



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 99 OF 2014**

**PAUL W. GICHU.....PLAINTIFF**

**VERUS**

**1. AMOS MATHENGE KABUTHU  
2. NATION MEDIA GROUP LTD.....DEFENDANTS**

**RULING**

1. Before me is the notice of motion dated 20<sup>th</sup> May, 2014 seeking a permanent injunction to restrain the Defendants by themselves, their agents and/or servants from further publication of the public notice published on Sunday Nation dated 19<sup>th</sup> May, 2014 or any false and defamatory publication against the Plaintiff pending hearing and determination of this suit. The grounds upon which the application is premised are in the body of the application and the supporting affidavit of the Plaintiff sworn on 20<sup>th</sup> May, 2014.
2. It is the Plaintiff's contention that the 1<sup>st</sup> Defendant caused the 2<sup>nd</sup> Defendant to publish false and defamatory words concerning him. He alleged that he is the national chairman of the African Independent Pentecostal Church of Africa (**AIPCA**). Pursuant to clause 24B, he was elected by a national delegate congress consisting of a Bishop synod, a layman and laywoman from every diocese. That under the constitution and the Rules of AIPCA, neither the central board nor the 1<sup>st</sup> Defendant is empowered to remove or excommunicate the national chairman from office. That the procedure governing such matters as elections and removal of AIPCA's office bearers is set out in Article X and XI of AIPCA's constitution. In that regard removal is either by a resolution of an annual general meeting or special general meeting which must be endorsed by the archbishop, the national chairman and secretary general meeting. He stated that he is aggrieved because no such annual general meeting or special general meeting has been summoned with requisite notice for purposes of excommunicating or removing him. He stated that he is apprehensive that the Defendants are likely to continue publishing the said public notice unless restrained.
3. The 1<sup>st</sup> Defendant opposed the application vide a replying affidavit dated 16<sup>th</sup> June, 2014. He contended that as the archbishop of AIPCA, he is entitled under the church constitution to exercise general powers over the affairs of the church as the overall head of the church. He alleged that he has been unable to perform his duties since he took over the leadership of the church since the Plaintiff has been constantly undermining his leadership. That the Plaintiff has purported to exercise authority and create a splinter group in the church, including some clergy who have no loyalty to him as the head of the church. That in view of the rebellion, he has not effectively been able to perform his duties bestowed upon on him by 3.5 million church members and the church constitution. He lamented that the Plaintiff also interfered with other church constitutional organs such as the central board and other committees to the extent that they failed to effectively perform their duties. He stated that with the support and approval of central board, he ex-communicated the Plaintiff from membership of the church which act he alleged he was entitled to do under the

- church constitution. He stated that with that authority that decision was published. He however justified that it was important to make the publication since it needed to be communicated to the members of the church who are spread all over Kenya. He contended that the publication is not defamatory since it is merely a communication of facts.
4. It was the Plaintiff's submissions that from the material before court, there was nothing to show that the Plaintiff had been ex-communicated from the church thereby the public notice is entirely false. He stated that the continued publication shall occasion him distress. He stated that unless the Defendant's are restrained, he stands to suffer distress which cannot be restored by way of damages. He argued that the relative strength of the parties tilts in his favour and that unless the order sought is granted, he will suffer irreparable damage.
  5. The 1<sup>st</sup> Defendant did not tender submissions while the 2<sup>nd</sup> Defendant expressed its unwillingness to participate in this application.
  6. While dealing with injunctions in defamation cases courts ought to weigh between the freedom to express oneself and the impact on the information against the respect for other's rights and reputation. The general principles for grant of injunctions have thereby been modified to suit the uniqueness of defamation cases. I am on this point fortified by **Cheserem v. Intermediate Media Services [2000] 2 EA 371** where it was held as follows:-

***"An interlocutory injunction is temporary and only subsists until the determination of the main suit...In defamation, the question of injunction is treated in a special way although the conditions applicable in granting injunction as set out in the case of Giella v. Cassman Brown & Co. Ltd (1973) EA 358 generally apply...In defamation cases, those principles apply together with special law relating to the grant of injunctions in defamation cases where the court's jurisdiction to grant an injunction is exercised with the greatest caution so that an injunction is granted only in clearest possible cases. The court must be satisfied that the words complained of are libellous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside perse...The reason for so treating grant of injunction in defamatory cases is that the action for defamation bring out conflict between private interest and public interest, and more so in cases where the country's Constitution has provisions to protect fundamental rights and freedoms of the individual including the protection of the freedom of expression."***

7. It is trite law that while dealing with an injunction, a court ought not to delve into the merits of the suit rather consider whether a prima facie case has been made out and that irreparable loss which cannot be compensated in costs shall be suffered in the event the orders sought are denied.
8. It was the 1<sup>st</sup> Defendant's contention that the publication was merely a communication of the ex-communication of the Plaintiff. There is however no evidence on record at all to confirm that there was such ex-communication. On the other hand the Plaintiff has exhibited the church constitution. Articles X and XI stipulates of the aforesaid constitution the procedure for removal from office. The Defendant has not rebutted the procedure stipulated therein or has he established that he followed the said procedure in the alleged ex-communication. In view of the foregoing, I find that the Plaintiff has prima facie, proved that the publication was false and is damaging to the Plaintiff's reputation. In the case of **Bonnard v. Perryman (1891) 2 Ch 269** it was held that exceptional caution ought to be taken by courts while exercising jurisdiction to interfere by way of injunction. The court in that decision highlighted that:-

***"...The right of free speech is one which it is for the public interest that individuals should possess, 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."*** (Emphasis own).

Having found that the publication was false, I am inclined to grant injunctive orders in favour of the Plaintiff. Accordingly, the Defendants are restrained by themselves, their agents and/or servants from further publication of the public notice published on Sunday Nation dated 19<sup>th</sup> May, 2014 or any false and defamatory publication against the Plaintiff pending the hearing and determination of

this suit. Costs of the application is given to the Plaintiff.

**Dated, Signed and Delivered in open court this 24<sup>th</sup> day of April, 2015.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant