and mandatory injunctions against the respondents, arising out of the tort of defamation. The plaint was filed together with the instant Motion.

6. The crux of the matter is that the defendants/respondents published and distributed a 40-page booklet/publication that made false, scandalous, and outrageous allegations, including that the presiding Bishop sold or mortgaged church property without the approval of the members, that the Bishop's wife was hired as the Chief Operations Officer and is paid Kshs.500,000/= per month, and that the said Bishop and the Trustees have charged the title deed of Methodist Church in Kenya headquarters.

7. It is clear from the motion, that the applicant is seeking one key order of grant of an interlocutory injunction.

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:

a) The applicant must first establish a prima facie case with a probability of success.

b) The applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.

c) 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** *inter alia* as follows:

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 applicant that as a result of the said libelous publication his public esteem, character and reputation have been seriously assaulted besmirched and ridiculed as a result of the Defendants/ Respondent's continuous and disparaging actions.

11. The applicant contends that it is beyond dispute that the Respondents authored, signed, and circulated the contested publication in the disclosed manner aforesaid with the intent of reaching as many people as possible, despite the publication's injurious and libelous effect on the applicant's person, stature, and character, and on the trustees of the Methodist Church in Kenya as custodians of the Church.

12. In its submissions, the applicant contends that any fair and reasonable person would have an unfavorable impression of the applicant and his reputation after reading the entire publication.

13. The applicant further contends that the Respondents' claim of privilege and fair comment in the writing and dissemination of the contested publication is without merit since they have not proved to the Honourable Court how or in what manner the remarks contained therein may be privileged or recognized as fair criticism.

14. To buttress its point above, the applicant cites **Gatley on Libel and Slander,9th Edition Sweet & Maxwell (pgs. 150-152)** the author states:

“at common law every republication of a libel is a new libel and, if committed by different persons, each one is liable as if the defamatory statement had originated with him.”

15. In response, the Respondents claim in their arguments that the Plaintiff/Applicants orders are too broad, that he has not laid forth the orders sought to be restrained with clarity and exactitude for purposes of enforcement, and that the orders sought are too broad. On this they relied on the case of **Evans Kidero v John Kamau & Another (2017) eKLR** Counsel submitted that the granting of interim injunctions orders would be akin to gagging order to prevent the defendant from making any factual statements on matters of public interest affecting Saku Constituency and Marsabit County.

16. The respondents contend that the words allegedly uttered by them have not been pleaded in the Plaint and the Applicant did not deny the annexures to the Replying Affidavits. The respondents in this case have submitted that they rely on the Defenses of justification, fair comment and privilege in response to the Plaint.

17. On this the Respondents relied on several authorities including the case of **Endmor Steel Millers Ltd v Royal Media Services Ltd & 2 Others (2020) eKLR** where the court in reiterating what Lord Denning M.R said in **Harakas v Baltic Mercantile and Shipping Exchange (1982) I.W.L.R 958** stated:

“This court never grants an injunction in respect of a libel when it is said by the defendant that the words are true and that he is going to justify them. So also when an occasion is protected by qualified privilege this court never grants an injunction to restrain slander or libel..... unless it is shown that what the defendant proposes to say is known by him to be untrue so that it is clearly malicious...”

18. According to the Respondents, the material in the aforementioned publication contains concerns of public interest, and members are right to make known the trust and make fair comments on it since it negatively affects the Methodist Church in Kenya.

19. The respondents argue that the Applicant has not established a sufficient case for an interlocutory injunction, namely that he has not demonstrated that he has a prima facie case with a reasonable chance of success, that damages would be insufficient to compensate the plaintiff, and that the balance of convenience would favor him.

20. Having studied the various parties' arguments as well as the attached papers and pleadings submitted, I am of the opinion that the aforementioned impugned publication(s) would cause any reasonable person to view the applicant negatively on the face of it.

21. Furthermore, it is undisputed that the respondents created the contested publication. It's also worth noting that whether the aforementioned publication was defamatory of the applicant and if the respondents' defenses would hold up at trial may only be determined at that point.

22. For now, I am satisfied that the applicant has established a prima facie case with a probability of success.

23. In respect to the second principle on irreparable damage/loss, the applicant submitted that the balance of convenience tilts in his favour as he stands to suffer irreparable harm to his reputation and stature unless the orders sought are granted.

24. On their part, the Respondents contend that the Plaintiff/ Applicant's application is an attempt to gag the Defendants/ Respondents from pointing out the Plaintiff's poor governance practices that has led to substantial loss and damage.

25. Upon considering the opposing viewpoints and reviewing the evidence presented on the record, I believe that one's reputation is priceless and cannot be fully compensated by damages once damaged. In this respect, I believe that unless the applicant is given an interlocutory injunction prohibiting the respondents from making use of, referring to, distributing, publishing, or causing to be published the aforementioned publication, the applicant will continue to suffer irreparable harm.

26. In the case of **American Cyanamid v Ethicon [1975]AC 135** it was stated inter alia as follows:

“A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages not injury that cannot be repaired..... The object of interlocutory injunction is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial.”

27. The orders sought in this suit do not, in fact, decide the case;

rather, they are just interim orders pending the main suit's hearing and decision.

28. After concluding that the applicant has met the first two (2) criteria for an interlocutory injunction, it is reasonable to conclude that the applicant will suffer more inconvenience if the injunction is not granted than the respondents would if the same were granted. As a result, the balance of convenience is tipped in favor of the applicant.

29. In conclusion therefore, I find merit in the Motion dated 23rd December 2020. The same is allowed giving rise to issuance of the following orders:

i. That pending the hearing and determination of this suit an Order of temporary injunction be issued to restrain the defendants/respondents from using, referring, circulating, publishing, or causing to be published or circulated the publication titled “The Untold Shocking Revelation of Anarchy in the Church” dated 1st October 2020 or print or Circulate

any new/and or similar defamatory letter, words and/or contents against the Plaintiff/Applicant.

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

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
17TH DAY OF DECEMBER, 2021.**

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant