

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 439 OF 2013

CYRIL BIKO GWENDO.....APPLICANT

VERSUS

THE STANDARD LIMITED.....1ST RESPONDENT/DEFENDANT

DAVID ODONGO.....2ND RESPONDENT/DEFENDANT

MAUREEN ODIWOUR. 3RD RESPONDENT/DEFENDANT

R U L I N G

The application before the court is the Notice of Motion dated 9th September, 2013 by the Plaintiff. It seeks an injunction order to restrain the Defendants from further defamatory articles as those upon which the suit is based until the suit is heard and finally determined.

The Applicant's case is that the Defendants jointly and/or severally published libelous articles in the Standard Newspaper which were defamatory of him on three different dates. The applicant avers that the words were repetitively published with intention to discredit and were false, malicious and injurious. Hence the need and request to restrain the Defendants from repeating publishing similar material.

The Defendants strongly oppose the application and state that the material and statement published were part of court proceedings in High Court Nullity Case No. 166 of 2013 – **C B G Vs J L W** and High Court Cause No. 174 of 2013, between same parties, and were factually true and privileged. They further argue that whatever does on in court as court proceedings is in public domain and theirs is merely a fair and accurate report of the judicial proceedings which should not be barred from the eye of the public. The Defendants accordingly posit that the publications aforesaid were accurate report of pleadings in the two aforesaid cases and were without malice or gross negligence as alleged by the Plaintiff. The Defendants also argue that a report of judicial proceedings cannot be restrained since reporting thereof is in public interest and is fair and accurate and privileged from interference. They averred that the court should act cautiously in attempting to stifle the right to freedom of expression and freedom and independence of the media, as enshrined in the Constitution.

I have carefully considered the arguments placed on record by each side.

There is no doubt in my mind that the court in such matters must act with great caution in making a decision to interfere with independence of the media and in particular, to clog the freedom of expression. More so where the defence from the Respondents is that what is to be restrained is accurate and fair report of the contested published words, however injurious they look. That is besides looking for the demonstration of fulfillment by the Applicant of the conditions set down in the **Giella Case** that the applicant's case must prima facie be one that has a probability of success and that unless the injunction sought is granted, irreparable damage that cannot easily compensable in damages is likely to occur.

In this case, it is clear that the articles published by the Defendant were not actual court proceedings which are usually privileged but a report based on mere pleadings which may later be amended because they may not be accurate. Furthermore, the articles were embellished with extraneous material inclusive of photographs etc. The articles in the end may not have remained accurate report of the pleading or fair report of the court file record at that stage. The publication also contained other and various private

unsubstantiated allegations and conclusions referring to the Plaintiff's private personal life which distorted the correct situation.

The court is persuaded on the face of the material before it that if proven, the words complained of would clearly be libelous and manifestly defamatory. This is because the articles have portrayed the Plaintiff as a person of loose morals with no regard to family values, a conman and fraudster and a man who is a philander and unworthy of respect.

Furthermore, Defendant in claiming the freedom to report and express in public interest, have not demonstrated how the private life of an individual, such as the Plaintiff, is a matter in public interest and that members of the public, otherwise than for mere scandal and gossip, would be interested to read.

In the court's view, the Plaintiff has demonstrated a prima facie case with probability of success. If not protected by injunction, his reputation and good character destroyed may not be fully compensatable in damages; and the balance of convenience is in favour of granting an injunction.

The application is accordingly, hereby granted as prayed until the suit is finally determined. Costs in the cause. Orders accordingly.

Dated and delivered at Nairobi this 22nd day of September, 2014.

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D A ONYANCHA

JUDGE