



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 455 OF 2013

PETER AMBOGO ABUSO.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL1ST DEFENDANT

DANIEL MUSETU2ND DEFENDANT

THE PEOPLE MEDIA GROUP3RD DEFENDANT

RULING

1. The application before this Court is a Notice of Motion dated 30.10.2013 brought under Order 40 rules 1, 2, 3 and 4 of the Civil Procedure Rules 2010, section 1A & 1B, 2, 3A & 63(c) of the Civil Procedure Act. The Plaintiff on an Application for orders that:-
 - i. Spent
 - ii. A restraining order do issue against the defendant/ respondent by themselves, their agents, servants, employees and / or representatives from writing, publishing or further publishing or broadcasting any article or images concerning or touching the name of the plaintiff/ applicant in both print and electronic media especially their People Daily Newspaper pending the hearing and determination of the application and or/suit herein.
 - iii. A restraining order do issue against the defendant/ respondent by themselves, their agents, servants, employees and / or representatives from writing, publishing or further publishing or broadcasting any article or images concerning or touching the name of the plaintiff/ applicant in both print and electronic media especially their People Daily Newspaper or any other program whatsoever during the pendency of this suit
 - iv. An Order compelling the defendants/respondents, by themselves, their servants, agents and/or representatives to unconditionally apologise to the plaintiff /applicant publicly in both the print and electric media for defendant/respondent's **The people Daily Newspaper** of No. 05114 of Wednesday, 17th July, 2013.
 - v. The cost of the application be provided for.
2. The application is premised on the grounds on the face of the application and the sworn affidavit of Peter Ambogo Abuso that;
 - a. The 3rd defendant /respondent with the assistance, aid and or authority from the 1st & 2nd defendants/respondent printed, published or caused to be published an article or articles, images concerning the plaintiff/applicant which was and is meant to defame, defamatory of the plaintiff/applicant, to demean his character without his authority or consent.

- b. The defendants/respondents by themselves, their servants, agents and or representatives without any rays of right have printed, published or caused to be published offending articles about the plaintiff/applicant which is meant to demean or assassinate the plaintiff's character.
 - c. The defendants/respondents further intend to print, publish or cause to be published the article or articles, with the images or photographs of the plaintiff/applicant which contains defamatory words unless restrained by this Honorable Court.
 - d. The defendants/respondents should be restrained by an order of injunction from further printing, publishing or causing to be published, printed the news item or articles and or its second part as it is prejudicial to the plaintiff/ applicant and further offends the rules of **sub-judice**.
 - e. The plaintiff/applicant will suffer irreparable loss and damage unless orders sought are issued against the defendant/respondent. Jointly by themselves, agents, servants and or assignees from printing, publishing or causing to be published printed the news item or article.
 - f. The printing, publishing or causing to be published, the use of the plaintiff/applicant's images, photographs was intended to depict the plaintiff/applicant in bad light as being a prostitute, unworthy and a fraudster which is defamatory to the plaintiff/applicant.
3. Peter Ambogo in his sworn affidavit dated 30th October, 2013 deponed that He is a draft man capable of meeting with many different people at different places and therefore it was defamatory to associate him with any kind of person to be an intimate friend with malicious intention to cause damage to his name and profession; that prior to the press release an employee of the 1st defendant one Mr. Daniel Musetu had threatened his life and eventually caused his arrest and arraignment in Court in criminal proceedings intended to silence him; that the defendants then proceeded to print an article in the 2nd defendant's The People Daily Newspaper No.05114 of Wednesday, 17th July 2013 articles which were meant to depict him as a con man thus defaming his name and assassinating his character before the eyes of his children and public in general; that the defendants/ respondents intend to proceed with the publication in the next issue of his private life or any issue in the said newspaper or any other unless stopped by the Honorable Court.
 4. The application was opposed and the 3rd defendant filed a replying affidavit sworn by Sarah Ndungu on 17th January 2014. She deponed that she is a journalist working with the 3rd defendant. She claimed to be a stranger to paragraph 2 and 3 of the plaintiff's application. In response to paragraph 4 and 5 she stated that the article that appeared in the People's Newspaper of 17th July 2013 entitled "City con's greed hasten his fate with destiny came to being after Mr. Daniel Musetu, the 2nd defendant called the media house on 16th July 2013 claiming that his officers while conducting routine inspection of premises had arrested the plaintiff at Light Academy Boys Secondary school in Karen Nairobi where he was carrying out renovations without approval letters and was masquerading as a City County Senior Development Control Officer and had in his possession fake building and renovation letters apparently written by one J. W. Nderitu from Director of City Planning on behalf of the Interim County Secretary and a work identity card presenting himself as a City County Senior Development Control Officer and was to inform and warn the general public having confirmed from the employment records that the plaintiff was not an employee there;
 5. She deponed further that there was no evidence portraying any future intention of the 3rd defendant to publish any article either electronically or in print in reference to the plaintiff's private as alleged; in response to paragraph 6 the respondent argued that the applicant had not met the threshold conditions for grant of temporary injunctions which she laid out as follows; that no prima facie case with a probability of success has been shown; that the plaintiff has not demonstrated that the article subject matter of this suit and other articles about him will be published. There is no specification of any nature of article that might be published about him that

is defamatory; that it has not been proved that the plaintiff will sustain irreparable harm or loss which would not be adequately compensated by damages should the claim succeed; that the plaintiff has prayed for monetary damages which Court will assess once an affirmative finding on liability is made against the defendants thus believing monetary compensation will be sufficient and that the balance of convenience tilts in favor of the 3rd Defendant in guaranteed freedom of media in the circumstance.

6. In reply to the defendant's replying affidavit the applicant filed a supplementary affidavit sworn on 4th February 2014. He referred to paragraph 3 and sated that those found breaking the law are arrested and charged accordingly and not necessarily published in the National Newspaper and failed to understand why he was termed as a con man for doing renovations; that in regards to allegations of the said Light Academy Boys Secondary School in Karen amounted to hearsay and the said warning was based on wrong facts; that being a technician of reputation, a father and husband of which the defamatory remarks with no fair comments would defame his good character and name; that the defendant has not proved why they published a defamatory story against him and this was evident that his case had high chances of success and that the defendants will not be able to compensate him with continued defamation and that nothing shows that they are likely not to publish unsubstantiated stories about him; that the freedom of media must be done with consideration of other people's rights.
7. Parties filed written submissions which came for highlighting on 4th April 2014. The applicant reiterated the grounds on the face of his application, the supporting and supplementary affidavits and further argued that the publications have not been proved and that the defendant acted on speculations and hearsay to make wild allegations and that it is necessary that the defendants are temporarily estopped.
8. The 1st and 2nd respondents denies being neither the printer nor publishers of the 3rd defendant and that if the said articles were published in regards to paragraph 6 of the plaint then that was the true position said; that the applicant's application has no prima facie case with probability of success to warrant grant of orders sought; no irreparable damage which cannot be compensated by way of costs has been established by the plaintiff as he has not shown the extent of his reputation and how it has been tarnished and that in the absence of proof that the plaintiff is an employee of the 1st and 2nd defendant the balance of convenience tilts in the defendants' favor.
9. Miss Ochieng Counsel for the 3rd respondent reiterated their replying affidavit and further stated that the article published was based on the truth and that the issue of the plaintiff being an employee of the 1st defendant had not been proved urged the Court to dismiss the applicant's application with costs. Counsel referred the Court to the case of ***Gil Gil Hills Academy –vs- the Standard Limited, HCCC 88 of 2009*** and the case of ***Hon. Ambassador Chirau Ali Makwere – vs- Nation Media Group Limited.***
10. I have considered the affidavits and rival submissions both written and oral and find as follows. The applicant seeks an injunctive order against the defendants from making publications he claims are demeaning to his character. From what has been adduced the applicant has failed to show that he has a prima facie case reasons being his employment with the 1st defendant has been challenged. Secondly he has failed to show that his life was threatened as alleged in his supporting affidavit. What he has annexed as PAA2 is a publication by the peoples Newspaper and does not specifically state the defamatory words. He has also failed to demonstrate that there was a next issue to be published on his private life. His facts as deponed merely remain as allegations thus I find he has failed to show he has a prima facie case with a probability of success. He has also not explained the irreparable loss that he will suffer nor does the balance of convenience tilt in his favour. I therefore find that the application lacks merit and is dismissed with costs to the respondents.

Orders accordingly.

Dated, signed and delivered this **24th** day of **July** 2014.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Plaintiff/Applicant

.....For the 1st & 2nd Defendants/Respondents

.....For the 3rd Defendant/Respondent

.....Court clerk