



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 255 OF 2018

WEALTHSMITH LIMITED.....PLAINTIFF/APPLICANT

VERSUS

THE STANDARD GROUP PLC.....1ST DEFENDANT/RESPONDENT

THE NAIROBIAN NEWSPAPER.....2ND DEFENDANT/RESPONDENT

MIRERI JUNIOR.....3RD DEFENDANT/RESPONDENT

RULING

1. The plaintiff has filed a Notice of Motion dated 31st October, 2018 and which Motion is supported by the grounds set out on the face thereof together with the facts deponed in the affidavit sworn by **Gerald Munyao Mwanza**. The following orders are sought therein:

i. Spent.

ii. Spent.

iii. Spent.

iv. THAT pending the hearing and determination of the suit, this Honourable Court be pleased to order that the Defendants/Respondents are restrained from publishing articles that relate to the plaintiff, its projects and investments in the Nairobi or the Standard Media digital platform, or any other forum whatsoever.

v. THAT the costs of the application be borne by the defendants/respondents.

2. The Motion stands opposed, with the defendants having filed Grounds of Opposition dated 6th November, 2018. In response thereto, a further affidavit sworn by the aforesaid Gerald Munyao Mwanza was filed.

3. The application was canvassed by way of written submissions, which I have considered in addition to the grounds set out on the face of the Motion, the facts deponed in the affidavit and the Grounds of Opposition.

4. The background of the dispute in brief is derived from a farming project known as *Kilimo Poa* which was launched by the plaintiff sometime in 2017 for the purpose of installation of green-houses that would subsequently bring about returns for sums invested by the certain members of the public. That on 26th October, 2018 and 27th October of the same year, the 2nd and 3rd defendants published articles in relation to the aforementioned project and which articles applied allegedly defamatory words in respect to the plaintiff, thereby causing injury to his reputation and standing in society. The plaintiff has therefore lodged a defamatory claim against the defendants on this basis.

5. It is evident that the present application concerns the granting of an order of injunction. That said, it is important to note that since the injunction sought concerns a defamatory claim, the relevant guiding principles are set out in ***Micah Cheserem v Immediate Media Services & 4 others [2000] eKLR*** in which the court stated inter alia that:

a) Firstly, the applicant must establish a prima facie case with a probability of success.

b) Secondly, the applicant must show that he or she stands to suffer irreparable loss that cannot be adequately compensated by way of damages.

c) Thirdly, where the court is in doubt, then the balance of convenience should tilt in favour of the applicant.

6. The first condition relates to whether or not the plaintiff has established a prima facie case. On this limb, the plaintiff did submit that the purported publication was a falsehood, and that the same was made prematurely and inaccurately.
7. The plaintiff in turn referred to the facts deponed in the affidavit filed in support of the Motion stating that the words published would be understood by any right thinking members of the society to mean that the plaintiff had in essence cheated its investors.
8. On their part, the defendants contended that the publications were made in public interest as provided for under Article 34 of the Constitution.
9. Having considered the rival arguments above, I have observed that the defendants are yet to put in their defences to enable this court form an opinion on its nature. I have considered the pleadings filed on behalf of the plaintiff and note that the tort of defamation has both been pleaded and explained in detail albeit ex parte. In the circumstances, I am of the humble view that the plaintiff has a prima facie case which points towards an apparent infringement of a right and for which there stands a chance of success.
10. The plaintiff submitted that unless an interlocutory injunction is issued, the respondents are likely to carry on with the defamatory publications and in doing so, lower the plaintiff's business and standing in society.
11. The defendants have argued that the members of the public are entitled to the information published as a matter of public interest.
12. In the circumstances of this case, there arises the need to strike a balance between the public and private interests, and especially as pertains to freedom of the media. Whereas I am alive to the provisions of *Article 34* of the Constitution, I am as well appreciative of the fact that a person's reputation matters just as much if not even more. It should be appreciated that if a person loses his or her reputation, no amount of monetary compensation would restore the same. The plaintiff in this instance is in the agro-business sector and as such, continued publications of a similar nature would result in additional injury. In this sense, the plaintiff stands to suffer irreparable damage.
13. The third principle on the balance of convenience was not touched on by the parties. Suffice it to say, having determined that the plaintiff has demonstrated a prima facie case with a probability of success and that it will suffer irreparable damage, I am convinced that the balance of convenience tilts in favour of the plaintiff.
14. In view of the foregoing, the Motion is found to have merit and is allowed in terms of prayer (iv). Costs shall abide the outcome of the suit.

Dated, Signed and Delivered at Nairobi this 28th day of February, 2019.

J.K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents