



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 387 OF 2012

OLOOLOLO GAME RANCH LTD.....PLAINTIFF

VERSUS

1. ILKAREKESHE GROUP TRUST

(REGISTERED TRUSTEES)

2. PAUL RATIK KUYANA

3. MICHAEL KATAKA

4. JACOB NAGUT

5. FRANCIS RAMET

6. PETER SAPALAN.....DEFENDANTS

R U L I N G

1. The Plaintiff's claim in this suit is in defamation. It seeks damages for libel and slander and appropriate injunctions. The suit stems directly from the parties' dispute over a large parcel of land. The Plaintiff has pleaded that it has title as the registered proprietor over the land as L.R. NAROK/TRANS-MARA-OLOOLOLO/1 and is the occupier thereof. It has further pleaded that the property was adjudicated upon and the Defendants' objections dealt with in accordance with the law through various proceedings and decisions that have not been set aside or overturned on appeal.

2. The Plaintiff has also pleaded that despite all this the 1st Defendant on 15th December 2011 "procured title L.R. TRANSMARA/ILKAREKESHE GROUP/1 for the very same parcel of land already registered in the name of the Plaintiff.

3. It is the Plaintiff's further case that the words complained of and giving rise to this suit is part of the Defendants' war against it over the aforesaid property.

4. Together with the plaint the Plaintiff filed notice of **motion dated 1st August 2012** which is stated to be brought under **sections 1, 1A, 3, 3A and 63 (c) and (e) of the Civil Procedure Act, Cap 21** and also under **Order 40, rules 1, 2 and 4 of the Civil Procedure Rules, 2010 (the Rules)**. That application is the subject of this ruling.

5. The application seeks two main orders –

(i) That the Defendant be restrained "from further publishing or causing to be

published any words and statements accusing, linking or associating the Plaintiff with and/or imputing fraud and corruption against the Plaintiff and its directors in the acquisition and ownership of the property title L.R. Narok/Trans-Mara/Oloololo/1 pending disposal of this suit.

(ii) That the Defendants be restrained from trespassing on the said property pending disposal of the suit.

6. The main ground for the application stated on the face thereof is that the Plaintiff is reasonably apprehensive that the Defendants, unless restrained as sought, “will further publish and broadcast and/or cause to be broadcast and published the said or similar words and statements defamatory of the Plaintiff, having released another defamatory statement on 19th July 2012 and threatened to invade the property on 24th July 2012”.

7. There is a supporting affidavit sworn by one **Kuya Kijabe Tunai**, a director and shareholder of the Plaintiff. At paragraph 16 of the affidavit various publications between 15th October 2010 and 19th July 2012 are set out which the Plaintiff alleges were published by the Defendants and that they are defamatory of it. Other publications are set out at **paragraphs 17, 18, 19 and 20** of the affidavit, which the Plaintiff also complains are defamatory of it.

8. The Defendants filed a joint **statement of defence dated 21st September 2012**. They denied the Plaintiff’s claims and also asserted the Constitutional freedoms of expression and the media.

9. The Defendants also opposed the Plaintiff’s application by **replying affidavit filed on 26th September 2012**. It is sworn by the 5th Defendant. Grounds of opposition raised include –

(i) That the Defendants were exercising their Constitutional freedom of expression.

(ii) That the words complained of are not defamatory of the Plaintiff.

(iii) That in any event the words complained of were “relevant information to the general public”.

10. On 15th November 2012 the Plaintiff filed a supplementary affidavit sworn by the same director and shareholder who swore the supporting affidavit. It exhibits the many documents that had been mentioned in the supporting affidavit.

11. On 13th August 2012 an interim injunction was by consent entered in terms of the first main prayer of the application, pending hearing and disposal of the application.

12. The application was subsequently canvassed by way of written submissions. The Plaintiff’s submissions were filed on 18th October 2012 while those of the Defendants were filed on 1st November 2012. I have considered those submissions together with the authorities cited.

13. As already seen, this suit stems from a long-standing dispute between the Plaintiff and the Defendants over a very large parcel of land over which both the Plaintiff and the 1st Defendant have title deeds. I do not know whether there are any substantive proceedings between the parties over **ownership** of the land pending before any court. The present suit is not one such. Notwithstanding the relief of permanent injunction to restrain the Defendants from trespassing into the disputed land, there are not in the body of the plaint any averments to the effect that the Defendants have trespassed, or intend to trespass into the land. The temporary injunction sought in the application to restrain trespass thus cannot be granted as it is not based upon any averment in the plaint.

14. The suit is purely based on the tort of defamation. I have noted the very many publications complained of by the Plaintiff. It appears to me that as part of their campaign for the disputed land the Defendants decided to give the dispute as much and as wide publicity as possible. It is this publicity whose content the Plaintiff has claimed is defamatory of it.

15. I hold the view that pending hearing and disposal of the suit it is in the interests of justice that the dispute between the Plaintiff and the Defendants should not be permitted to escalate further, a need that both parties appear to have recognized when they consented to interim injunction on 13th August 2012. Any further publications in the vein of those already complained of by the Plaintiff can only spark more litigation and worsen the existing one. That there is danger of further such publications there cannot be any doubt. The Defendant's determination in this regard clearly comes out in their statement of defence and replying affidavit.

16. I will in the event allow prayer 4 of the notice of motion dated 1st August 2012. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 28th DAY OF NOVEMBER 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER 2013