



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 174 OF 2017

GEORGE MUDHUNE.....PLAINTIFF

- V E R S U S -

PHILIPS EAST AFRICA LIMITED.....DEFENDANT

RULING

1) George Mudhune, the plaintiff/applicant herein, took out the motion dated 7.8.2017 in which he sought for the following orders:

- 1. THAT this application be certified as urgent and heard ex parte in the first instance and for purposes of prayer 2 and 3 of this application.**
- 2. THAT the defendant/respondent, whether by itself or its servants or agents or otherwise be restrained by a temporary order of injunction from publishing, printing , broadcasting, distributing defamatory words about the plaintiff and/or discussing in any media matters touching on the plaintiff's resignation from the defendant's employment pending the hearing and determination of this application inter partes.**
- 3. THAT the defendant/respondent, whether by itself of its servants or agents or otherwise be restrain by a temporary order of injunction from doing the following acts or any of the, namely from initiating, continuing, engaging in or permitting any action that would interfere with the plaintiff's good name and reputation in any manner howsoever pending the hearing and determination of this application inter partes.**
- 4. THAT the defendant/respondent, whether by itself or its servants or agents or otherwise be restrained by a temporary order of injunction from publishing, printing, broadcasting, distributing defamatory words about the plaintiff and/or discussing in any media matters touching on the plaintiff's resignation from the defendant's employment pending the hearing and determination of this suit.**
- 5. THAT the defendant/respondent, whether by itself or its servants or agents or otherwise be restrained by a temporary order of injunction from doing the following acts or any of them, namely from initiating, continuing, engaging in or permitting any action that would interfere with the plaintiff's good name and reputation in any manner however pending the hearing and determination of this suit.**
- 6. THAT such other or further orders as may be just be made to meet the ends of justice and to safeguard and protect the dignity of this honourable court.**
- 7. THAT the costs of this application be provided for.**

2) The motion is supported by the affidavit sworn by the plaintiff. Philips East African Ltd, the defendant herein, filed a replying affidavit of Kananu Mithika to oppose the motion. When the motion came up for hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions. At the time of writing this ruling, the defendant was the only party which had filed its submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavit filed in support and against the application. I have also considered the written submissions filed herein.

4) It is the submission of the plaintiff/applicant that the defendant has embarked on a series of threats and harassment meant to blackmail him. The plaintiff averred that the defendant intends to publish untrue, false and highly defamatory media reports against him unless it is paid a sum of USD54,000 within 7 days. The plaintiff further submitted that the defendant's intention has been to defame and injure his reputation

and expose him to hatred, contempt, ridicule and damage in the right thinking members of society. It is for the above reasons that the plaintiff has beseeched this court to issue an order of injunction to restrain the defendant from actualising its threat.

5) The defendant has vehemently opposed the motion arguing that there is no iota of merit in the plaintiff's application. It is the defendant's submission that the plaintiff was its former employee who was at some point issued with a notice to show cause why he should not be disciplined for participating in activities which were in conflict with those of the defendant. It is also said that the plaintiff dealt with other companies but did not disclose that he had interest in them to the defendant. In other words the defendant formed the opinion that the plaintiff was guilty of material non-disclosure and has therefore come to court with unclean hands. The defendant pointed out that after the plaintiff resigned from the defendant's employment some clarification relating to the aforesaid matters were sought from the plaintiff. The defendant further averred that in the event the plaintiff failed to offer any clarification it would draft a disclaimer and publish in at least three national newspapers notifying the public of the circumstances surrounding the plaintiff's exit from the defendant's employment.

6) The brief background of this dispute can be discerned from the pleadings and averments made herein. In the month of July 2014, the plaintiff was employed by the defendant as the General Manager CL East Africa, Personal Health Africa. In his letter of acceptance, the plaintiff is said to have signed a disclosure form where he confirmed that he did not have any conflict of interest with the defendant. It is alleged by the defendant that upon carrying out an internal investigation it was discovered that the plaintiff was a 60% shareholder of Consignia East Africa Ltd, a company listed as a vendor of the defendant thus representing a conflict of interest which was never disclosed by the plaintiff to the defendant. It is said that following the revelation, the plaintiff decided to resign from the defendant's employment. I have already stated that upon the plaintiff's resignation, the defendant demanded from the plaintiff further clarification failure to which it would publish a disclaimer to the members of public.

7) The plaintiff is now before this court seeking for orders of injunction to restrain the defendant from publishing what he called false defamatory and malicious matters. At this interlocutory stage, I think it is not appropriate to make a finding as to whether or not the plaintiff is guilty of material non-disclosure or whether or not the plaintiff has approached the court with unclean hands. I am of the view that the relevant issue to be determined at this stage is whether or not a grant of interim injunction should be granted. The first question to be answered is whether the plaintiff has shown the prima facie case. It is stated by the plaintiff that the information the defendant is about to publish is false, malicious and defamatory. I have carefully perused the plaintiff's averments and the plaint. In my humble view, the material presented to this court does not manifest itself as defamatory of the plaintiff. The words stated in the plaint and by affidavit by their nature do not show that they are defamatory but appear to be meant to demand an explanations from the plaintiff. A careful consideration of the contents of paragraph 7 to 26 of the plaint shows that the issues raised therein relate to the plaintiff's employment. The plaintiff has failed to show that those issues were untrue and malicious. The defendant has categorically stated that it has no intention of publishing false and defamatory material against the plaintiff.

8) I am satisfied that the plaintiff has failed to show that he has a prima facie case with a probability of success. The plaintiff has argued that unless an order for injunction is granted, he stands to suffer loss and damage in that his good name and reputation will be destroyed. The plaintiff did not attempt to specify the nature of irreparable damage that may be visited upon him. What is apparent is that the dispute revolve around the circumstances under which the plaintiff resigned from the defendant's employment. It is not enough to allege that the publication will interfere with the plaintiff's reputation and standing in society. A party must show the specifics of the irreparable loss that may occur. In this case the plaintiff has failed to lay a basis of this test.

9) In the end, I find no merit in the motion dated 7.8.2017. The same is dismissed with costs.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent