



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**MILIMANI LAW COURTS**  
**CIVIL CASE NO. 32 OF 2012**

**THOMAS WAHOME NJUGUNA.....PLAINTIFF**

**VERSUS**

**1. ERICK OBINA**  
**2. MUTUMA MATHIU**

**3. NATION MEDIA GROUP LIMITED.....DEFENDANTS**

**R U L I N G**

The Plaintiff's suit is in defamation. His case is that certain words published by the Defendants (as set out in paragraph 5 of the plaint dated 30<sup>th</sup> January 2012) are defamatory of him. The Plaintiff has also complained of a photograph of a woman called **Leah Mueni Kasyoka** (and words accompanying it) published by the Defendants which he alleges were also defamatory of him and in contravention of court orders issued in **Nairobi CM Divorce Cause No. 129 of 2011** and **Nairobi Children's Case No 353 of 2011** (both suits being between him (as plaintiff) and the said Leah Mueni Kasyoka (as defendant).

Together with the plaint the Plaintiff filed **notice of motion dated 30<sup>th</sup> January 2012** seeking temporary injunction to restrain the Defendants "*from further publishing and causing to be published*" the words complained of or similar words defamatory of him pending disposal of the suit. An interim injunction is also sought pending disposal of the application. This short ruling concerns only the issue of interim injunction.

The Defendants have opposed the application by grounds of opposition and replying affidavit filed on 6<sup>th</sup> February 2012. They have also opposed issuance of interim injunction.

I have perused the plaint and the supporting and replying affidavits. I have also given due consideration to the brief submissions of the learned counsels appearing.

The words and photograph complained of and as published by the Defendant do not refer to the Plaintiff either by name or some other direct connection. He has pleaded that the words and photograph

complained must be referring to him and no one else because (paragraph 8 of the plaint):-

“(i) ...

(ii) **The Plaintiff introduces his programmed “Miujiza isiyo ya kawaida” in KBC, GBS, K24 and KISS TV in the manner and style narrated in the story published ...**

(iii) **The Plaintiff is a reverend with Helicopter Ministries and his wife is middle-aged.**

(iv) **The above facts are known within Nairobi and around the whole country as the Plaintiff is a televangelist with a wide coverage in the electronic media other than the Defendants.”**

The court is thus being invited to take judicial notice of facts that may be in contention at the trial. *Prima facie*, I find no notoriety upon which the court can legitimately take judicial notice of the facts pleaded as identifying the Plaintiff as the subject of the words complained of.

It is also to be noted that the order in the other two suits said to have been contravened forbade only reporting of the proceedings in **those** matters. The words and photograph complained of in the present suit do not, *prima facie*, contravene those orders. In any event, if there be such contravention appropriate action ought to be taken in those other suits.

The freedoms of opinion, expression and the media in **Articles 32, 33 and 34** of the **Constitution** are fundamental rights, and although they are not absolute, they will not be lightly curtailed. At this preliminary stage I do not find any justification for issuing the interim injunction sought, and I decline to do so.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF FEBRUARY 2012**