



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 87 OF 2020

ABNO SOFTWARES INTERNATIONAL LIMITED...1ST PLAINTIFF/APPLICANT

ALEX BARASA2ND PLAINTIFF/APPLICANT

VERSUS

HEMANDRA SINGH1ST DEFENDANT/RESPONDENT

NINE HERTZ INDIA PVT LIMITED.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiffs approached this court on 30th June, 2020 with an application by way of Notice of Motion dated 22nd June, 2020 under certificate of urgency, seeking orders that the defendants be restrained by an order of interim injunction from publishing any emails, articles, words, materials or remarks concerning the applicants and their operations. That application was supported by grounds set out on the face of the applications alongside an affidavit sworn by the 2nd applicant Alex Barasa who is the founder and Chief Executive Officer of the 1st plaintiff.

In the plaint filed on 25th June, 2020 by the plaintiffs against the defendants, the plaintiff set out the grounds upon which the defendants have written what the plaintiffs consider malicious and reckless emails and published the same relating to their business operations. The plaintiffs have set out details of several recipients of the said publications which are likely to impact negatively on their business. Particulars of malice and falsehoods have also been set out.

Additionally, the plaintiffs have set out the list of their clients with running contracts and their values, which stand at risk of being compromised as a result of the defendants' actions. It is on the basis of those pleadings that the order for injunction is sought before the hearing of the main suit.

On 9th July, 2020 Githua J gave interim orders as sought by the plaintiffs pending the hearing of the application inter partes. On 10th August, 2020 this court issued orders for the parties to file written submissions online to address the application. This is after confirming service upon the defendants. On 22nd September, 2020 counsel for the applicants confirmed filing of their submissions but none had been filed by the defendants.

I note that despite service the defendants did not file any response to the application or submissions as ordered by the court. Indeed to date, the defendants have neither entered appearance or filed any defence to the plaintiffs' claim.

In the submissions filed by the plaintiffs, several authorities have been cited to justify the orders sought at this stage. Before this order is confirmed the court must be satisfied, even in the absence of any rejoinder by the defendants, that the plaintiffs have met the threshold for granting such an order. In this regard, two cases come to light. These are **Cheserem vs. Immedicate Media Services (2000) 2EA 371** which was cited in the case of **Ann Waiguru vs. Paul Kinuthia (2019) e KLR** as follows,

“An interlocutory injunction is temporary and only subsists until the determination of the main suit. In defamation, the question of injunction is treated in a special way although the conditions applicable in granting an injunction as set out in the Giella v Cassman Brown & Co Ltd (1973) EA 358 generally apply...In defamation cases, those principles apply together with special law relating to the grant of injunctions in defamation cases where the court's jurisdiction to grant an injunction is exercised with the greatest caution so that an injunction is granted only in clearest possible cases. The court must be satisfied that the words complained of are libelous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse.....The reason for so treating grant of injunction in defamation cases is that the action for defamation brings out conflict between private interests and public interest, more so in cases where the country's constitution has provisions to protect fundamental rights and freedoms of the individual, including the protection of the freedom of expression.”

I have already observed that there is no rejoinder from the defendants in this case. It behoves this court therefore, based on the pleadings, the facts and the cited cases, that the order sought be confirmed. Before that however, I must emphasise that in defamation cases, the name of a party, be it an individual or a corporate entity, has to be preserved and protected by the court using the law. This is because, a name is what any party has as an identifying tool, and defines such a party in any given situation.

Counsel for the plaintiffs has cited **Shakespeare** in the book of **Othello, Act 3 Scene three, 155 – 161** which calls for citation. And it reads as follows,

“Good name in a man or woman, dear my Lord, is an immediate jewel of their souls. Who steals my purse steals trash; Tis something, nothing; Twas mine, tis his, and has been slave to thousands; But he that filches from me my good name , Robes me of that which not enriches him; And makes me poor indeed”

The reputation of the plaintiffs herein, going by the pleadings and the averments set out in the supporting affidavit to the application is at stake, and one cannot fathom the financial consequences that may result if the order sought is not given. Going by the material presented by the plaintiffs, and in the absence of any response from the defendants, though served, I am persuaded that the interim injunction given by this court, pending the hearing of this application, shall now remain in place until this suit is heard and determined.

Since the defendants were served and elected not to contest this application, they shall pay the costs of the application to the plaintiffs.

Signed at Nairobi this 8th day of December, 2020.

A.MBOGHOLI MSAGHA

JUDGE

Dated, signed and delivered online via Microsoft Teams at Nairobi this 16th day of December, 2020

J.K. SERGON

JUDGE