



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL DIVISION**  
**CIVIL CASE NO.407 OF 2015**

**VIMALKUMAR BHIMJI DEEPAK SHAH.....PLAINTIFF/APPLICANT**

**VERSUS**

**HEADLINK PUBLISHER LIMITED t/a WEEKLY CITIZEN....DEFENDANT/RESPONDENT**

**R U L I N G**

The Plaintiff/Applicant has approached this Honourable Court by way of a Notice of Motion dated 1<sup>st</sup> December, 2015. The same is expressed to be brought under the provisions of Order 40 Rule 2, Order 51 of the Civil Procedure Rules and all the other enabling provisions of the law.

The applicant has sought the following orders:-

1. THAT this matter be certified as urgent and heard ex parte in the first instance in respect of payers 1,2 and 3.
2. THAT the Court do grant the Plaintiff/Applicant a temporary injunction barring the Defendant, whether by itself or through its agents or otherwise howsoever from further publishing or causing to be published same words or words similar to or defamatory of the Plaintiff pending the hearing and determination of this application.
3. THAT the date for the interpartes hearing be granted.
4. THAT the Court do grant the Plaintiff/applicant a temporary injunction barring the Defendant, whether by itself or through its agents or otherwise howsoever from further publishing or causing to be published words defamatory of the Plaintiff pending the hearing and determination of this suit.
5. THAT the costs of this application be for the Plaintiff.

The application is based on the grounds that the Plaintiff/Applicant is a respected family man, he is the director of Bidco Africa Limited and he is a respected member of the business community both locally and internationally and a role model to many.

It is alleged that on or about the month of November, 2015, the Defendant wrote a defamatory article and published the same in its weekly Citizen Newspaper volume 18 issue No. 44 dated November, 2<sup>nd</sup> – 8<sup>th</sup>

titled **“the dark side of tycoon Vimal Shah.”**

It is further averred that in the said article, the Defendant, wrote and published or caused to be published the following words, “the Nairobi and London demonstrations” and along it displayed an image of the Plaintiff, next to the defamatory placards raised by demonstrators citing the following words of and concerning the Plaintiff:-

a. “#stop Bidco ..... STOP VIMAL SHAH Kenyan violator of employees rights”

b. “#stop Bidco – we shall not stand for #Bidcoslaves.”

cc. “Don’t believe VIMAL SHAH”

“CEO BIDCO VIMAL SHAH WE DEMAND OUR JUSTICE”

The other particulars of the alleged defamatory articles are as captured in the Plaint.

The Plaintiff avers that the aforesaid words and allegations are completely false and malicious and that the circulation of the mentioned article has gravely injured the Plaintiff’s reputation, character, esteem, credibility as a businessman and his social standing. He has urged the court to grant a temporary injunction barring the defendant whether by itself or through its agents or otherwise from further publishing or causing to be published the alleged defamatory words of him pending the hearing and determination of the suit.

The application is not opposed as the Defendant/Respondent did not file any grounds of opposition or a replying affidavit.

The submissions by the Plaintiff/Applicant reiterates the contents of the affidavit in support and it will serve no purpose for the court to rehearse them. The principles and conditions applicable in granting orders for temporary injunction were set out in the case of **Giella Vs Cassman Brown (1973) E.A 253** which generally apply to defamation cases. The court must further be satisfied that the words or the matters complained of are libellous and that the words are manifestly defamatory that the verdict to the contrary would be set aside as perverse as was held in the case of **Cheserem Vs Immediate Media Services (2000) 1 EA** as follows:-

“Application for interlocutory injunction in defamation cases are treated differently from ordinary cases because they bring out a conflict between private interests and public interest. Though the conditions applicable in granting an interlocutory injunction as set out in **Giella Vs Cassman Brown & Co. Limited** generally apply in defamation cases, these conditions operate in special circumstances over and above the test set out in the Giella case. In defamation cases the court’s jurisdiction to grant an injunction is exercised with greatest caution so that an injunction is granted only in the clearest possible cases. The court must be satisfied that the words or matters complained of are libellous and also that the words are so manifestly defamatory that the verdict to the contrary would be set aside as perverse.

I have considered the application herein, the submissions, the relevant law on defamation and the principles that govern the granting of an interlocutory injunction. It is clear that the injunctions in such cases should be granted only in the clearest possible cases. However, it is noted that the issues raised by the Plaintiff are not contested as the defendants did not file any response. In law, failure to file a replying affidavit in contention of a fact amounts to admission of the said facts. This was the holding in the case of **Crown Berger Kenya Vs Kalpech Vasuder Devan & Anor Civil Case No. 246 of 2006 (UR)** quoted with approval in the case of **Kennedy Otieno Odiyo and 12 others Vs Kenya Electricity Generating Company Limited (2010) eKLR** where the court held:-

***“In the absence of a replying affidavit, rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant.”***

In the premises, I find that the Plaintiff has established a prima facie case. Accordingly, the application dated the 1<sup>st</sup> December, 2015 is allowed in terms of Prayer 4. Costs shall be in the cause.

Dated, signed and delivered at Nairobi this 22<sup>nd</sup> day of September, 2016

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**L. NJUGUNA**

**JUDGE**

***In the Presence of:-***

..... *for the Plaintiff/Applicant*

.....*for the Defendant/Respondent*