REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 409 OF 2014

SUPERSPORT INTERNATIONAL

(PROPRIETARY) LIMITED ……...PLAINTIFF/APPLICANT

VERSUS

FRANCIS GAITHO……...DEFENDANT/RESPONDENT

RULING

1. Before this court for determination is the plaintiff/applicant's application by way of Notice of Motion dated 18th February 2015 and filed on 19th February 2015. The applicant **SUPERSPORT INTERNATIONAL (PROPRIETARY) LIMITED** seeks from this court orders of:

a. temporary injunction restraining the defendant Francis Gaitho, his agents, servants or any person whomsoever acting on his instructions or directions from publishing through whatever means statements which, whether in their natural and ordinary meaning or by necessary implication are defamatory of the plaintiff, pending the hearing and determination of the main suit;
b. ……..

(c) That costs of the application be awarded to the plaintiff/applicant.

2. The application is predicated on the grounds set out on the face of the application and the deposed facts contained in the supporting affidavit sworn by Mr Andre Venter on 18th February 2015. The application is also supported by the supplementary affidavit of Mr Andre Venter sworn on 29th September 2015.
3. The defendant/respondent **FRANCIS GAITHO** opposed the application by the plaintiff/applicant and filed a replying affidavit sworn on 10th July 2015.
4. The applicant's case is that the respondent has since the year 2013 published online some social platform twitter statements that are false and grossly defamatory of it thus necessitating the institution of the main suit and the application subject of this ruling. It is averred that the statements published by the respondent are grossly damaging the applicant's trading character internationally and that there is a basis for belief that unless the respondent is stopped by way of an interlocutory prohibitory injunction, he will publish further defamatory statements or repeat publication of the defamatory statements that led to the institution of the suit and the application.
5. It is further alleged that the respondent on numerous occasions in the year 2014 through his

account on twitter platform **@Kenyafootball**; repeatedly and maliciously published statements that are false and disparaging of the plaintiff which publications have continued unabated and more specifically, that the publications are published under the name or handle**" @Kenyafootball"** wherein several tweet messages are disseminated to the public concerning the plaintiff and more particularly, the following words were allegedly published:

"Back to @ SuperSportTV, even if its being corrupt, employ some sophistication at least, employing your wife? Please, juniors will clip you." "Breaking "@ SuperSportTV orders staff not to copy any mails to Head of Africa Andre Venter, amidst allegations, incl, employing his wife." "I doubt its police for @ SuperSportTV to charge prod'n fees for a match they hope to televise.That is extortion overseen by Stan Mathews""Then came Stan Mathews. Before @ SuperSport TV, he dispatched his local guy to try extort me money, under the guise of prod's fee."

The applicant annexed the print out of the above tweet messages as "AVI."

6. According to the plaintiff, the above tweets by the defendant are grossly defamatory of the plaintiff/applicant in that in their natural and ordinary meaning as well as by implication would be understood to mean that the applicant:
    a. is an organization whose management has nepotism tendencies in the selection and recruitment of employees;
    b. Has as part of its management, persons who lack in integrity and who are misusing their positions to advance their own personal and family interests;
    c. Is a corrupt organization that extorts money from persons it engages in commercial relations with.
7. It is alleged that even after institution of this suit, the defendant/respondent has not been deterred in publishing more defamatory tweets about the plaintiff among them: On 3rd February 2015 the following words were tweeted;

"Why always them @ SuperSportTV also being kicked out of Uganda Juja co. ug/juja statement…On 6th February 2015*: "All* ***those sponsors for I club, meanwhile our KPL idiots fixated on SS handouts. Build your clubs goddam nit! " "No wonder I heard that SuperSportTV sent an email to MP and Silva saying they know powerful people in Kenya. It was at UKenyatta all along.?"***

8. That on 10th February 2015 the following tweets were published respecting the applicant: ***"From 2007, SS has only implemented a 10% increase in its fees, yet on its third trimester. Not concurrent with global trends "Imagine and some fuckers go to SA sign a deal for SA*** **Rand 19M, their gloat on how they bagged a good deal. Kenya we got jokes!" "And while EPL rights are tendered transparently, 4 KPL officials sneaked to SA and signed an inferior deal, without due process."** The above tweets are annexed as P exhibit 'AV2'.
9. It is alleged that the above tweets imply that the applicant:

a. Is an organization whose leadership has racist inclinations.
b. Deliberately and calculatedly represses Kenyan football in particular and African football in general;
c. Is a corrupt organization that gives kickbacks to Kenya premier league officials to entice them to grant it rights to broadcast Kenya Premier League Football Matches;
d. Relies on improper means to obtain rights to broadcast Kenya Premier League Football Matches;
e. Intimidates stakeholders in the sports industry in Kenya into ceding to its demands by leveraging on political connection.
f. Is giving KPL and Sports organization in other African Countries raw deal;
g. Engages in poor human resources practices and is capable of unlawfully and unfairly dismissing its employees for failure to win tenders.

10. It is further alleged that the tweet messages are defamatory and that they have injured the applicant's trade reputation all over the world, given that the forum used by the respondent is accessible worldwide over the internet and that there is reasonable apprehension among the plaintiff/applicant's officers that unless restrained, the respondent will continue to make false and defamatory statements of and concerning the plaintiff/applicant through his tweeter account and other platforms; That the applicant stands to suffer irreparably in that its good will and brand image will be injured beyond incalculable monetary terms and that its business reputation will be damaged in Kenya and in other markets around the world where the company operates.
11. In his replying affidavit sworn on 10th July 2015 the respondent Francis Gaitho deposes that the affidavit by Andre Venter in support of the application is sworn without authority of the plaintiff. The respondent also denies being the operator of account @ Kenyafootball on tweeter and contends that the account is operated by various fans of Kenya Football from within and without Kenya. That he is an ardent Kenyan Football fan who subscribes to the applicant's bouquets on the pay TV Sports Channel SuperSport and that he operates a personal twitter handle from which he communicates with other football fans.
12. That on 27th June 2014 he published fair comments and not actuated by malice. That it is common knowledge that Mrs Venter is employed at the applicant company in Kenya at their Ngong Road offices as an administrator.
13. That the applicant has gone against the policy of not charging production fees and its staff and officials charge production fees for matches which are televised on their platforms which may be termed as extortion since it already has the rights to televise the matches.
14. That the information on the tweets are meant to sensitize other football fans who also subscribe to the applicant and that the information thereon is factual and in the public domain.
15. That since receiving service of court process by way of substituted service he had not published any statements on his twitter handle touching on the applicant.
16. That it is true that the applicant lost broadcast rights in their television platform in Uganda to AZAM Media Ltd following a ruling at Commercial Court in Uganda Misc 21/2015. That it is a fact that Kenya Premier League officials flew to South Africa to sign a deal with the applicant yet FKF is the sole custodian of Football Sport in Kenya. That the deal was inferior @ shs 7.5 million instead of shs 9.5 million negotiated by FKF.
17. That there is no evidence that the applicant has since the publication of the tweets lost any business or trade reputation all over the world. That the conditions for grant of interlocutory prohibitory injunction had not been fulfilled. That he was exercising his rights to information and seeking the right to goods and services of reasonable quality as a subscriber and an injunction would curtail his consumer rights.
18. In the supplementary affidavit sworn on 29th September 2015 in Johannesburg, Andre Venter annexed authority to sue delegated by the plaintiff /applicant dated 18th August 2014 and a tweet from the defendant@ Kenyafootball stating ***' Speaking of people suing me, would be great to work with @ SuperSport TV once they drop their law suit against me"*** and maintaining that the defendant's profile pictures are in the ' Kenyafootball' platform, of the twitter handle preceded by the defendant/respondent's name " Francis Gaitho @ KenyaFootball."
19. Further, that the affidavit sworn by the respondent admits publishing the tweets which are false and grossly defamatory. That the deponent's wife Mrs Venter is an employee of Mnet an affiliate of the applicant but separate and distinct entity. The deponent also denied trying to extort money from the respondent, denied existence of any policy prohibiting charging production fees for matches to be broadcast. He further deposes that the right to freedom of expression does not extend to freedom to make false and disparaging statements about the applicant which injures its trading reputation and character. That even after being served with court orders, the respondent continued to write defamatory tweets as annexed to the affidavit of Desmond Odhiambo 'DO2' annexed to the supporting affidavit to the certificate of urgency wherein an interim injunction was issued to restrain the respondent from continuing to publish any defamatory matter concerning the applicant. That it was untrue that the applicant dismisses employees for failure to win bids for broadcasting rights. That there was no evidence of the applicant being kicked out of Uganda; that it does not give handouts/kickbacks to Kenya Premier League; denied opposing the entry of MP Silva into the Kenyan market. That the

applicant's reputation has been in its business which is likely to be lost through malicious falsehoods and among others, that disowning his own twitter handle was a sign that unless restrained the respondent would continue with the tweets to the detriment of the applicant.

20. The parties filed written submissions. The applicant filed on 28th October 2015 whereas the respondent filed on 7th December 2015. According to the applicant, it had satisfied the conditions for grant of interlocutory injunction in defamation cases as established in the decision of **Cheserem V Immediate Media Services HCC 398/200[2000] 2 EA 371.** It also relied on **William Kabogo Gitau V The Standard Group Ltd & 7 Others HCC 74/2011** while maintaining that the tweets were highly defamatory and that there was no ground to conclude that they constituted fair comment or were factual in substance.
21. Further, that in any case the respondent had not filed a defence in the main suit hence the defenses of fair comment and or justification are not available to him since his affidavit is a bare denial.
22. The applicant maintained that it had established a prima facie case with high probability of success since the respondent admitted publishing the defamatory words and that given that there was no evidence of the respondent's financial means to pay heavily (more than nominal)damages owing to its international status, an interlocutory injunction is the convenient remedy at this interlocutory stage to avoid substantial grave injustice since there is no prejudice likely to be suffered by the respondent if he is restrained.
23. In the respondent's submissions filed on 7th December 2015, the respondent maintained his stance that under Article 33 of the Constitution he is entitled to seek, receive or impart information or ideas and that the utterances of the said comments on twitter were done in exercise of his right to give or receive information, to sensitize other football fans who also subscribe to the ***'applicant'*** which information is factual and in the public domain hence not intended to injure the applicant's reputation.
24. The respondent also submitted that as a consumer, Article 46 of the Constitution guarantees him the right to goods and services of reasonable quality and therefore being a pay TV subscriber to the applicant he has the right to question the service provider where he felt that he was getting less than ***'reasonable quality.'*** Therefore, that an injunction would effectively curtail his right to quality services. Further, that the application does not meet the threshold of **Giella V Cassman Brown** principles for grant of interlocutory prohibitory injunction. That the applicant has not shown any defamatory statements published by the respondent but that rather, the respondent's publications are fair comments, factual and in the public domain which is his personal opinion as a consumer of the applicant's products. The applicant urged this court to dismiss the application by the plaintiff/applicant.
25. I have carefully considered the applicant's application dated 18th February 2014 filed simultaneous with the suit herein. I have also considered the respondent's response and the parties' advocates rival submissions together with the cited authorities and constitutional as well as statutory provisions of the law.
26. The applicant is seeking for an interlocutory injunction prohibiting the respondent, his agents, servants or by any other person or means from publishing any defamatory words of and concerning it and its business and trade pending the hearing and determination of this suit.
27. It is now settled law that the principles of law governing grant of interlocutory injunctions are those laid down in the case of **Giella V Cassman Brown and Company Limited [1973] EA 358**. What the applicant needs to demonstrate to satisfy the court to issue an interlocutory injunction is that they have a prima facie case with a probability of success; that they stand to suffer irreparable damage that cannot be compensated by an award of damages and that in the event of any doubt in regard to the above two conditions then the balance of convenience having regard to all the circumstances of the case tilts in favour of the applicant.
28. In addition to the above principles, in defamation cases in particular, courts have to weigh between the freedom to express oneself and impart information and ideas to others against the respect for other rights and reputation. The freedom of information and expression is guaranteed by the Kenya Constitution in Article 33(1) (a) which provides that ***every person has the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas***. However, that freedom is not absolute. It is expressly limited by the same Article 33 Clause (3) thereof which provides that ***in the exercise of the right to freedom of expression,***

every person shall respect the rights and reputation of others. Clause 2 also limits the right to freedom of expression and specifically states that ***that freedom does not extend to:***

a. ***Propaganda for war;***
b. ***Incitement to violence;***
c. ***Hate speech; or***
d. ***Advocacy hatred that :***

i. ***Constitutes ethnic incitement, vilification of others or incitement to cause harm;***
ii. ***Or is based on any ground of discrimination specified or contemplated in Article 27(4)***

29. The respondent in the instant case has admitted publishing the impugned tweets on social media of and concerning the applicant but argues that this application for interlocutory injunction seeks to deny him the right to give fair comment on matters which are in the public domain. He maintains that all the matters he admittedly published on his twitter handle comprise fair comments and that as a subscriber to the applicant's pay TV sports broadcast, he is entitled to comment on matters that concern the quality of the services that the applicant offers to its paid up subscribers like himself and others, being ardent fans of football in Kenya.
30. On their part, the applicant avers that there is absolutely no evidence or truth on the claims being peddled by the respondent, and that if this court does not stop the respondent, he will continue to publish the defamatory material which would destroy its business and trade reputation that has been built over a period of twenty years.
31. From the above rival positions of both parties and the law as established, it is clear that in defamation cases, the principles as set out in **Giella V Cassman Brown** case (supra) are applied in a special way. The said principles are applied with the greatest caution so that the injunction sought is granted only in the clearest of cases. The court must satisfy itself that the actual words or matters complained of are clearly libelous in nature and that they are so manifestly defamatory that any verdict to the contrary would likely be set aside for being perverse.
32. In the **Media Council of Kenya V Eric Orina [2013] e KLR** case, Onyancha J asserted the reasons why the court should apply the **Giella V Cassman Brown** case principles with caution in defamation claims. The learned judge stated as follows;-

a. That free speech should not without strict proof of its violating individual rights, be fettered;
b. That the right of free speech is one which is for public interest by dint of human rights as protected by our Constitution and therefore one which individuals should have and should exercise without impediments, even if such impediments is by court injunction such as the one sought herein, at this interim state of the suit.
c. That even where there is clear evidence that the publication or repeated publication of a libel is likely to cause injury to an individual, the right to free speech would persuade the court to deny restraint thereof even at the risk of such injury occurring in anticipation that the individual injury will be compensated by ordinary or aggravated damages or both.
d. That otherwise the publication of the injurious material will be justified because it may be true and should be published in public interest or as fair or true comment.

33. In this case, the respondent who has not yet filed his statement of defence has by his affidavit evidence deposed; first, denying that he uses the twitter handle "@Kenyafootball." However, he has admitted that he published all the publication/tweets that are complained of and in his view, they <u>are not</u> <u>defamatory</u> but <u>fair comment on matters in the public domain</u>. He is not saying that he is publishing the tweets in the public interest. He is saying that as a subscriber of the applicant's services, he is concerned about the quality of those services and is taking the liberty to inform others about their common consumer rights protected under the law.
34. My careful perusal of the respondent's affidavit has not come across any paragraph where as a subscriber, he is expressly challenging the quality of the services offered by the applicant to the respondent and other subscribers. Furthermore, if the quality of services offered is poor, there is no single letter written by the respondent to the applicant complaining that he is not receiving the quality of services deserved, being a subscriber, to bring to the attention of the applicant the

deficiency in their service provision to its subscribers and to enable the applicant either respond or correct the deficiency. The tweets which have been admitted by the respondent have nothing to do with the quality of services provided by the applicant but on the conduct of the applicant. For example, the tweets of 19th February 2015 that SuperSport TV has been mischievous in the whole process. Fuelling the war, but shifting goal posts every morning; do not forget that @ SuperSport TV flew some officials Kenya Premier League to SA, to sign a defective contract till 2021; as it stands, @ SuperSport TV going to televise Kenya Premier League matches this sat, openly taking sides, yet lying on the other side, And unlike other industries, lies are not entertained in the football industry. It is clear that @ SuperSportTV have been lying;……..last November, @ SuperSportTV said NO' to an 18 team league in bold. And to affirm, sneaked officials to SA, to sign a faulty contract……; On 20th February 2015 " The thing is after officials flew to SA, everyone got their commission/cuts, including some @ SuperSport TV staff. Reason they've adamant, On 24/2/2015 " For the umpteenth time, I repeat that this process was mishandled by @ SuperSport TV. June 26th 2015……."I doubt its policy for @ supersport TV to charge prod'n fees for a match they hope to televise. ***That is extortion overseen by Stan Mathews……..he dispatched his local guy to try extort me money, under guise of prod'n fee…….even if its being corrupt, employ some sophiscation at least …….2nd June*** " To all my journalist, friends, we have to launch a synchronized attack on @ SuperSport TV for not airing African friendly qualifier matches. Expand……" SuperSport refused to buy from Africans or Arabs. But if say a British firm approaches them, cash at the ready……..***SS have a policy of discriminating against African football."*** And many more tweets some spanning from 2013 which show the respondent calling the applicant corrupt among other accusations through tweets.

35. The question that this court poses is, would the respondent find a solution to what he calls, corrupt, discriminating, racist conduct of the applicant through an orchestrated synchronized journalistic attack on the applicant in the social media? The answer is I doubt. What I find flushed all over the social media is indeed an orchestrated synchronized attack on the reputation of the applicant and which appears to be highly libelous and not a call on the applicant to make amends and offer quality services to its subscribers. That orchestrated synchronized attack, which the respondent uses to call on his journalist friends to join in the arena and fray regrettably, appears inflammatory, with corrupt, racial hatred connotations and vilification propaganda aimed at diminishing and or injuring the reputation and trade of the applicant in the eyes of right thinking members of the society. Sadly, the respondent in his tweets is the key player and those who respond to his propaganda which appears is aimed at recruiting more hate propagandists like him are quite few or even insignificant.
36. I am in agreement with the applicant that it takes a while to build a good reputation and to acquire trust. But it only takes a second to destroy that reputation which no amount of money can buy back. The respondent has not in his response to this application demonstrated that he is speaking in the public interest those things of such public concern that everyone is entitled to know the truth about and make fair comment on. He in my view is spreading malicious and degrading hate propaganda as exemplified in the tone of his several tweets. Iam persuaded that by his own admission of calling upon his fellow journalists to a synchronized attack of the applicant hell bent to bring down SuperSport TV for allegedly being corrupt, racist and or discriminatory in their policies against African football, charging production fees which they are not supposed to charge, and for fuelling war in the Kenya football circles among others.
37. Malicious propaganda, vilification of others and hate speech, in my humble view, is not an integral part of the right to free speech and expression. And if it was a matter of public concern, this court does not see why the respondent is carrying the show and even denying the use of the twitter handle Kenyafootball which is clearly spelled out in his publications. He is the star twitter in the field where very few people respond to his tweets. He is almost tweeting to himself while calling on others (his journalist friends to join in the war of propaganda against the applicant. That is an unacceptable way of raising complaints against a service provider for inferior services. I think that the circumstances of this case do not warrant this court to allow the respondent to continue publishing such inflammatory defamatory propaganda against the applicant at his own risk of paying damages; for there is even no evidence of the respondent being a man of such sufficient means, although not being a pauper, that he would be in a position

to pay aggravated/exemplary or punitive damages to the applicant should this court at the end of the trial find that the publications are highly defamatory and malicious.

38. Albeit this court has no idea what the next tweet by the respondent will contain, it can still grant an injunction prohibiting the publication of any tweets that contain defamatory matter of and concerning the applicant for it has weighed the respondent's potential of publishing unjustifiable highly defamatory matter of and concerning the applicant.

39. In my view, there is no material evidence that the material published in the social media platform of and concerning the applicant by the respondent herein who is a seasoned journalist are true and are of public concern. Instead, I find that the material as published would in the long term expose the applicant to public odium and ridicule and tend to lower the applicant's reputation and integrity in the eyes of the right thinking members of the society generally who would then shun or avoid business or trade association with the applicant. In this case, the court is satisfied that on a balance of probabilities, the applicant has strongly demonstrated that it has a sufficiently prima facie case against the respondent with high chances of success. A prima facie case was defined by the Court of Appeal in the **Mrao Ltd V First American Bank of Kenya Ltd & 2 Others [2003] I KLR 125 at page 137** that*:*

" a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

40. The issue is were the tweets prima facie defamatory and malicious? Some of the tweets accuse the applicant of being corrupt or condoning corruption, which is an alleged lack of integrity on the part of the applicant's employees who are named to be watching over the corrupt deals. Other tweets claim that the applicant favours European soccer to African soccer which imputes racism, while others accuse the applicant of being responsible for the soccer wars/ rivalry between Kenya Premier League Limited and Football Kenya Federation.

41. Although there is indication that some of the tweets were made in 2013 and may therefore not be actionable, nonetheless, there is prima facie evidence that after the institution of this suit and after service of court process on the respondent, he continued tweeting his synchronized propagandist massages of and concerning the applicant and even contemptuously claiming that people suing him would be great to work with him once they drop their law suit against him. In my view, that is evidence of malice on the respondent's part. Recourse to the courts is essential to accessing justice which is guaranteed under Article 48 of the Constitution and therefore whoever chooses the path of justice should not be treated with contempt. Justice is one of the national values and principles of governance and it shall be done to all irrespective of status.

42. The publication of the impugned tweets is not in dispute since the respondent has admitted publishing them. What the respondent contends is that they are fair comments and that the application and the suit generally are in breach of Articles 46 and 33 of the Constitution. My careful examination of the reproduced tweets both in the plaint and in the subsequent affidavits supporting this application and what the applicant contends that the words the tweets mean or meant or were understood to mean inter alia, that it is corrupt or engages in corrupt or condones corrupt deals, practices discriminates against African soccer, practices nepotism and lack integrity among other insinuations. In an action for defamation, the claimant must establish that the words complained of are defamatory, that is that those words tend to lower the applicant/claimant's reputation in the estimation of right thinking members of the society; that the words refer to the claimant and that they are malicious. In the instant case, there is no dispute that there was publication of the impugned publications by the respondents and that the publications referred to the applicant.

43. The respondent claims that he is entitled as a consumer/subscriber of the applicant to good quality services although he does not clearly state which services are not of good quality. For a plaintiff of international or even national repute and engaged in the broadcasting of the most popular loved sports called football, such allegations are not light. The applicant has demonstrated that unless restrained, the respondent who is a journalist is hell bent to continue publishing malicious, defamatory and highly inflammatory matters of and concerning the applicant's trade which publication would cause it irreparable injury which cannot be adequately

compensated by an award of damages.

44. In my humble view, any person, subscriber, or business associate of the applicant in the world of soccer reading such information would be slow in dealing with such an entity which is alleged to be practicing outright nepotism, condones corruption and is discriminating on the basis of race. In my humble view, an entity which condones employees who engage in corrupt practices, discriminates or practice nepotism and fan divisions in the different bodies involved in the organization and management of soccer lacks integrity and is not an entity that any right thinking member of society would freely be willing to deal with. To my mind, therefore a prima facie case has been established that the words may be defamatory. Odunga J in **Phineas Nyaga V Gitobu Imanyara [2013] e KLR** stated that:

"Malice can be adduced from the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice. Malice may also be inferred from the relations between the parties. Failure to inquire in the facts is a fact from which inference of malice may properly be drawn.

45. From the affidavit evidence on record, the respondent sought to have dealings with the applicant but it never worked out. He never denied this assertion on oath as deposed by the applicant's official. The respondent also overtly called upon his journalist friends to orchestrate the attack on the applicant. In my view, and from the record, it is possible that the respondent was not happy about the failed deal with the applicant and hence the reason that he called upon his journalist friends to synchronize an attack on the integrity and reputation of the applicant, which in itself is evidence of malice. Although I may not at this stage dismiss the defense of fair comment since no such defence is on record yet, but on the material on record, I am unable to find any particulars of fair comment or justification for the orchestrated tweets. I have in this case taken exceptional caution while exercising my discretion and jurisdiction to interfere with the respondent's exercise of his right of expression and or to impart information or ideas by way of an injunction. In **Bonnard V Peryman [1891] 2 CH 269** the court persuasively held that"

" The right of free speech is one which it is for the public interest that individuals should posses, and ……until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.

46. Having found that there is no evidence of the particulars of truthfulness of the allegations that the applicant is corrupt through its officials, discriminates against African soccer or that it is responsible for the problems that bedevil Kenya soccer or the wars between Kenya Premier League and Football Kenya Federation or that it lacks integrity which can be protected by way of an injunction, and having found that the respondent's tweets are not merely fair comment on matters which are in the public domain or that the respondent is justified to publish any defamatory matter of and concerning the applicant merely because he is a subscriber of its pay TV services, I am inclined to grant a temporary injunctive relief in favour of the applicant.

47. Accordingly, I hereby grant and issue an interlocutory prohibitory injunction restraining/prohibiting the defendant/respondent **FRANCIS GAITHO**, his agents, servants and or any person whosoever acting on his instructions or directions from publishing through whatever means statements which, whether in their natural and ordinary meaning or by innuendo are false and defamatory of the plaintiff/applicant **SUPERSPORT INTERNATIONAL (PROPRIETARY)LIMITED** pending the hearing and determination of this suit. The plaintiff/applicant shall have costs of this application.

Dated, signed and delivered in open court at Nairobi this 20th day of April 2016.

R.E. ABURILI

JUDGE