



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 239 OF 2015**

**NATIONAL BANK OF KENYA LIMITED ..... PLAINTIFF**

**VERSUS**

**NATION MEDIA GROUP LIMITED .....1<sup>ST</sup> DEFENDANT**

**TOM MSHINDI .....2<sup>ND</sup> DEFENDANT**

**ERIC OBINO .....3<sup>RD</sup> DEFENDANT**

**ANDREW TEYIE .....4<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff filed this suit against the four defendants following a publication in the Daily Nation and the Sunday Nation both published by the 1<sup>st</sup> defendant. The publication is alleged to have been authored by the defendants jointly and severally. It is the plaintiff's case that the publication was defamatory and therefore injurious to the operations of the plaintiff, a banking institution with a wide presence in the country.

Alongside the suit, there was filed an application for injunction to restrain the defendants jointly and severally from writing, printing and publishing statements that are defamatory of the plaintiff, its business, shareholders, employees and or directors, its customers and their accounts. The application also sought to restrain the defendants from publishing or otherwise disclosing or making public any confidential information regarding the plaintiff, his business, directors, shareholder and or its customers and their accounts.

On 1<sup>st</sup> July, 2015 Seron J granted interim orders pending the hearing and determination of the application. The application was opposed and subsequent thereto counsel for the parties filed written submissions and cited some authorities which I have considered.

It is about one and half years since this suit was filed and interim orders issued. That notwithstanding even after the closure of pleadings herein the parties have not taken any steps towards the prosecution of this suit. The issues complained of in the plaint are the same issues raised in the application for injunction, and going by the defences filed by the defendants it is clear to me that any ruling on the application for injunction will have an impact on the final determination of the suit. This is because the substratum of the suit is the publication complained of and the reply by the defendants. If I were to address the application for injunction at this stage there is real danger that the issues for determination may be compromised.

I know the principles that govern the grant of injunction orders but deem it necessary to avoid any analysis of the pleadings, the facts, the evidence and authorities cited at this stage. I direct that the parties comply with Order 11 of the Civil Procedure Rules with a view to having this matter set down for hearing. In effect the application for injunction is denied and each party shall bear their own costs.

***Dated, signed and delivered at Nairobi this 30<sup>th</sup> Day of November, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**