



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL SUIT NUMBER 171 OF 2011**

**JONATHAN SOMEN..... 1<sup>ST</sup> PLAINTIFF**  
**DAVID SOMEN..... 2<sup>ND</sup> PLAINTIFF**  
**ACCESSKENYA GROUP LIMITED.....3<sup>RD</sup> PLAINTIFF**  
**VERSUS**  
**ROBERT ALAI..... DEFENDANT**

**RULING**

This is a Notice of Motion dated 11<sup>th</sup> May 2011 filed on behalf of the plaintiffs. It was brought under section 3A of the Civil Procedure Act (Cap.21 Laws of Kenya), as well as Order 40 Rule 2(1) and Order 51 Rule 1 of the Civil Procedure Rules.

Prayers 1 and 2 and 3 of the application have been spent. Prayer 4 and 5 are the substantive prayers which are alive. Prayer 4 is for an ordinary injunction pending hearing and determination of the case. Prayer 5 is in the form of a request for a mandatory injunction by way of retracting what has been published.

Though this application is unopposed, I will not grant prayers 5. This is because granting the prayer will have the effect of substantively determining prayer (b) in the plaint. A main prayer in the suit cannot be determined at an interlocutory stage. The case authorities cited do not address this issue.

I therefore allow the application and grant prayer 4. I decline to grant prayer 5. Costs of the application are awarded to the plaintiffs.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of July 2011.**

.....  
**GEORGE DULU**  
**JUDGE**

**In the presence of**

Ms Gulenywa for Plaintiffs  
No appearance for Defendant  
C Muendo – court clerk