

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 232 OF 2013

DIANA MBINYA MUSYA. APPLICANT/PLAINTIFF

VERSUS

AFRICA MANAGEMENT COMMUNICATIONS &

INTERNATIONAL LIMITED. RESPONDENT/DEFENDANT

RULING

The application before the court is the Chamber Summons dated 24th June, 2013. It seeks a temporary injunction restraining the Defendant and its agents and servants from making/and/or publishing any defamatory utterances against or concerning the Plaintiff/Applicant in a forum pending the hearing and final determination of this matter. The applicant also sought a mandatory injunction directing the Defendant to issue an apology retracting the alleged malicious and defamatory publication contained in the Daily Nation Edition of 21st June, 2013.

The facts on record show that the Applicant/Plaintiff was a former employee of the Defendant/Respondent from the year 2010 until 30th April, 2013 after voluntarily resigning on 10th April, 2013. The Defendant soon or later discovered that on leaving her employment aforesaid, the Plaintiff joined another company known as Access Business Management Conferencing International Limited (**ABMC**). It is not denied either that the Plaintiff may have even been employed by “**ABMC**” at the latest by 1st of April 2013 while she still worked for the Defendant before resigning by end of April, 2013. The Defendant’s deponent that it has evidence of information of salary payment into the Plaintiff former computer that she received April, 2013 salary from “**ABMC**” on April 11th, 19th and May 2nd. There is also unchallenged deponement from the Defendant that the Plaintiff before resigning her employment had attempted to delete the said information from the computer disc which she used while working for Defendant.

It is not contested as well that after the Plaintiff joined “**ABMC**” which appears to be a competing company doing similar business and appearing to have a deceptive similar sounding name, the Plaintiff and another person known as Joseph Mugo who also and similarly worked for the Defendant before joining ‘**ABMC**’ as an employee, allegedly passed off “**ABMC**” as an associate company of the Defendant which the Defendant categorically denied to be true.

It was the Defendant’s case that when it realized that the plaintiff, her colleague Mugo and “**ABMC**” were effecting a scheme in which “**ABMC**” was passing off as the Defendant, it decided to inform its current and potential clients about the scheme. It as well decided to warn them that the Plaintiff and Mugo were no longer employees of the Plaintiff but were working for “**ABMC**”, who was a serious competitor and that all the representations the two were making relating to the Defendant, were false. The Defendant averred that it did so to protect its own business interest and to protect its intellectual property and trade secrets. It also averred that what it published was correct, true and fair and that it stood by it and that the same formed its complete defence.

I have carefully perused and considered the application for injunctions sought by the Plaintiff. I am not satisfied that the Plaintiff has shown that he has a prima facie case with a probability of success. He has not denied the fact that he worked for “**ABMC**” even before quitting working for the Defendant and could on the face of things have been working at double-purpose for the Defendant for gain. The fact that

he did not deny the allegation of receiving April and May 2013 salary from “**ABMC**” confirms a probability that he might have been passing “**ABMC**” as a sister or subsidiary of the Defendant. However, such a conclusion would be left to the kind and quality of evidence that may be produced during the trial.

The Plaintiff has not demonstrated as well, what irreparable injury he will suffer if the Defendant’s defence is that what it published was correct, true and fair position of what the Plaintiff and Mugo were doing. Indeed it can be argued that it had an obligation to protect itself and its intellectual property and secrets in respect to its customers and potential customers, as well as protect its business which the Plaintiff, Mugo and “**ABMC**” may have been targeting.

Furthermore, in the estimation of this court, the balance of convenience would rule against issuing any injunction in these circumstances.

Finally, in a case such as this where the main defence is that the contents of the publication were correct and true, the court will hesitate to grant an injunction. If the Defendant were to publish similar material again, it would stand to be penalized more heavily in damages if it finally loses the case. That would be sufficient sanction to the defendant and others in a similar position.

The result is therefore that this application has no merit. It is hereby dismissed with costs. Order accordingly.

Dated and delivered at Nairobi this 25th day of September, 2014.

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JUDGE