



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CIVIL SUIT NO. 30 OF 2015**

**SALIM AL-AMIN MAZRUI.....1ST PLAINTIFF**  
**KHALFAN ABDALLA MAZRUI.....2ND PLAINTIFF**  
**AHMED MOHAMED SULEIMAN MAZRUI.....3RD PLAINTIFF**  
**RASHID MOHAMED SALIM MAZRUI.....4TH PLAINTIFF**  
**SALIM MASOUD ABDALLA MAZRUI.....5TH PLAINTIFF**  
**MOHAMED SULEIMAN SHAQSY.....6TH PLAINTIFF**  
**WELFARE AND DEVELOPMENT WAKF LANDS TRUST.....7TH PLAINTIFF**

**VERSUS**

**THE STANARD GROUP LIMITED.....1ST DEFENDANT**  
**JOHN BUNDOTICH.....2ND DEFENDANT**

**R U L I N G**

1 The plaintiff have filed this case alleging that the defendants published libelous article on 26th October 2014 entitled MAZRUI DYNASTY: PROMINET COAST FAMILY. The plaintiffs seek damages both general and exemplary from the defendants; and an order of injunction to restrain the defendants from further publishing.

2. Plaintiffs have moved this court by a Notice of Motion application, dated 2nd March 2015 which is for interlocutory injunction to restrain the defendants from further making similar publication.

3. In the affidavit in support of the application Salim Al-Amin Mazrui, the 1st plaintiff deponed that after the publication, the plaintiff sought from the defendant a retraction, but the defendants failed to publish a retraction or an apology. That the defendants had failed to contact the plaintiffs to verify from them the correctness of their article before publication. The deponent also stated that the defendants had previously published similar articles and the plaintiffs filed another case seeking similar prayers to this, the case being Mombasa High Court Civil case No 69 of 2013.

4. Although the plaintiffs affidavit in support of the application detailed plaintiffs allegation against the defendant and also stated the reasons why there was need for interlocutory injunction to be issued, the defendants did not file a replying affidavit or grounds of opposition. What that means is that the facts in the plaintiffs affidavit are uncontroverted and the court is entitled to treat them as proved.

## ANALYSIS

5. I have considered the parties submission, authorities and also their pleadings.
6. As a preliminary point I wish to say that I am aware that the issue of land ownership and occupation is indeed a very emotive issue in coastal region of Kenya, perhaps more than any other part of Kenya.
7. I am also very conscious that the media has been guaranteed its freedom and independence by Article 34 of the Constitution of Kenya.
8. Having set the stage as above I need to say that the article complained of by the plaintiffs stated that Mazrui “dynasty” a prominent coast family was intent on evicting 10,000 squatter families on land they had lived in for decades based on a law passed by colonial rulers giving the plaintiff that land. That Mazrui family had obtained a court order in the year 2012 which upheld that colonial law. That in the ownership of that land Mazrui family was discriminatory towards Mijikenda and other Swahili tribes.
9. In balancing the rights of the plaintiffs and the defendants I find help in the holding of the case **CHESEREM VS IMMEDIATE MEDICS SERVICES (2002) 2 EA 371** as follows:

***“the court can only protect a respondent who is free from malice and whose information is based on factual truth”***

***In CHESEREM VS IMMEDIATE MEDICS SERVICES (2002) 2 EA 371 Khamoni J held inter-alia as follows:-***

***at page 371 of the ruling ( paragraph I)***

***“The right to freedom of expression enshrined in section 79 of the Constitution should be enjoyed by every news media, the press, newspapers, their journalists and everybody in Kenya free from all drastic interferences that may be caused by granting an injunction unless there is a substantial risk of grave injustice and the private interest in preventing the publications outweighs the public interest....However the freedom of expression is not absolute and the court will only protect a defendant free from malice and a plaintiff is also under the constitution entitled to the law.”*** (underling provided)

10. Similarly I am persuaded by the case HCCC NO. 519 of 2009 **JAMES NJENGA KARUME -V- NAIROBI STAR LIMITED &2 OTHERS**, where the judge stated:

***“The court can albeit in special circumstances issue restraining orders in a libel suit. The court has to weigh the much cherished principle of freedom of expression or freedom of the press as against the equally cherished protection of an individual by the Law. The court can intervene to stop further or future publication of a matter which is injurious to an applicant weighed against interfering with the freedom as stated above. Where faced with an interlocutory application such as the one before me the court is required to tread with great caution while arriving at its decision.”***

11. Having considered affidavit evidence, parties submissions and their authority I do form the view that the plaintiffs application is merited and if for nothing else to ensure that the publication, which possibly can arouse emotions are not published until the case is heard.

## CONCLUSION.

**I therefore grant the following orders:**

- a) An injunction is hereby issued, pending hearing and determination of this suit restraining the defendants themselves, their servant or agents or otherwise however publishing, printing,**

**circulating or distributing matters as set out in paragraphs 8, 9 and 10 of the plaint.**

**b) The plaintiffs are awarded costs of Notice of Motion dated 2nd March 2015.**

**c) At the reading of this Ruling the court shall give a date for direction to enable the court direct on whether this suit should or should not be consolidated with Mombasa HCCC NO. 69 of 2013.**

Dated and delivered at Mombasa this 25th day of June 2015.

**MARY KASANGO**

**JUDGE**

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Plaintiffs:

For defendants:

Court

Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**