



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 59 OF 2020

DSO.....PLAINTIFF/APPLICANT

VERSUS

AJA.....DEFENDANT/RESPONDENT

RULING

1) The plaintiff/applicant took out the motion dated 21st April 2020 and sought for inter-alia

i.Spent.

ii.Spent.

iii. THAT pending the hearing and determination of this application or further orders of this honourable court, the defendant to either by herself and/or through her agents or servants or any of them be restrained from publishing or posting or causing to published or posted texts, words or information defamatory of the plaintiff.

iv. THAT pending the hearing and determination concerning the plaintiff in this application the defendant be ordered to remove, pull down and delete all publications and all references to the plaintiff from her facebook page and all social media accounts that she owns.

v. THAT pending the hearing and determination of this application this honourable court be pleased to order the defendant to issue an unreserved and unconditional apology and retraction of the entire contents of her defamatory publications concerning the plaintiff.

vi. THAT the cost of this ex-parte application be provided for.

2) The motion is supported by two affidavits sworn by the plaintiff. When served, the respondent filed a replying affidavit she swore to oppose the motion. This court issued directions for the motion to be disposed of by written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival written submissions. It is the submission of the plaintiff/applicant that on diverse dates namely: 9.10.2020, 25.02.2020, 22.03.2020, 15.04.2020 and 16.04.2020 the respondent published on her facebook page posts that are defamatory of the plaintiff and that she has refused to pull down or stop the publications.

4) The plaintiff avers that the defendant published the defamatory publications concerning him with the sole intention of tarnishing the plaintiff's reputation.

5) The plaintiff identified some of the offending publications as follows:

15.04.2019: "This is it. I call it the certificate of deadbeats. This is to certify that Mr. DSO has successfully been appointed into the club of 10 years a deadbeat and the results are here to confirm that he is the biological father."

On 16.04.2020 "So how is a clear pattern of gender based violence and emotional abuse demonstrated."

6) The plaintiff argued that the aforesaid publications amongst others injured and continues to injure his reputation hence the orders sought should be granted.

7) The respondent strenuously opposed the motion arguing that the same does not meet the threshold required in such cases. The respondent further denied having defamed the plaintiff in anyway. She argued that she made truthful expressions which do not amount to defamation.

8) She also argued that the confidentiality test agreement she executed with the applicant did not prohibit her from asserting the truth and demanding for the applicant to be responsible for the maintenance and upkeep of the child she has with him.

9) Having carefully considered the rival submissions and the material placed before this court, it is clear in my mind that though the defendant denied having published the publications complained of it is apparent that she indeed published the same in her facebook account under her name. The defendant even attached copies of some of those posts to her replying affidavit.

10) On the face of it those posts may appear to be defamatory. However, the final and conclusive determination as to whether or not those posts are defamatory is a matter for the court which will hear the substantive suit. At this stage, the applicant is required to merely show a prima facie case and that unless the orders are granted he would suffer irreparable loss.

11) In my view, the publications cannot be justified at this stage.

The plaintiff's reputation is at stake and may not be adequately compensated.

12) In the end I am convinced that the plaintiff has made out a prima facie case. At this stage I think the most appropriate order to issue is prayer (iii) of the motion. The other orders namely prayers (iv) and (v) should await the outcome of this suit. Consequently an order for temporary injunction is granted to restrain the defendant either by herself and or through her agents or servants or any of them from publishing or posting or causing to be published or posted texts words or information defamatory of the plaintiff.

13) The defendant to meet the costs of the motion.

Dated, signed and delivered virtually via Microsoft Teams at Nairobi this 19th day of June, 2020.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Advocate/applicant

..... for the Client/Respondent