



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 56 OF 2018

WHISPERING PALMS ESTATE LTD.....1ST PLAINTIFF

AFRISON EXPORT IMPORT LTD.....2ND PLAINTIFF

HUELANDS LTD.....3RD PLAINTIFF

- V E R S U S -

NATION MEDIA GROUP.....1ST DEFENDANT

IBRAHIM ORUKO.....2ND DEFENDANT

RULING

1. Whispering Palms Estate Ltd, Afrison Export Import Ltd and Huelands Ltd, being the 1st, 2nd and 3rd plaintiffs herein, took out the motion dated 19th March 2018 in which they sought for the following orders against Nation Media Group and Ibrahim Oruko the 1st and 2nd defendants herein.

1. THAT this honourable court be pleased to certify this application as urgent and the same be heard exparte in the first instance due to its urgency and thereafter the same be heard interpartes as the court deems fit.

2. THAT pending the hearing of this application interpartes this honourable court be pleased to issue a temporary injunction restraining the defendants jointly and/or severally, their agents, servants and/or employees and/or business associates from writing or causing to be written, broadcasting and/or causing to be broadcasted, printing and publishing or causing to be printed and published, any words/matters/statements libellous/defamatory to the plaintiffs in any manner whatsoever and in particular in respect of the libellous/defamatory and malicious words/ statements that were printed/broadcasted by the defendants in the Sunday Nation Newspaper of 11th March 2015.

3. THAT pending hearing and determination of the suit herein this honourable court be pleased to issue a permanent injunction restraining the defendants jointly and/or severally, their agents, servants and/or employees and/or business associates from writing or causing to be written, broadcasting and/or causing to be broadcasted, printing and publishing or causing to be printed and published, any words and/or matter and/ statements libellous/ defamatory to the plaintiffs in any manner whatsoever and in particular in respect of the to the libellous /defamatory words/matters/statements that were printed/broadcasted by the defendants in the Sunday Nation Newspaper of 11th March 2015.

4. THAT the costs of this application be provided for.

2. The motion is supported by the affidavit of Francis Mburu Mungai. When served with the motion, the defendants filed the replying affidavit of Sekou Owino to oppose the motion.

3. The motion came up for interpartes hearing this morning. Mr. Nyamai, learned advocate for the plaintiffs appeared and made oral arguments in support of the motion while Miss Ogulo, learned advocate for the defendants, too, made oral submissions to resist the motion. At the conclusion of the arguments, this court reserved its ruling for 18th April 2018.

4. Mr. Nyamai has beseeched this court to grant the plaintiffs, a temporary order of injunction to restrain the defendants from **writing or causing to be written, broadcasting and or causing to be broadcasted, printing and publishing or causing to be published any words, matters, statements libelious or defamatory to the plaintiffs in the 1st defendant's newspapers pending the ruling.** The learned advocate pointed out that the plaintiffs who are investors in Mauritius are affected by the negative publicity they are attracting from the defendants publications.

5. Miss Ogulo, learned advocate for the defendants vehemently opposed the plaintiff's oral application arguing that the defendants having raised the defence of **justification, privilege and fair comment**, therefore the plaintiffs are not entitled to the order.

6. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival oral submissions made by learned counsels plus the authorities cited. In determining the question as to whether or not, a temporary order of injunction pending ruling should be granted, it must be kept in mind that the ruling on the substantive motion is to be determined in a few days so that the mind of the court is not influenced early. In determining such an application, the court should not go into detail over the material supplied and relied upon by the parties. Methinks the main issue to be considered is whether or not a prima facie case has been shown to justify a grant for an interim order of injunction.

7. In the motion before this court, the plaintiffs have complained that the defendants' publications have affected their business dealings and relation they have in and outside the country. The plaintiffs have complained that the defendants have published articles in the Sunday Nation of 11.3.2018 insinuating that the plaintiffs are involved in fraudulently obtaining a sum of ksh.33 billion from the Government of Kenya through the National Land Commission as compensation for compulsory acquisition of L.R. no. 7879/4.

8. The defendants have expressly stated that they will raise the defence of justification, fair comment and privilege at the opportune time upon being served with the plaint and the summons to enter appearance. The defendants have also argued that the article complained of was intended to inform the public of the facts that they had investigated which show that the public may lose a colossal sum of money.

9. Having considered the rival arguments, it is clear to me that the defendants hold the firm view that they should be allowed a free hand to continue reporting the offending information. At this stage, not all the pleadings have been served therefore the defences anticipated to be filed are yet to be done. If the article is found to be false and malicious, then irreparable damage may be caused before the ruling on the motion is delivered. The ruling is just about 5 days away. I am persuaded by Mr. Nyamai submission that the order for a temporary injunction is not given the plaintiffs will suffer irreparable damage. In the circumstances of this case, I am minded to grant the interim order. Consequently, I grant the order sought in prayer 2 of the motion dated 19.3.2018 pending the ruling scheduled for 18.4.2018. Costs shall await the outcome of the aforesaid motion.

Dated, Signed and Delivered in open court this 12th day of April, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant