



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 250 OF 2016

CHETAN HEMANTKUMAR PAVANI.....PLAINTIFF

- V E R S U S -

MITTLE CHETAN PAVANI 1ST DEFENDANT

STANDARD MEDIA GROUP LIMITED..... 2ND DEFENDANT

PKEMOI NG'ENO..... 3RD DEFENDANT

CHARLES OTIENO..... 4TH DEFENDANT

RULING

1. Chetan Hemantkumar Pavani, the plaintiff herein took two motions. The first motion is dated 26.9.2016 whereof the plaintiff/applicant applied for the following orders:

1. This application be certified urgent and heard ex-parte on the first instance.

2. This application be set down for hearing inter parties on a priority basis.

3. Pending the hearing and determination of this application, a gag order do issue against the defendants jointly compelling them to immediately remove from publication and cease the publication of the following:-

a. The article defaming the plaintiff published on 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke on 5th August 2016 with the Headline "Facebook Love: Professor demands sh.200,000 from a husband for 'misusing' her body.

b. The article defaming the plaintiff published on the 2nd defendant's website addresses: www.standardmedia.co.ke and [ww.sde.co.ke](http://www.sde.co.ke) on 6th august 2016 with the headline "My husband sexually abused me for three months."

c. A summary of the article defaming the plaintiff with a link to the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke published on the website address: www.mambolook.com in the section headlined 'Crimes: Sex Offenses' and with the tag 'Sex Offenses' on 6th August 2016 with the headline: The Counties: My husband sexually abused me for three months."

d. A summary of the article defaming the plaintiff with a link to the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke published on or around 6th August 2016, on the 3rd defendant's website address: muckrack.com where the 3rd defendant publishes summaries of his articles. The headline reads "My husband sexually abused me for three months."

e. The article defaming the plaintiff published on the 1st defendant's twitter handle @mitspavani where it is accessible to ten public worldwide.

4. Pending the hearing and determination of this suit, a gag order do issue against the defendants jointly in terms of prayer 3 above.

5. Pending the hearing and determination of this application a gag order do issue against the defendants jointly restraining them from publishing or discussing the subject matter of these proceedings and of the proceedings in HC MISC APP. NO. 81 OF 2016 in any public media including television, newspaper, radio, website, the internet and any other media at large.

6. Pending the hearing and determination of this suit a gag order do issue against the defendants jointly in terms of prayer 5 above.

7. This honourable court do summon the Managing Editor, Charles Otieno and the Publisher of the Nairobi newspaper, the Managing Director of Standard Media Group, to appear before this honourable court and thereupon do direct them to immediately publish an apology for the article defaming the plaintiff published in the Nairobi newspaper issue of Friday August 5th 2016 clearly indicating in the apology that the statements made therein did not in any way reflect the true position in HC MISC APP. NO. 81 OF 2016 wherein no allegations of sexual abuse whatsoever have been made.

8. Pending the hearing and determination of this suit a gag order do issue to Kenya Broadcasting Corporation, Standard Group, Kenya Television Network and all their affiliate radio and television stations restraining them from accessing, publishing or discussing the subject matter of these proceedings.

9. Pending the hearing and determination of this suit a gag order do issue to any print or electronic mass media restraining them from accessing, publishing, airing/narrating or commenting/writing or debating the subject matter of these proceedings in any newspaper, journal, weekly magazines, TV or radio show or in any mode of communication.

10. Pending the hearing and determination of this suit a gag order do issue against the Nairobi newspaper, The Standard, The Nation, People Daily, Citizen Newspaper and the Daily Post websites and other internet media including twitter handles and facebook pages from accessing, publishing or writing about the subject matter of these proceedings.

11. The defendants do bear the costs of this application.

12. This honourable court do make such further orders as it may deem fair and just in the interest of justice.

2. When served with the aforesaid motion, Standard Media Group Ltd, Pkemoi Ng'eno and Charles Otieno, the 2nd, 3rd and 4th defendants respectively filed grounds of opposition to resist the motion.

3. The second motion is dated 31.10.2016 in which the plaintiff/applicant sought for the following orders inter alia:

1. This application be certified urgent and be heard ex-parte on the first instance.

2. The plaintiff's application dated 26th September be set down for hearing inter parties on a priority basis.

3. Pending the hearing and determination of the plaintiff's application dated 26th September 2016, and order do issue against the defendants jointly restraining them from publishing any articles whatsoever referring to or mentioning the plaintiff's relationship with the 1st defendant or anything whatsoever relating to the plaintiff.

4. Pending the hearing and determination of the plaintiff's application dated 26th September 2016, an order do issue against the defendants jointly compelling them to immediately remove from publication and cease the publication of the following:-

a. The article defaming the plaintiff published on 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke on 5th August 2016 with the Headline "Facebook Love: Professor demands sh.200,000 from a husband for 'misusing' her body.

b. The article defaming the plaintiff published on the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke on 6th August 2016 with the headline "My husband sexually abused me for three months."

c. A summary of the article defaming the plaintiff with a link to the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke published on the website address: www.mambolook.com in the section headlined 'Crimes: Sex Offenses' and with the tag 'Sex Offenses' on 6th August 2016 with the headline: The Counties: My husband sexually abused me for three months."

d. A summary of the article defaming the plaintiff with a link to the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke published on or around 6th August 2016, on the 3rd defendant's website address: muckrack.com where the 3rd defendant publishes summaries of his articles. The headline reads "My husband sexually abused me for three months."

e. The article defaming the plaintiff published on the 1st defendant's twitter handle @mitspavani where it is accessible to ten public worldwide.

5. Pending the hearing and determination of the plaintiff's application dated 26th September 2016, a order do issue against the defendants jointly compelling them to immediately remove from publication and cease the publication of the following:-

a. The article defaming the plaintiff published in the Nairobi issue of October 28th 2016 to November 3rd 2016.

b. The article defaming the plaintiff published on the 2nd defendant's website addresses: www.standardmdeia.co.ke and www.sde.co.ke on 28th October 2016 with the headline "Director to pay wife for 'misusing' her body".

c. A summary of the article defaming the plaintiff with a link to the 2nd defendant's website addresses: www.standardmedia.co.ke and www.sde.co.ke published on or around 28th October 2016, on the 3rd defendant's website address: muckrack.com where the 3rd defendant publishes summaries of his articles. The headline reads "Director to pay wife for 'misusing' her body."

d. The aforesaid article defaming the plaintiff published on the 1st defendant's twitter

handle @mispavani where it is accessible to the public worldwide.

6. Pending the hearing and determination of the plaintiff's application dated 26th September 2016, an order do issue against the defendants jointly restraining them from publishing material on or discussing the subject matter of these proceedings and of the proceedings in HAC MISC APP. NO. 81 OF 2016 and in CMCC NO. 708 OF 2016 in any public media including television, newspaper, radio, website, the internet and any other media at large.

7. The defendants do bear the costs of this application.

8. This honourable court do make such further orders as it may deem fair and just in the interests of justice.

4. Both motions are supported by the affidavits sworn by Chetan Hemantkumar Pavani. When served with the application, the 2nd to 4th defendants too filed grounds of opposition to resist the same.

5. When the motions came up for interpartes hearing, learned counsels chose to present oral submissions. I have considered the grounds stated on the face of each motion. I have also considered the facts deponed in the supporting affidavit and the grounds of opposition filed by the 2nd to 4th defendants. It is the submission of Miss Njeri, learned advocate for the plaintiff, that in both applications the applicant is seeking for both mandatory and prohibitory orders of injunctions. It is argued that the publications which plaintiff avers are defamatory still remain in the online editions of the 2nd defendant's platform. It is also argued that the alleged published defamatory words are not found in the court file. This clearly show that there is no objectivity on the part of the publisher hence one can read malice. The applicant pointed out that the respondents have not controverted and that the freedom of information is being abused. It is also submitted that there is no attempt to publish the applicant's side of their story.

6. Mr. Echessa, learned advocate for 2nd, 3rd and 4th defendant, vehemently opposed the motions. He was of the opinion that the prayers for declaration and apology are prematurely being sought because they belong to the judge who will hear the substantive suit. It is also the argument of Mr. Echessa that the applicant has not demonstrated that he is entitled to the orders for mandatory order for injunction. The learned advocate pointed out that the defendants have already filed a defence which answers the issues raised in the plaint hence the plaintiff should await for the substantive hearing of the suit instead of seeking for interlocutory orders of injunction.

7. I have carefully scrutinized the sort of prayers applied by the plaintiff/applicant in the motion dated 26.9.2016. It is apparent that the applicant seeks to have the Managing Editor, Mr. Charles Otieno and the publisher of the Nairobi Newspaper and the Managing Director of the 2nd defendant to be summoned to appear in court to offer an apology for the defamatory article published against the plaintiff. With respect, I agree with the submissions of Mr. Echessa that the prayer is part of the substantive orders prayed for in the plaint. The same order is specifically sought for as prayer f of the plaint. The prayer therefore is prematurely sought.

8. The plaintiff has also sought for gagging orders in prayers 8, 9 and 10 of the motion jointly against several parties who are not parties to this suit. The only party named in the aforesaid prayers is the 2nd defendant. The plaintiff/applicant, in my humble should elect to either to amend the pleadings to enjoin the parties names as parties to this suit or to completely delete their names. In the circumstances I find it inappropriate to grant prayers 8, 9 and 10 of the motion dated 26.9.2016. My finding here leaves prayers 4 and 6 available for determination.

9. I have already outlined the arguments of the parties over these prayers. In prayer 4, the plaintiff is seeking for a mandatory order of injunction directing the defendants to remove from publication and to cease acting on the publication of the offending articles. It is said that the articles quoted in prayers 3 and 4 of the motion completely misrepresented the 1st defendant's case as contained in the pleadings filed in H.C. Misc. Appl. no. 81 of 2016 and concentrated on maligning the plaintiff by portraying him as a

sexual predator and a pimp. In response to these powerful submissions, Mr. Echessa was of the view that the defendants have answered those issues in their defence hence the orders should not be granted. It is not in dispute that the plaintiff has laid bare in his affidavit that the articles as published depicted him as a sexual predator and a pimp. The defendants did not deem it fit to controvert the averments made on oath. I am convinced that the plaintiff has made out a prima facie case that entitles him to be granted the order sought in prayer 4.

10. In prayer 6, the plaintiff/applicant has sought for an order of injunction to restrain the defendants jointly from publishing or discussing the subject matter of the proceedings in Nairobi H.C. Misc. App. no. 81 of 2016 in any public media including TV, newspapers, radio, website, the internet and any other media at large. It is said the article completely misrepresented the 1st defendant's case. Again, the defendants did not deem it fit to respond to the plaintiff's averments made under oath. I find prayer 6 to be well founded. I grant the same.

11. Having concluded the determination of the motion dated 26thSeptember 2016, let me now turn my attention to the motion dated 31.10.2016. In the motion dated 31.10.2016, the plaintiff/ applicant is basically seeking for near similar orders as those he sought for in the motion dated 26.9.2016 pending the hearing and determination of the motion dated 26.9.2016. The only item which is new is the inclusion of Nairobi C.M.C.C. No. 708 of 2016. In view of the fact that the motion dated 26.9.2016 has now been determined, I find the motion dated 31.10.2016 as overtaken by events. The same is ordered struck out.

12. For avoidance of doubt, the motion dated 26.9.2016 is allowed in terms of prayers 4 and 6 while the motion dated 31.10.2016 is ordered struck out. Costs of both motion to await the outcome of the substantive suit.

Dated, Signed and Delivered in open court this 27th day of January, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant