



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 382 OF 2015

TOM ODEGE..... 1ST PLAINTIFF

JERRY OLE KINA 2ND PLAINTIFF

- V E R S U -

LAWRENCE OCHIENG NYAGUTI.....DEFENDANT

RULING

1. Tom Odege and Jerry Ole Kina, the 1st and 2nd Defendants/ applicants took out the motion dated 6.11.2015 in which they sought for interalia:

THAT pending the hearing and determination of this suit the court be pleased to grant an interlocutory injunction prohibiting the defendant whether by himself, his agents and/or employees from issuing and sending and other or further libellous communications pertaining to the plaintiffs, the leadership and status of the Union of Kenya Civil Servants with immediate effect.

2. The motion is supported by the affidavit of Jerry Ole Kina. When served, Lawrence Ochieng Nyaguti, the Defendant/respondent, filed a replying affidavit to oppose the motion.
3. I have considered the rival oral submissions made by learned counsels. I have also considered the material placed before this court. It is the submissions of the Plaintiffs that on diverse dates in the month of October 2015, that the Defendant posted short text messages which were defamatory, alarming and vexatious to various members of the union of Kenya Civil Servants. The Plaintiffs further argued that the text messages impute theft and other felonious conduct by the union of which the Plaintiffs are secretary general and the 1st deputy. The Plaintiffs are under investigation the criminal investigation officers and by the Kenya Revenue Authority. It is the argument of the Plaintiffs that the messages are calculated to cause undue panic and concern amongst union members by alluding impending collapse of the union due to mismanagement and embezzlement of funds by the leaders.
4. The Defendant was of the view that sending such messages from one phone to another does not satisfy the ingredients of defamation alleged. He further argued that the messages had no intent to disparage the Plaintiffs but was meant to be a wakeup call on the impropriety within the union by the Plaintiffs.
5. The Defendant further stated that he acted in good faith and even went to extent of filing a case at the Employment and Labour Relations court to obtain orders freezing the union account. It is said

that the messages were meant to be used as a whistle blow to call for the attention of union members in regard to misuse, misappropriation and or mismanagement of the union funds.

6. After a careful consideration of the material placed before this court, it is apparent that the Defendant does not deny having released the messages reproduced in paragraph 6 of the plaint.
7. The Plaintiffs are of the view that those messages are defamatory and were meant to injure their reputation and the survival of the union. The Defendant is of the view that the messages were not meant to defame the Plaintiffs but was meant to be a wakeup call to expose misuse of funds and mismanagement of the union by the current officials.
8. I have already stated that the words complained of are reproduced in paragraph 6 of the plaint as follows:

“Dear member U.K.C.S Our beloved union is on the verge of dissolution due to fraud and non-remittance of over 90,000,000 deducted payee and stolen by 5 national officials. K.R.A has already written a demand note to recover the money from the union within 3 months. C.I.D. is also investigating this matter. We urge you to be steadfast as we take action to save our union and institute changes that will make the union more vibrant and responsive to civil servants. Yours in solidarity Lawrence Nyaguti Ochieng happy Mashujaa day”

“Good morning olekina. You guys misrepresented the registers letter. Members are awake and will not tolerate schemes to steal union cash through a fake NDC. YOUR SCHEME WILL FAIL AGAIN. I PROMISE.”

“Dear member UKCS, 21 civil servants interdicted, 40,000 jobs on line and NO lawyer!. But Tom Odege and Olekina have now employed a lawyer to defend them against the truth. THERE IS THEFT OF MONEY IN THE UNION RESULTING TO DEMAND OF OVER 90,000,000 FROM KRA. ITS TIME FOR CHANGE IS NOW... BE A CHAMPION!SHARE WIDELY. Name and shame corruption.”

“Dear delegates...NEB has suspended ALL union operations, branch allowances e.t.c to call NDC...CGC has not approved coz there are other important things. DO NOT BE USED BY PEOPLE WHO HAVE SIGNED FOR YOUR RETRENCHMENT BE A CHAMPION OF UKCS!”

9. I have carefully examined the aforesaid words and it is clear in my mind that a person reading those messages will obviously form an opinion that the Plaintiffs are dishonest people, thieves and tax evaders. In short, the words are defamatory to an ordinary right thinking member of the society. The Defendant has specifically stated in paragraph 3 of his replying affidavit that he aspires to be the secretary general of the union of Kenya Civil Servants in the coming general elections, hence his intention is to expose the manner in which the Plaintiffs have mismanaged the union and its funds. The veracity of the allegation contained in the text messages are yet to be ascertained. It is therefore not right for the Defendant to claim he can enjoy the freedom of expression by spreading messages which are injurious to the Plaintiffs. It is clear to this that unless the Defendant is restrained from further sending the messages he will continue doing so to the utter detriment of the Plaintiff.
10. In the end, I am convinced that the motion dated 6.11.2015 is well founded. The same is allowed in terms of praye costs to the Plaintiffs.

Dated, Signed and Delivered in open court this 22nd day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant