

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 403 of 2008

JAMES KIMEU MULINGE.....PLAINTIFF /APPLICANT

-versus-

HEADLINK PUBLISHERS LIMITED.....DEFENDANT/ RESPONDENT

R U L I N G

The main prayer the Applicant wants be granted in this Chamber Summons dated 5th September 2008 is prayer number 3 which states: -

“THAT the defendant herein be restrained temporarily exparte by itself, its servants and/or agents from publishing or continuing to publish words defamatory to the Plaintiff until further orders of the court.”

I would have granted that prayer on the basis of what the Plaintiff’s learned counsel, Mr. Tollo, told me during the hearing. But there are a few things of concern to me. I am told the Defendant/Respondent exists and has an office continuing in its business of publishing and that was served with pleadings here including this Chamber Summons and hearing notice without acknowledging any of those services and that therefore has never responded in this matter. However, I do not comprehend why there should have been no response, especially when I note the inclusion of the word “*exparte*” in the prayer and the fact that the prayer, though including the term “*temporarily*” is not intended to exist “*pending the hearing and determination of the suit*”, but is to exist “*until further orders of the court*” in these proceedings where there is no prayer for an injunction in the plaint so that this prayer in the Chamber Summons has the legal effect of being an additional prayer to the prayers in the plaint in favour of a Plaintiff who may thereafter go to sleep following the obtaining of the said injunction for the purpose of only waking up when he feels he could be entitled to contempt proceedings.

Otherwise injunctions in defamatory suits used to be treated in a special manner different from injunctions in other civil suits though ordinarily no body cares about all that.

With all those in my mind, I do hereby decline to grant the orders asked for and therefore do dismiss this Chamber Summons dated 5th September 2008 with no order as to costs.

Dated this 28th day of November 2008.

J. M. KHAMONI

JUDGE

Present:

Mr. Tolo for the Applicant

Court Clerk- Kabiru