



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 71 OF 2012

ELVIS MUTAHI GITHINJI.....PLAINTIFF

VERSUS

**1. JAMES MUTITU MWORIA
2. DAVID MWORIA
3. NATION MEDIA GROUP.....DEFENDANTS**

R U L I N G

1. The application by **notice of motion dated 21st May 2012** is between the Plaintiffs and the 1st and 2nd Defendant. The 3rd Defendant stated through its learned counsel that the application does not concern it.

2. The application seeks the main order that the Defendants,

“and especially the 1st and 2nd Defendants be restrained from further writing, printing or publishing defamatory statements of the Plaintiff in any media whatsoever whether newspapers, internet or any other media”.

3. The application is brought under **Order 40, Rule 2** of the **Civil Procedure Rules, 2010** (the **Rules**) upon the following grounds, *inter alia*, stated on the face thereof –

(i) That the Defendants have, despite being sued in this matter and being aware of the suit, “continued to circulate and repeat and publish the defamatory matters against him in e-mails to various persons”.

(ii) That the Plaintiff is justifiably apprehensive that unless restrained the Defendants “will continue to write, print and publish statements defamatory of (him)”.

(iii) That the Plaintiff stands to suffer “great prejudice and irreparable damage to his credit and reputation” unless the order sought is granted.

4. There is a supporting affidavit sworn by the Plaintiff. It sets out the factual basis for the application. There are various documents annexed to the affidavit.

5. I cannot find on the record any papers in response filed by any of the Defendants. As already noted the 3rd Defendant's learned counsel stated on 10th December 2012 that the 3rd Defendant would not file any replying affidavit as the application does not concern it. But it clearly does; the temporary injunction is also sought against it.

6. The Plaintiff's and the 1st and 2nd Defendant's learned counsels agreed that the application be canvassed by way of written submissions. In the event only the Plaintiff filed submissions on 5th February 2013 after a 14-day extension on 18th January 2013. On 7th February 2013 when the matter came up for mention there was no appearance for the 1st and 2nd Defendants, and they had not filed submissions.

7. The application is thus unopposed. I have considered the allegations contained in the supporting affidavit, and I have seen the further publications annexed of the defamatory materials complained of after the suit was filed and the Defendants served. I have also considered the submissions of the learned counsels appearing.

8. I am satisfied that it is in the interests of justice to grant the temporary injunction sought. I will allow the application as prayed in prayer 1. Costs of the application shall be in the cause. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF AUGUST 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 22ND DAY OF AUGUST 2013