



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 321 OF 2015

FEP HOLDINGS LIMITED.....PLAINTIFF

VERSUS

GEORGE NJUE..... 1ST DEFENDANT

CHARLES KABA KU.....2ND DEFENDANT

JAMES OCTAVIA SLOAN..... 3RD DEFENDANT

GEOFFREY SOYIANTET..... 4TH DEFENDANT

RULING

1. The subject matter of this ruling is the motion dated 11th September 2015 taken out by Fep Holdings Ltd, the plaintiff herein. In the aforesaid motion, the plaintiff sought for the following orders inter alia:
 - i. *Pending the hearing and determination of the suit herein, an injunction do issue, restraining the defendants by themselves, their servants, and or agents, or otherwise howsoever from publishing in any media, posting and from repeating publication of, any innuendos, insinuations, allegations, or statements that the plaintiff has plundered, misappropriated, or otherwise mismanaged any funds invested with it for the benefit of its members and shareholders, and from publishing and further causing to be published, and/or printing further defamatory words and/or similar words of, and concerning the plaintiff's businesses, directors, or affiliate companied under the umbrella of FEP HOLDINGS LTD.*
 - ii. *Pending the hearing and determination of the suit herein, an injunction do issue, restraining the defendants by themselves, their servants, and or agents, or otherwise howsoever, from disrupting, creating a breach of the peace, stopping, or otherwise howsoever acting in any disorderly manner during the Annual General Meeting of the plaintiff set to be held on 23rd September 2015.*
 - iii. *The arising cost be borne by the respondents.*
2. The motion is supported by the affidavit of Maurice Korir. The plaintiff successfully obtained interim orders before lady justice Aburili on 16th September 2015. Those orders were subsequently extended pending the interpartes hearing of the motion.
3. When the motion came up for interpartes hearing, Mr. Omwenga appeared as holding brief for Mr. Kinyanjui, learned advocate for the plaintiff/applicant urged this court to confirm the interim

orders. He pointed out that the motion was served upon George Njue, Charles Kabaiku, James Octavia Sloan and George Soyiantet, the 1st, 2nd, 3rd and 4th defendants/respondents respectively but none has filed a response. The defendants also failed to turn up in court for the interpartes hearing of the motion.

4. I have carefully perused this court's record and it is apparent that on 22nd December 2015, that he plaintiff successfully obtained an interlocutory judgement in default of a defence. It is also apparent from the record that none of the defendants has filed a response to the motion, therefore the application remains unopposed.
5. In order to make a decision on the application put forward by Mr. Omwenga, it is important to first establish whether or not there was proper service effected upon the defendants. I have considered the contents of the affidavit of service of Thomas Win Odhiambo Nduku sworn on 13th January 2016. The process server is basically saying that a Hearing Notice for 16.2.16 was served upon the firm of Onyancha Nyakundi and Suyianka Lempoa learned advocates for the 2nd and 3rd defendant respectively. I am satisfied that the 2nd and 4th defendants advocates were served with both the motion and the Hearing Notice. The duo have failed to file any response to the motion hence the motion remains unopposed as against the 2nd and 4th defendants.
6. The record shows that the plaintiff was granted leave on 2nd October 2015 to serve the 1st and 3rd defendants by substituted service by way of a newspaper advertisement. A copy of the nation newspaper advertisement dated 6th October 2015 is attached to the affidavit of service of Thomas Win Odhiambo Nduku sworn on 7th October 2015. I am satisfied that the 1st and 3rd defendants were properly served. Again, the duo did not deem it fit to respond to the motion dated 11th September, 2015. They did not also attend court for the interpartes hearing.
7. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. The plaintiff avers that the 3rd defendant posted to be published on the internet on 1st August 2015 some defamatory material of the plaintiff/applicant at a website know as **"Diaspora messenger"** and whose link was supplied and posted at various other websites. It is the plaintiff's argument that the 3rd defendant intended to injure its business and commercial standing. The plaintiff has also stated that it has a constitutional right to the protection of its commercial standing and reputation as the defendants do not have a carte blanche right to use their freedom of expression in a manner injurious to the applicant. It is said that the defendants being the shareholders/members of the plaintiff have other avenues which they can use to ventilate their grievances rather than engage in reckless and harmful publications. For these reasons the plaintiff has beseeched this court to grant temporary orders of injunction to restrain the defendants from further publishing the injurious information. The 1st defendant is said to have stormed into the premises of the plaintiff on 7th September 2015 and threatened to disrupt the plaintiff's A.G.M scheduled on 23rd September 2015. It was also pointed out that Kenyans are increasingly tecno savvy and many access online information concerning a company they wish to invest in such as the plaintiff. The anticipated damage on the applicant is therefore monumental. The averments presented by the plaintiff are not controverted. I cannot therefore doubt their veracity. In the end, I find that the plaintiff has established a prima facie case with high chances of success. I am also convinced that the plaintiff has shown that it may suffer irreparable loss if the order for injunction is not granted.
8. Consequently I find the motion dated 11th September 2015 to be well founded. It is allowed as prayed.

Dated, Signed and Delivered in open court this 19th day of February, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent