



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 128 OF 2016**

**HON. AARON CHERUIYOT.....PLAINTIFF**

**- V E R S U S -**

**RADIO AFRICA GROUP LIMITED..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF EDITOR, THE STAR NEWSPAPER .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff herein took out the motion dated 25.4.2016 in

which he sought for the following orders:

***1. THAT an interlocutory mandatory injunction be issued restraining the defendants, their agents, employees, and/or servants from further publishing the article on its world wide web [http://www.the\\_star.co.ke](http://www.the_star.co.ke).***

***2. THAT the costs of this application be borne by the respondents.***

2. The motion is supported by two affidavits sworn by Aaron Cheruiyot. When served with the aforesaid motion, the defendants filed the replying affidavit of James Mbaka to resist the application. Learned counsels appearing in this matter recorded a consent order to have the motion disposed of by written submission.

3. I have considered the grounds set out on the face of the motion plus the facts deponed in support and against the application. I have also considered the rival written submissions. It is the submission of the plaintiff that there is a continued act of defamation by the defendants'/respondents' both in articles circulated countrywide by the 2<sup>nd</sup> defendant and republished on its website which is interlinked to the defendants' Facebook and Twitter pages. It is alleged that on 13.4.2016 the defendants wrote, printed and published or caused to be published the following words:

**“PARLIAMENT’S youngest senator, Aaron Cheruiyot has yet to make any contribution in the plenary of the finance committee where he sits. Youth from his county who voted him in overwhelmingly in the hope that the youthful senator would present their problems where it matters are worried that he could let them down – Big Time. Even as he moves around Parliament to familiarize himself with both the Standing Orders and House procedures generally, isn’t it high time that he opened his mouth and demonstrated the verbal fireworks he showed when he was campaigning? His eloquence notwithstanding, the senator likes to just quietly sit and follow proceedings, even as time runs out of the 11<sup>th</sup> Parliament (and for**

**him to prove himself): P Sic**

4. The plaintiff avers that the aforesaid publication was false and malicious. It is pointed out that the aforesaid publication was reproduced on the world wide web on the Star Newspaper Facebook and Twitter pages under the caption: **“This is why Kericho youth are worried Aaron Cheruiyot could let them down.”** The plaintiff argued that the aforesaid publication depicted him as lazy, ignorant and incompetent. He claimed that he is an active member of the senate who has made contributions to the senate both at the plenary and committee contrary to the assertion made in the article. He annexed to the supporting affidavit a copy of the senate hansard. It is further submitted by the plaintiff that his reputation, image, credit, integrity and status as a senator has been greatly damaged by reason of the wide circulation of the defendants’ offending publication.

5. The defendants denied ever publishing any article to defame the plaintiff therefore it is not true to state that there has been continued act of defamation of the plaintiff by the defendants. The 2<sup>nd</sup> defendant admitted that it published the article complained of on 13.4.2016 but denied that the same was defamatory of the plaintiff. The defendants further pleaded that the article was a matter of public concern and benefit hence privileged subject to explanation or contradiction. The 2<sup>nd</sup> defendant also admit that the publication was reproduced on its Facebook page and Twitter handle.

6. It is apparent from the material placed before this court that there is no dispute that the defendants published the article complained of. The question which has been posed is whether or not the publication is defamatory. The defendant has stated that the publication is not false nor defamatory. The plaintiff has produced a copy of the senate hansard showing that he contributed in debates in senate proceedings thus contradicting the contents of the publication which depicted the plaintiff as having failed to contribute in senate debates. It is clear in my mind that the defendants’ assertion that the plaintiff has never contributed in the senate debates is not true. The defendants have not sought to correct the false impression created by the publication despite having been notified through these proceedings. In the circumstances, a court of law is entitled to make an inference that the defendants have exhibited malice by continuing to defend a false statement.

7. In the end I am satisfied that the motion dated 25.4.2016 is well founded. I allow the motion in terms of prayer 1. Costs of the motion is awarded to the plaintiff.

Dated, Signed and Delivered in open court this 25<sup>th</sup> day of May, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant