



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. 70 OF 2020

KASSO ABDALLA EBRAHIM.....PLAINTIFF/APPLICANT

-VERSUS-

LYNN NGUGI.....1ST DEFENDANT/RESPONDENT

TUKO NEWS MEDIA COMPANY.....2ND DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant herein has brought the notice of motion dated 26th May, 2020 supported by the grounds set out on the body thereof and the affidavit of the applicant. The applicant sought for the following orders:

i. Spent.

ii. Spent.

iii. THAT pending the hearing and determination of the application this Honourable Court be pleased to grant an interim injunction against the 1st and 2nd defendants/respondents or their agents, assigns, representatives, employees or otherwise howsoever from using the applicant's name and/or likeness, publishing any more videos, conversations and/or print stories related in any way to the applicant herein on their social media platforms.

iv. THAT the costs of the application be provided for.

2. The 1st defendant/respondent swore a replying affidavit to oppose the Motion while the 2nd defendant/respondent put in the replying affidavit of its director, **Hanningtone Gibendi Ramenya**.

3. The motion was canvassed by way of written submissions. At the time of writing this ruling, only the submissions of the respondents had been availed to this court.

4. The respondents who filed joint submissions deny that the publications allegedly made by them were defamatory of the applicant or that the same were actuated by malice. The respondents further submit that the applicant has not presented any special circumstances to warrant the granting of a mandatory injunction and cited the case of **Humanist Institute for Cooperation With Developing Countries (HIVOS) v Kenya National Farmers Federation (KENAFF) [2020] eKLR** where the court stated *inter alia* as follows:

“In Kenya Airports Authority vs Paul Njogu Mungai & 2 Others [1997] e KLR referred to Shepherd Homes Ltd vs Shadahu 1971 1 Ch 34 Megarry J held;

“It is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effect than a prohibitory injunction. At the Trial of the action the Court will of course grant such injunction as the justice of the case requires; but at the Interlocutory stage, when final result of the case cannot be known and the Court does the best it can, I think the case has to be unusually strong and clear before a mandatory injunction can be granted even if it is to enforce a contractual obligation.”

5. In conclusion, the respondents contend that the applicant has not demonstrated that he is entitled to the injunctive prayers sought.
6. This court has considered the grounds set out on the face of the motion and the facts deponed in the affidavit in addition to the respective replying affidavits in opposition thereto and the written submissions of the respondents.
7. A brief background of the matter is that the applicant instituted a suit against the 1st and 2nd respondents by way of the plaint dated 26th May, 2020 and sought for *inter alia*, damages and an order for a permanent injunction, arising out of the tort of defamation. The plaint was filed together with the instant Motion.
8. Upon perusal of the orders sought in the Motion, I note that the order for an interim injunction was sought as an interim order as opposed to a substantive order. However, this could be the result of a typographical error and in the interest of substantive justice, I will consider the said order in the appropriate manner.
9. It is obvious from the above that the main issue presented before this court for its consideration and ultimate determination is whether or not the applicant is entitled to an interlocutory injunction. The guiding principles to be considered in such applications were restated in the case of **Micah Cheserem v Immediate Media Services & 4 others [2000] eKLR** where the court expressed itself 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, the applicant stated that the publications made by the respondents depicted him as fraudulent and were tainted with falsehoods and that the published words would in their natural and ordinary meaning portray the applicant as an imposter, thereby exposing him to public contempt and ridicule.
11. The applicant also stated that the publications were made without his knowledge or consent, and were therefore both false and illegal in their very nature.
12. In his reply, Hanningtone Gibendi Ramenya on behalf of the 2nd respondent denied the particulars of malice, falsehood and defamation against the applicant. The 1st respondent relied on the averments made in the aforementioned reply.
13. Having considered the arguments by the respective parties together with the annexed documents, I am of the view that on the face of it, the aforementioned publications would very well cause any reasonable person to perceive the applicant unfavourably. I therefore find that the applicant has established a prima facie case with a probability of success.
14. Secondly, the applicant averred that his constitutional right to privacy has been violated and that his character and social standing in society has been injured as a result of the publications made by the respondents. The applicant went further on to aver that unless this court intervenes, the respondents are bound to continue to infringe upon his right to privacy.
15. On their part, the respondents are of the view that they have done nothing to interfere with the applicant's constitutional rights.
16. Whilst I observed that the respondents maintain that the publications were made truthfully and in good faith without malice, it is worth appreciating that one's reputation is invaluable and once tarnished, cannot adequately be compensated by way of damages. In this regard, I am convinced that the applicant is more likely than not to continue suffering irreparable loss unless granted an interlocutory injunction restraining the respondents from making further publications of a similar nature.
17. Having come to the conclusion that the applicant has established the first two (2) principles warranting an interlocutory injunction, it would be fair to state that the applicant stands to suffer a greater inconvenience if the injunction is not granted in comparison to the inconvenience that would befall the respondents were the same to be allowed. It therefore follows that the balance of convenience tilts in favour of the applicant.
18. With respect to the order of a mandatory injunction, there is no such prayer in the Motion. There is no basis on which to address or make a determination on the order for mandatory injunction.
19. In conclusion therefore, I find merit in the Motion, consequently a temporary order of injunction is granted against the 1st and 2nd defendants, their agents, assignees, representatives and employees from using the plaintiff's name and or likeness, publishing any more videos conversations and or print stories related in any way to the applicant herein on their social media platforms.

Costs of the motion to abide the outcome of this suit.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 16th day of October, 2020.

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J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff/Applicant

.....for the 1st and 2nd Defendants/Respondents