

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 194 OF 2016

SAFERIDER MANAGEMENT SYSTEMS LTD.....PLAINTIFF/APPLICANT

- V E R S U S -

SAFERIDER VEHICLE TECHNOLOGIES (PTY) LTD....1ST RESPONDENT/DEFENDANT

LEON DU PLESSIS.....2ND RESPONDENT/DEFENDANT

RULING

1. On 26th July 2016, this court issued an ex parte order of injunction to restrain **Safe Rider Vehicle technologies (PTY) Ltd** and **Leon Du Plessis**, the 1st and 2nd defendants/respondents herein, from publishing or causing the publication of defamatory and the damaging allegations against **Saferider Management Systems Ltd**, the plaintiff/applicant herein. The ex parte interim order was issued pursuant to the motion dated 22nd July 2016 taken out by the plaintiff/applicant. The aforesaid order was extended on various occasions but the same lapsed on 6th October 2016 when the duty judge failed to extend the same. This prompted the plaintiff/applicant to take out the motion dated 10.10.2016 seeking for issuance of the interim order of injunction.

2. When this matter came up for mention before this court on 18th October 2016, Mr. Wathuta learned advocate for the plaintiff/applicant beseeched this court to grant an interim order of injunction to last upto 22nd November 2016 when the motion dated 22nd July 2016 is fixed for interpartes hearing. The learned advocate stated that unless the order is granted the plaintiff's business will be at the risk of being exposed to continued circulation of false and malicious allegations to its clients with threats by the respondents to further publish similar or worse allegations to the general public through the media in furtherance of malicious and unlawful blackmail.

3. Mr. Mwangi learned advocate for the defendants/respondents strenuously opposed the application of issuance of a blanket order of interim order for injunction. The learned advocate pointed out that if this court is inclined to grant the order then it should guard against issuing orders which will impact negatively on his client's business. It is not in dispute that when the motion dated 22nd July 2016 was placed before this court on 26.7.2016, this court found that it was appropriate to grant ex parte interim order of injunction upon considering the material placed before it. The main ground raised by the plaintiff/applicant was that the 1st defendant/respondent through the 2nd defendant/respondent has embarked on an elaborate scheme to scandalise the plaintiff/applicant's business by maliciously spreading false information to the applicant's clients to the effect that the goods supplied by the applicant are counterfeits. It is argued that the information may cause irreparable loss of confidence by the applicant's clients and damage to its reputation. In response to the above allegations, the defendants/respondents vide the replying affidavit of Leon Du Plessis averred that the plaintiff was their customer and distributor in Kenya for speed governors and recorders from 2014 until mid-this year when it terminated the business relationship with the plaintiff/applicant because the plaintiff had started trading in counterfeits which resemble the respondents' speed governors. From the allegations and counter- allegations traded by the parties, it is apparent that the plaintiff and the defendants have had a business relationship which has gone sour. The defendants do not deny that they have alleged that the plaintiff trades on counterfeit speed governors which are near similar to those the defendants trade on. The veracity of the allegations cannot

be established at the early stages of this dispute. There is no doubt that the protagonists are in the business of selling speed governors among other items. I am convinced that the interim order as sought in prayer 2 of the motion dated 22.07.2016 should be reissued which I hereby grant to last upto 22.11.2016. This will protect the plaintiff's business from being destroyed by the negative media reports until the foresaid motion is heard and determined.

4. The order is not meant to hinder any of the parties from operating its business. This being an interim order, costs shall await the outcome of the motion dated 22.7.2016.

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

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent