REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 398 OF 2000

MICAH CHESEREM.....PLAINTIFF/APPLICANT

VERSUS

IMMEDIATE MEDIA SERVICES.....1ST DEFENDANT/RESPONDENT

KIPRONO ARAP KEMEI.....2ND DEFENDANT/RESPONDENT

OLUOCH AKECH.....3RD DEFENDANT/RESPONDENT

NYAMBURA KAMAU.....4TH DEFENDANT/RESPONDENT

WANGOMBE MUTAHI.....5TH DEFENDANT/RESPONDENT

RULING

In the Chamber Summons dated 13th March 2000 supported by the affidavit of same date plus annextures thereon, the applicant Micah Cheserem, is praying that this Court

"be pleased to grant an injunction to restrain the defendants and each of them whether by themselves or their servants or agents or otherwise howsoever, from publishing, circulating or disseminating in any manner whatsoever the words concerning and in respect of the plaintiff in the article published in the issue of "The independent" Vol 1 No 6 of 17th March 2000 or any words in any manner defamatory of the plaintiff in any manner whatsoever until the hearing of this suit."

The applicant in this Chamber Summons before me is the plaintiff in the main suit in which the Chamber Summons application has been filed against the defendants. Properly, this Chamber Summons should have referred to the plaintiff as the applicant, and to the defendants as the respondents and the prayer I have quoted above should have had the word "respondents" where the word "defendants" appears and the word "applicant" where the word "plaintiff" appears. For the purpose of this ruling therefore, I will be referring to the plaintiff as the applicant and to the defendants as the respondents.

The first respondent, Immediate Media Services, is a firm carrying on business in Nairobi and other places in Kenya and is the publisher of a magazine known as "The Independent".

The second respondent, Kiprono Arap Kemei, is a male adult the editor of the aforesaid magazine. The third, fourth and fifth respondents; namely Oluoch Akech, Nyambura Kamau and Wangombe Mutahi respectively; are adults and distributors of the said magazine.

The applicant is represented by Mr JA Ougo from M/s Oraro and Company, Advocates, while the respondents are represented by Mr K A Nyachoit from Ms K A Nyachoti and Company Advocates.

The applicant is a public figure in Kenya, a well known personality in the financial sector and is presently the Governor of the Central Bank of Kenya. His complaint is that "The Independent" magazine in its issue Vol 1 No 6 of March 17th 2000 and more particularly the lead article under the banner headlines "Central Bank Boss in major sex scandal" made a scathing unwarranted and scandalous attack against his personal character, integrity and moral standing. He has annexed to his affidavit a photocopy of the article complained of and says the author of the said article falsely and maliciously alleged that he (the applicant) had used his position to entice married ladies to enter into illicit relationship with him and more particularly that such relationship had led to a breach of the marriage of a lady employed by Trust Bank whose husband allegedly employed by Barclays Bank of Kenya was compromised by payment of substantial sums through a settlement allegedly by lawyers engaged by him and the husband. There are allegations about the applicant's salary, children's education in Britain and motor vehicles.

At the end of the article, the respondents say:

"More to follow on the man entrusted to oversee Kenya's financial sector."

The applicant says the article does not contain the truth. It is false and scandalous, disparaging and maliciously defaming. He says the injuries caused to him cannot in any way be compensated in any form and that even if he succeeds in the suit, the respondents, from the nature of their publication are unlikely to compensate the applicant in damages awarded by the Court in any manner.

The respondents on the other hand, oppose this application arguing that the applicant can be adequately compensated through payment of damages and that no evidence has been adduced to prove that the respondents are incapable of paying the damages that the Court may award. They accept having published the article complained of but deny that the article was a scathing, unwarranted and scandalous attack against the applicant's personal character, integrity and moral standing. They claim that the article was based on information given at the first respondent's offices which information was believed to be true and which the second respondent had no reason to doubt its accuracy. They say the article was reported without any intention to defame, without malice and assert that any views expressed therein are based on fair comment.

The second respondent goes on to say that as a journalist, he has the right to freedom of speech and expression as guaranteed by the Constitution of Kenya and that such freedom cannot be taken away from the press which freedom is in the public interest for shaping up the society. It is therefore submitted for the respondents that where public interest conflicts with private interest, the public interest shall prevail and that that is the position in the instant case making the case unsuitable for the grant of an injunction.

The suit or the main suit which this Chamber Summons is referring to, and in which the Chamber Summons is herein filed, is yet to be heard. The plaint has been filed by the applicant/plaintiff, but the defence is yet to be filed by the respondent/defendants. In other words, pleadings in the main suit are not yet complete. The stage for hearing the main suit has not been reached. I am not therefore hearing the main suit. I am only hearing an application in the main suit. That application is a Chamber Summons which does not and should not determine the main suit. The main suit will be heard and determined later. That is when *viva voce* evidence will be adduced, tested, canvassed, evaluated and determined.

I am therefore handling this matter simply because the applicant has come with this Chamber Summons application under XXXIX rule 2 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. The applicant is saying he is apprehensive the respondents may carry out their promise to the public to publish more such articles about the applicant. He seeks the court's protection from that further publication. It means the injuction the applicant is seeking in this Chamber Summons is temporary. It is an interlocutory injunction different from the permanent injunction the applicant, as plaintiff, is seeking in prayer (a) of his plaint in the main suit if an interlocutory injunction is granted therefore, it will subsist only up to the determination of the main suit as prayed in the Chamber Summons.

I should add that although I was fully addressed on the facts of this case during the hearing of the Chamber Summons, learned counsel on both sides did not think much about the relevant law apart from

the two provisions of the Civil Procedure Act and Rules quoted in the heading of the application and two short paragraphs read to me by Mr Ougo pages 177 and 178 of the 14th Edition of the book of *Gatley on Slander* where I was being told that the Court has power to restrain by an injunction the publication of libels or slanders when satisfied that there is a reasonable apprehension that a defendant, unless so restrained, will continue to publish or repeat the publication of the defamatory matter of which complaint is made.

Maybe both counsel did not address me fully on the relevant law because it is not appreciated that the question of an injunction in defamation cases is treated in a special way. Here injunction is not treated in the way it is treated in other cases. I looked at the relevant authorities and considered the matter in the case of *Francis P Lotodo vs Star Publishers & Magayu Magayu* in HCCC No 883 of 1998 and found that though the conditions applicable in granting an injunction as set out in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 generally apply, in defamation cases those conditions operate in special circumstances. Those conditions have to be applied together with the special law relating to the grant of injunction in defamation cases where the court's jurisdiction to grant an injunction is exercised with the greatest caution so that an injunction is granted only in the clearest possible cases. The Court must be satisfied that the words or matter complained of are libelous. It must be satisfied that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse.

But how will the Court be so satisfied when the application for an injunction in a defamation action is, like in the instant case, filed at the initial stage? It is filed before pleadings are closed. How will the Court be so satisfied?

Further, even when the Court is satisfied that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse, can the Court grant an injunction where the respondent has the defence of qualified privilege or where the respondent is pleading justification or fair comment? We will be at a stage where the Court has not yet heard and seen witnesses testify. Their evidence has not therefore been tested, canvassed and evaluated. The respondent or defendant is pleading qualified privilege and therefore justification or fair comment, being a defence which defendants in actions which are not for defamation normally do not have. Does the Court grant an interlocutory injunction?

From the authorities and the law I considered in the case of *Francis P Lotodo*, I found that defamation cases are special actions as far as the granting of injunctions is concerned. This is because generally and basically, actions or cases of defamation bring out a conflict between private interest and public interest, and this is more so in Kenya where we have the country's Constitution which has provisions to protect fundamental rights and freedoms of the individual including the protection of freedom of expression.

In connection with the above see what Lord Coleridge CJ, as he then was said in the English case of *Bonnard and another vs Perryman* (1891-4) All ER 965 at page 968. He said

"It is obvious that the subject matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by an injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any rights at all have been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."

Years later Lord Denning MR came to say in the case of *Fraser vs Evans and others* [1969] 1 All ER 8 at page 10 as follows:

"There is no wrong done if it is true, or if it is fair comment on a matter of public interest."

At page 12 he said:

"It all comes back to this. There are some things which are of such public concern that the newspapers, the press, and indeed, everyone is entitled to make known the truth and to make fair comment on it. This is an integral part of the right of speech and expression. It must not be whittled away. The Sunday Times assert that, in this case, there is a matter of public concern. They admit that they are going to injure the plaintiff's reputation, but they say that they can justify it; that they are only making fair comment on a matter of public interest; and therefore, that they ought not be restrained. We cannot pre-judge this defence by granting an injunction against them. I think that the injunction which has been granted should be removed. The Sunday Times should be allowed to publish the article at their risk. If they are guilty of libel ....., that can be determined by an action hereafter and damages awarded against them. But we should not grant an interim injunction in advance of an article when we do not know in the least what it will contain. I would allow the appeal accordingly and discharge the injunction."

There are three things to note from that passage. First, the interlocutory or interim injunction was being sought in that case, to prevent publication which was to be done after the hearing and determination of the application for the injunction. Secondly, parties were aware of the article to be published and there was no dispute that the articles, when published, were going to be defamatory of the plaintiff. That was why the plaintiff was trying to prevent the publication. But the Court refused to grant the injunction although the Court was told by the parties that the articles were going to be defamatory. Thirdly, since the defendants were claiming were going to justify the defamation which was to be caused to the plaintiff, the defendants had to be allowed to publish the article, but with an element of a warning that they would publish the article at their own risk. That is for example, where publication had already been done and suit filed like in the instant case, if the defendants could be ordered at the end of the suit to pay Kshs 10 million without further publication, with further publication the defendants could end up being ordered, by the Court, to pay an additional Kshs 5 Million on account of the publication made after the suit had been filed, so that the total damages payable by them could be Kshs 15 million.

Having said the above, see what section 79(1) of the Constitution of Kenya which protects freedom of expression says:

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence."

That section is under chapter V of the Constitution containing provisions for the protection of fundamental human rights and freedoms. It sounds like what I have been quoting from the English cases. It means the rights, freedoms, principles and conditions I am discussing in this application are rights, freedoms, principles and conditions enshrined in section 79(1) of the Constitution of this country; and as I held in the case of *Francis P Lotodo*, those rights, freedoms, principles and conditions should be enjoyed by every news media, the press, newspaper, their journalists and every body in Kenya free from the drastic interference that may be caused by the granting of an interlocutory injunction, unless there is a substantial risk of grave injustice and the private interest in preventing the publication the applicant seeks to prevent outweights the public interest.

But that is on the basis that it is "in the public interest that the truth should out" when malice is discarded. The respondent or defendant must be saying the truth when the Court accepts his plea of justification of fair comment before evidence is adduced. The Court is trusting him when it refuses to grant an injunction at the stage and he should not abuse the trust. In other words, the Court in refusing to grant the injunction the plaintiff is asking for in defamation actions aims to protect a humane responsible, truthful and trustworthy defendant. A defendant devoid of malice. Short of that, defendants in defamation actions should not blame the Court when Courts grant interlocutory injunctions, as the constitutional provisions relating to fundamental rights and freedoms of the individual section 79, do not give the individual, even if it is a news media, including the press, newspapers, managers, editors, journalists and all those engaged in publishing, communicating or disseminating ideas and information, absolute freedom. Their freedom is subject to the freedom of other people. Their freedom is also subject to public interest, and they should do

to others what they would like those others do to them. Better; they should love their neighbour as they love themselves. Otherwise it is a fundamental right of every individual under this country's Constitution, see section 70(a), that the individual receives the protection of the law. That is why the applicant came to this Court with this Chamber Summons application.

In *Francis P Lotodo's* case, I refused to grant him the interlocutory injunction he wanted because I held the opinion that the public interest in the matter far out weighed the private interest of the applicant and saw no substantial risk of grave injustice being caused to him.

He had filed a suit alleging that the defendants had defamed him in various of their issues and had systematically published and/or caused to be published stories and allegations which were wholly untrue, malicious, libelous and extremely defamatory. While the defendants did not dispute publication of the words the plaintiff was complaining about, they had filed a defence in which they averred that those words were true, void of malice and libel and were therefore not defamatory and that even if they were defamatory, they were published under qualified privilege and therefore the plaintiff was not entitled to the orders he was seeking in the plaint.

When the main suit was pending, the plaintiff filed a Chamber Summons praying for an injunction to prevent publication of more stories about him by the defendants before the hearing and determination of the main suit. That was the application which was before me and I heard and decided it. I had had the opportunity to look at the plaint, the defence, the Chamber Summons and its supporting documents in addition to the submissions I heard. The opposition by the defendant in their replying affidavit in the Chamber Summons was substantially based on the issues in their filed defence- while the plaintiff based his Chamber Summons on the issues in the plaint including the apprehension that the defendants were going to make further publication.

In the instant case before me, while the applicant filed his plaint, the respondents have not yet filed their defence. I do not therefore know what the defence will contain and the documents filed by the respondents in opposition to the Chamber Summons do not give the sufficient indication as to what the defence of the defendants will be in the main suit.

Looking at the Law of Defamation Act, chapter 36 Laws of Kenya, there is qualified privilege of newspapers under section 7(1). But that is only if what was published was a fair and accurate report on a matter of public interest and malice is not proved. Once that qualified privilege does exist, it remains in existence even if in the course of publishing the fair and accurate report on a matter of public interest, a matter of defamatory to the plaintiff is included. That is qualified privilege as spelled out in paragraph 6 under part II of the schedule to the Defamation Act.

In this matter, the respondents have not filed their defence. I have said I do not know what that defence will contain. I do not know whether it will include a defence of qualified privilege. Even if that defence will be included, I do not know how the respondents will conduct or are conducting themselves. This is because the defence of qualified privilege can be lost by a defendant even after he has included it in his defence. This happens if the plaintiff demanded an explanation or contradiction as required under section 7(2) of the Defamation Act, and the defendant refused or neglected to give that explanation or contradiction or the defendant gave the explanation or contradiction in a manner not adequate or not reasonable having regard to all the circumstances.

I have not been told the applicant before me demanded from the respondents such an explanation or contradiction. I have not been told what the response if any, of the respondent was. Perhaps I have not been given that information because it is reserved for the main trial, that is for the hearing of the main suit. It may be because of the fact that pleadings in this suit are not yet closed.

Those are statutory procedural stages to be observed by parties in a libel case before the hearing of the main suit starts in Kenya. Otherwise a defendant in such a suit may, at the time the suit is filed against him, plead in his filed defence, a defence of qualified privilege and therefore a plea of "justification" or "fair comment" only to discover at the time the main suit is heard, that he has already lost that defence

through failure to observe the requisite technicalities of the law. That happens where the defendant has filed a defence. In the case before me, respondents/ defendants, have not yet filed a defence.

The law with regard to the granting of a temporary or an interlocutory injunction in defamation cases comes to the protection of the defendant where he has filed a defence so that it can be seen whether or not he has pleaded a defence of "justification" or "fair comment". Otherwise the defendant should show by affidavit that he is going to plead the defence of "justification" or "fair comment".

In the case of *Bonnard and another vs Perryman* mentioned earlier, it was said:

"Although the publication, if true, would clearly be libellous, an interlocutory injunction will not be granted where the defendant pleads justification unless the Court can be sure his defence cannot be sustained at the trial and that the plaintiff will receive more than nominal damages."

Here pleadings had been closed and the Court had no problem.

In *Fraser vs Evans and Others* also referred to earlier, it was held:

"The Court would not restrain the publication of an article, even though it was defamatory, when the defendants said that they intended to plead justification or fair comment."

In that case the defendants only intended to plead justification or fair comment. It was because they were to be restrained from publishing before they published the article the plaintiff feared could be published and defame him. The defendants admitted that the article, when published, would be defamatory of the plaintiff but said that, if they were sued, they would plead justification or fair comment.

The Court said it could not restrain the defendants when the defendants said they intended to justify the article or to make fair comment on a matter of public interest. The defendants had said that through a replying affidavit. The Court went on to say:

"That has been established for many years ever since *Bonnard v Perryman* (1). The reason sometime given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge; but a better reason is the importance in the public interest that the truth should out."

That case, from what I have just quoted, makes clearer the two reasons upon which Courts in England refused to grant interlocutory injunctions. Since Courts in Kenya do not need the service of juries and judges make their own decisions in civil cases it is the second reason which is of interest to me.

"The importance in the public interest that the truth should out."

Gatley on Libel 8th Edition from page 641 paragraph 1574 says:

"When once a defendant says that he is going to justify (the words complained of), there is an end of the case so far as an interim injunction is concerned."

That reads more or less, like a passage from Mr Richard Kuloba's book titled, "*Principles of Injunctions*" at page 102 where the subject of his discussion is "injunctions to restrain defamation". He states:

"When once a defendant says that he is going to justify the words complained of, there is an end of the case so far as a temporary injunction is concerned; and it will be refused even if the words complained of are *prima facie* libellous and untrue."

Mr Richard Kuloba is now a judge of the High Court of Kenya.

The learned author, like Mr Gatley, says the Court will intervene to stop further or future publication of

matter, slander or libel, which is injurious to the plaintiff. But at the same time to Court will not do anything which will unnecessarily interfere with the cherished principle of freedom of expressing the truth. "Accordingly", he adds, "Although the Court has jurisdiction to grant an interlocutory injunction to restrain a defendant from further publishing libelous matters of and concerning a plaintiff, this jurisdiction will be exercised with great caution. He conclude:

"The importance of leaving free speech enfettered is the strong reason in cases of defamation for dealing most cautiously and warily with granting temporary injunction. So no injunction will be granted where the defendant swears that he will be able to justify the words and the Court cannot say whether the libel or slander complained of is untrue."

The respondent/defendants in this Chamber Summons have not shown either by a filed defence or by a sworn affidavit that they will justify the words complained of. The replying affidavit they rely upon deponed by the second respondent Kiprono Arap Kemei constitutes a denial of the alleged defamation only. Paragraph 4 is the most important. It denies that the words complained of were defamatory and explains that the publication was based on information given at the first defendant's offices which information was believed to be true and the second respondent had no reason to doubt its accuracy and reported it without intention to defame and without malice and asserts that any views expressed therein are based on fair comment. The paragraph states – like this:

"That the contents of paragraph one and two of the plaintiff's sworn affidavit save that the publication of the "The Independent" in its issue Vol 1 of March 17th inclusive of the article complained of Central Bank boss in major sex scandal was not a scathing unwarranted and scandalous attack against the plaintiff's personal character, integrity and moral standing but to the contrary the same was based on information given at the 1st defendant's offices which information was believed to be true and which I had no reasons to doubt its accuracy and the said article was reported without any intention to defame without malice and any views expressed therein are based on fair comment."

I do not take what is being said in that paragraph or in any other paragraph of that affidavit, to mean that the respondents are swearing that they will be able to justify the words complained of either in the article published on 17th March, 2000 or in any articles that are intended to be published as promised at the end of the article complained of. I take into account Mr Nyachoti's submissions before me that if the applicant is alleging the article is defamatory and untrue, what the applicant is alleging will have to be proved by *viva voce* evidence at the hearing of the main suit and that the information which was published was so published by the respondents believing the same to be true and was published without any malice or intention to defame.

But in the absence of a filed defence containing a plea of "qualified privilege of the press" and therefore a plea of "justification" or "fair comment" and alternatively in the absence of the respondents' sworn affidavit, in the Chamber Summons, containing the aforementioned pleas, I do not take what is contained in the respondents' replying affidavit filed on 3rd April 2000 and the submissions by Mr Nyachoti to have included the respondents' swearing that they will be able to justify the words complained of and that they are going to plead justification or fair comment in their defence. If the respondents intend to do that, those facts should have been clearly and specifically deponed in an affidavit, if not in the replying affidavit which is already filed.

The law as I understand it is that those pleas be either in a filed defence or in a filed affidavit at the time of hearing an application for an interlocutory injunction. That is where a defence has been filed, those pleas must be in the filed defence. Where a defence has not yet been filed, those pleas must be in the respondents' filed affidavit. Where the pleas are neither in a filed defence nor in a filed affidavit, as in the matter before me now, I do not think the Court should accept or say that the respondents or defendants have those pleas and should not therefore treat the respondents as if they have those pleas. Consequently I will not treat the respondents herein as having those pleas and the case for an interlocutory injunction against the respondents does not end here because I should now move to the conditions for granting an interlocutory injunction as set out in the case of *Giella – vs - Cassman Brown* already referred to earlier.

The Court of Appeal for East African having stated, in that case that the conditions, for the grant of an interlocutory injunction were well settled in East Africa, went ahead to list the following three conditions:

"First, an applicant must show a *prima facie* case with a probability of success.

Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

Starting with the first condition, the respondents have not yet filed a defence to the applicant's plaint filed in this matter to institute this suit. The matter is still at an initial stage and I do not know how the defence, if filed, will look like. But I have seen the plaint and from the comments I have already made concerning some of the provisions of the Defamation Act, in the absence of a filed defence, I think the applicant has a *prima facie* case with a probability of success.

If that conclusion is not sufficient, let me move on to consider the second condition. The applicant says that having been already defamed by what the respondents have published, he will be defamed more if the respondents are left to publish further articles and he fears he will not be adequately compensated by an award of damages. Moreover the financial standing of the respondents is not known and their ability to pay high damages doubted.

The respondents on the other hand say that the applicant has failed to adduce evidence to show that they are incapable of paying the damages that may be awarded. But having said that, the respondents do not go on to show that they are capable of paying the damages. They merely say they can pay and stop there.

Look at the status of the applicant in society and the seriousness of the allegations already made against him. If the respondents do not succeed in the defence, they are already liable to pay heavy compensation in damages. If therefore the respondents are going to be allowed to publish more and similar articles about the applicant, the applicant may be defamed more not only increasing the quantum of the compensation to be paid, but the defamation may as a result be so injurious that he may thereby suffer irreparable injury which may not adequately be compensated by an award of damages.

That leaves me with the third condition in *Giella vs Cassman Brown*. This condition was not discussed by both advocates. The balance of convenience. But upon the basis that the publication complained of has already caused some injury to the applicant it could be stressed that if the interlocutory injunction is not granted, the respondents would make further publications from which the applicant will suffer more injury which may finish him completely.

The respondents whose defence is yet to be known, cannot convincingly claim that what is complained of is not defamatory and that therefore what is intended to be published is not going to be defamatory and they cannot go on to claim the plea of justification or fair comment on matters of public interest as it is not even known whether they will have the defence of qualified privilege of newspapers. In the circumstances, it is my opinion that the balance of convenience tilts in favour of the applicant as I think the inconvenience which the applicant will suffer by the refusal of the Court to grant the injunction is greater than the inconvenience which the respondents will suffer, if the injunction is granted. Indeed there is a substantial risk of grave injustice to be caused upon the applicant.

Before I conclude, I will try to correct three things. First, the right of a journalist to freedom of speech and expression as guaranteed by the Constitution of Kenya is not absolute and it is not correct for the respondents to say that that right cannot be taken away from the press. I have already discussed the limitation to freedom of expression elsewhere. Secondly, it is not sufficient, and I think it is dangerous and not good, for a journalist to disseminate information based solely on good faith. He should base the information on factual truth if he expects the law to protect him. Thirdly, it is not correct to say, as the respondent say, that:

"Where public interest conflicts with private interest, the public interest shall prevail".

This is public interest vs private interest in defamation actions and the end result is not always the same. The result can be in favour of the public interest or in favour of the private interest. If there is a substantial risk of grave injustice and the private interest in preventing the publication the applicant seeks to prevent outweighs the public interest, then the Court will declare that private interest prevails over public interest, and from my discussion in this Chamber Summons dated 13th March, 2000, that is exactly the way I am ending this ruling.

There being a *prima facie* case with a probability of success in favour of the applicant who may also suffer injurious and irreparable injury as compensation by way of an award of damages may not be adequate and the balance of convenience is tilting in his favour in this suit where it is not known whether the respondents have a defence of qualified privilege of newspapers and therefore a plea of justification on fair comments, it is my humble opinion that the private interest of the applicant far outweighs the public interest the respondents purport to serve as there is a substantial risk of grave injustice being caused to the applicant if the interlocutory injunction prayed for in the Chamber Summons is not granted.

Accordingly, the said Chamber Summons be and is hereby granted as prayed, the publication, circulation of dissemination being restrained by this interlocutory injunction relating only to publications done after the date of this ruling.

Dated and Delivered at Nairobi this 18th day of April 2000.

J.M.KHAMONI

JUDGE