



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. E036 OF 2020**

**HATARI GUARDS SECURITY LIMITED.....PLAINTIFF**

**-VERSUS-**

**STANDARD GROUP PLC.....1<sup>ST</sup> DEFENDANT**

**BRIAN OBUYA.....2<sup>ND</sup> DEFENDANT**

**SIRAJURANMAN ABDULLAHI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant took out the motion dated 7<sup>th</sup> July, 2020 whereof it sought for the following orders *inter alia*:

**i. This application be certified as urgent and the same be heard ex-parte in the first instance and service be dispensed with.**

**ii. Pending interpartes hearing and determination of this application, this honourable court be pleased to issue an injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, their servants, officers, employees, agents and/or assigns from otherwise howsoever from airing or publishing or causing to be aired or published or otherwise howsoever from posting on any social and electronic media or publishing or disseminating in any manner whatsoever the features titled “Rusty Gold: investigating murders linked to the lethal scrap metal industry” and a Kiswahili version of the same entitled “Tafrani ya vyuma vikuukuu: Ufichuzi kuhusu jinsi watu wanauawa katika sakata ya wizi wa vyuma.”**

**iii. Pending the hearing and determination of this application, this honourable court be pleased to issue an interim injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, their servants, officers, employees, agents and/or assigns from otherwise howsoever from airing or publishing or causing to be aired or published or otherwise howsoever from posting on any social and electronic media or publishing or disseminating in any manner whatsoever the features titled “Rusty Gold: investigating murders linked to the lethal scrap metal industry” and a Kiswahili version of the same entitled “Tafrani ya vyuma vikuukuu; Ufichuzi kuhusu jinsi watu wanauawa katika sakata ya wizi wa vyuma”.**

**iv. Pending the hearing and determination of this suit, this honourable court be pleased to issue an interim injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, their servants, officers, employees, agents and/or assigns from otherwise howsoever from airing or publishing or causing to be aired or published or otherwise howsoever from posting on any social any electronic media or publishing or disseminating in any manner whatsoever the features titled “Rusty Gold: investigating murders linked to the lethal scrap metal industry” and a Kiswahili version of the same entitled “Tafrani ya vyuma vikuukuu: Ufichuzi kuhusu jinsi watu wanauawa katika sakata ya wizi wa vyuma:.**

**v. Costs of this application be provided for.**

2. The motion is supported by the two affidavits sworn by Dr. Steve Mwangi Kimani. When served, the defendants filed grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.

3. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support of the motion. I have also considered the grounds of opposition together with the rival written submissions. The main order sought is for an order of injunction as stated in the prayers on the motion. The plaintiff avers that it has a prima facie case with high chances of success.

4. It is stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants published and aired investigating murders linked to the illegal scrap metal industry on via KTN News on 22/9/2019 (English feature) and a Kiswahili version of the same.

5. The plaintiff averred that the defendants deliberately and recklessly linked it to unlawful conduct and felonies including illegal scrap metal trade, torture and murder. The plaintiff stated that in their natural and ordinary meaning, the feature as published and aired by the defendants are intended to be construed and understood by right thinking members of society to mean that the plaintiff is involved in violent robberies in land Mawe Nairobi. That the plaintiff is engaged and condones illegal trade of scrap metal. That the plaintiff is involved in torture and murder.

6. The defendants submitted that the plaintiff's case is not among those which is clear to warrant issuance of a gagging order. The defendants also argued that the plaintiff has failed to establish a prima facie case.

7. Having considered the rival submissions, it is not in dispute that the defendants did not file an affidavit to deny or controvert the contents of both the supporting and the supplementary affidavits. In other words the defendant did not controvert the plaintiff's averments that the defendants published the offensive articles.

8. In their defence, the defendants aver that the publications were not defamatory of the plaintiff. At this stage the court is merely determining whether the plaintiff has established a prima facie case with a probability of success.

9. A cursory look at the publications complained of will reveal that those articles link the plaintiff with illegal trade in scrap metal. It also links the plaintiff with crimes of torture and murder. I am convinced that the plaintiff has shown a prima facie case with high chances of success.

10. The plaintiff has also averred that he may suffer irreparable loss if the order for injunction is not granted. It is argued that the plaintiff's business and reputation will be severely injured by the defendant's publications which appear in the 1<sup>st</sup> defendant's You Tube Channel, Website, Facebook and Twitter pages. The defendants on the other hand submitted that if the plaintiff's reputation has been damaged then such damage can adequately be compensated by an award of damages.

11. Having considered the rival submission, I am convinced that the damage which may be caused to the plaintiff's reputation cannot be compensated by damages. The articles link the plaintiff with illegal trade in scrap metal and the crime of murder. In essence the plaintiff's reputation and brand in the business will have been severely damaged. I do not think such damage can be compensated in monetary terms.

12. The plaintiff has also argued that the balance of convenience tilts in favour of granting the order of injunction. The defendants are of the view that the balance of convenience lies in favour of protecting the greater interest for the public to be informed of the dangers that belie the scrap metal industry as opposed to the plaintiff's private interest of protecting reputation.

13. With respect, the submissions of the defendants appear to be attractive and appealing but unfortunately the defendants failed to controvert the plaintiff's averments deponed in the two affidavits filed in support. I am convinced that if the order of injunction is not granted the plaintiff's business may collapse and may not be revived. I think the balance of convenience tilts in favour of granting the order. I am also satisfied that this is one of those clear cases. In the end, the motion dated 7/7/2020 is found to be meritorious. Consequently, the motion is allowed giving rise to issuance of the following orders:

**i. An interim injunction order is issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, their servants, officers, employees, agents and/or assigns from otherwise howsoever from airing or publishing or causing to be aired or published or otherwise howsoever from posting on any social any electronic media or publishing or disseminating in any manner whatsoever the features titled "Rusty Gold: investigating murders linked to the lethal scrap metal industry" and a Kiswahili version of the same entitled "Tafrani ya vyuma vikuuku: Ufinchuzi kuhusu jinsi watu wanauawa katika sakata ya wizzi wa vyuma: pending the hearing and determination of this suit.**

**ii. Costs to abide the outcome of the suit.**

**Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17<sup>th</sup> day of December, 2020.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant