



Directline Assurance Company Limited v Macharia & 11 others (Commercial Case E328 of 2024) [2025] KEHC 284 (KLR) (Commercial and Tax) (22 January 2025) (Ruling)

Neutral citation: [2025] KEHC 284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E328 OF 2024
F GIKONYO, J
JANUARY 22, 2025**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED PLAINTIFF

AND

SAMUEL KAMAU MACHARIA 1ST DEFENDANT
BASHIR MBURU 2ND DEFENDANT
JULIUS ORENGE 3RD DEFENDANT
KELVIN MOGENI 4TH DEFENDANT
SALOME GITOH 5TH DEFENDANT
TOY AND SUNA HOLDINGS LIMITED 6TH DEFENDANT
DIAMOND TRUST BANK LIMITED 7TH DEFENDANT
EQUITY BANK KENYA LIMITED 8TH DEFENDANT
FAMILY BANK LIMITED 9TH DEFENDANT
I & M BANK LIMITED 10TH DEFENDANT
INSURANCE REGULATORY AUTHORITY 11TH DEFENDANT
ATANAS MAINA 12TH DEFENDANT



RULING

Interim injunction

1. The court gave directions on 7th day of January, 2025, on the Plaintiff's application dated 7th January 2025. But, on 15th January, 2025, parties agreed that the application be brought forward and further directions be given whilst parties comply with the earlier directions. Upon giving of further directions, the plaintiff sought for interim measure of relief in terms of prayers number 4 and 5 of the application.
2. Primarily: prayer 4 is seeking temporary injunctive orders pending the hearing and determination of the application restraining the 1st Defendant, from publishing, printing, distributing, airing or otherwise circulating false allegations to the effect that any insurance covers issued by it are illegal or in any manner invalid and that any claims made by or against policyholders in respect of such insurance covers will not be settled by it.
3. Prayer 5 seeks orders restraining the 1st Defendant from interfering with its business, management, operations and/ or affairs without its consent or further orders of the Court.
4. The application is supported by the grounds set out in the application and the supporting affidavit sworn by the Plaintiff's Acting Principal Officer, Sammy Kanyi on 7th January 2025.
5. The application has been opposed.
6. Dr. Kamau Kuria opposed the request. He stated that Mr. Mbogori's clients are hijackers of his clients' company. And that, interim orders sought will prejudice his client's freedom of enterprise.
7. Mr. Mbogori told the court that Mabeya J gave an order preventing Dr. Kamau Kuria's client from acting in any way in respect of the business of the applicant. Instead, he accused the 1st defendant of deeming to run the applicant company through the back door. He stated that, the acts by Dr. Kamau Kuria's clients are prejudicing the applicant. He took the view that, the respondents will suffer no prejudice if the adverts are stopped.
8. According to the applicant, in December 2024, the 1st Defendant, minority shareholder of the Plaintiff Company, has published false statements on various television and radio stations to the effect that insurance covers issued by the Plaintiff are illegal and invalid and that any claims made by or against policyholders will not be honoured; that the false statements aired have caused the Plaintiff's sales to drop by about 50% due to erosion of public trust and that the publications are contemptuous of this Court's orders of 4th October 2024 which barred the 1st Defendant from purporting to act for the Plaintiff in any capacity.

Analysis and Determination

Context and Scope

9. In the Supporting Affidavit of Sammy Kanyi at Paragraph 10 is stated: -
 10. That in addition to the media statements referred to in paragraph 6 above, during the month of December 2024, the 1st Defendant/Respondent caused to be aired and published, further advertisements on Citizen Television, Ramogi Television and Inooro Television in English, Kiswahili, Dholuo and Kikuyu respectively on a daily basis, explicitly alleging that Insurance



policies issued by the plaintiff were illegal and/or invalid and that settlement of claims could not be guaranteed. The text of the notice was as follows:

Royal Credit Limited the majority shareholder of Directline advises holders and prospective holders of motor vehicle insurance policies that any insurance covers issued by Directline Assurance Company are invalid. This is due to the illegal alteration of the Company's CR 12 imposing on Directline illegal shareholders and directors who are now running the company. Royal Credit Limited cannot guarantee payment of any claims by Directline as Sections 23,71 and 166 of the Insurance Act have been contravened. Under the prevailing circumstances Royal Credit Limited cautions against any purchase of insurance policy from Directline." Copies of screenshots of the said Advertisements are at pages 3 to 5 of Exhibit SK2.

10. The applicant seeks an interim measure of relief to stop the said advertisement pending the hearing of the application. The court will therefore, state only what is necessary to determine this request.

Issue

11. The specific issue is whether the Plaintiff has made a case for the grant of the interim orders of injunction to restrain the 1st Respondent from continuing to make or place the above advertisement or statements concerning the applicant pending the determination of the application for injunction.
12. Is the relief merited at this stage?

Power of court

13. A court of law has power to restrain a person from causing injury or further injury of any kind to another person's right or property. Order 40 Rule 2 of the Civil Procedure Rules.
14. The core complaint is a publication through advertisements which the applicant says has injured and continues to injure the applicant, its rights and business. Does the publication through advertisements in the media concerning the applicant pass the constitutional muster; exercise of right whilst respecting the rights and reputation of others. Art. 33(3) of the Constitution.
15. Consequently, requiring an order of injunction to stop it before the application is heard?

The threshold

16. The court takes a wider view of justice in determining such interim measure of relief in form of injunction; but, also seeks answers to the traditional questions in *Giella v Cassman Brown & Co Ltd*, (1973) E.A 385, at page 360 (Spry J), to wit: -
 - a. Whether the applicant has shown a prima facie case with a probability of success.
 - b. Whether, unless an interlocutory injunction is granted, the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.
 - c. If the court is in doubt, where does the balance of convenience fall?
17. This is the functional foundation for determining whether an injunction should be granted at this stage, to stop the advertisements in issue.
18. A prima facie case is established where the applicant shows an infringement of a right and probability of success upon trial.



19. On the face of the matters complained of, we probe whether the applicant has a right which has been or is threatened with violation? *Nguruman Limited v Jan Bonde Nielsen & 2 others* (Civil Appeal No. 77 of 2012) [2014] eKLR.
20. In this matter, the Plaintiff/ Applicant has shown that the 1st Defendant has widely published statements about the applicant and its business.
21. The statements relate to; shareholding and directorship of the applicant, the company's CR-12, the applicant's business which are issues that are directly in controversy in court amongst the parties herein. The court is yet to determine these issues.
22. Yet, the statements seem to make certain declarations on the shareholding and directorship of Directline, company's CR12, validity of insurance policies issued by it and settlement of claims that may arise there from.
23. Of particular relevance; the statements to the general public are to the effect that the insurance covers issued by the applicant are illegal and invalid and that any claims made by or against policyholders will not be honoured by it.
24. The statements are also being published by persons who are parties in these proceedings where the issues canvassed and conveyed in the advertisements, are live and in sharp controversy. And, it bears repeating that, the statements are being published to the general public through media with very wide national circulation.
25. The applicant is a company with separate legal personality; and has rights of enterprise and to run in accordance with the law. *Salomon vs. Salomon*. Its core business is insuring the general public, making it quite a serious statutory and public venture under guarded by statutory, government and prudential regulatory radar to protect the insuring public. In these circumstances, the statements in question are prejudicial to the company.
26. The publication does not pass the constitutional muster; exercise of right whilst respecting the rights and reputation of others. Art. 33(3) of the [Constitution](#).
27. Consequently, a publication of statements that injure the rights of another attracts the wrath of the law; and renders itself a perfect candidate for judicial remedy of injunction, deletion and correction. Art. 35(2) of the [Constitution](#).
28. The court is also aware of the orders of the court issued on 4th October, 2024 amongst others: -
 - “ 5. That Pending the hearing and determination of the Suit herein, a temporary injunction is hereby issued restraining the 1st to 6th Defendants/ Respondents whether by themselves, their servants, agents or any of them from purporting to act for or on behalf of the Plaintiff/ Applicant in any capacity whatsoever.”
29. In granting the said orders, the Court (Mabeya J) noted that the matter was of great public interest because the Plaintiff is an insurance company dealing with hundreds of thousands of Kenyans making up the insured public.
30. Therefore, a prima facie case has been established.
31. The applicant asserted that the subject publications made from December 2024 are likely to cause irreparable harm to the reputation and business of the company. On prima facie basis, the applicant



has shown that pending the hearing of the application, it shall suffer irreparable harm that cannot be compensated by damages if the interim orders are not granted.

32. Placing the prejudice that the 1st respondent may suffer if an interim relief is granted stopping the advertisements on the scale against the damage and injury the applicant will suffer if the interim relief is not granted, the balance of convenience tilts towards stopping the advertisements.

Conclusion and orders

33. In the special circumstances of this case, the court thinks it ought to decide at once the need and efficacy of an interim relief pending the hearing of the application to avoid a situation where the 1st defendant may steal a march on the applicant or continues to injure the applicant whilst judicial proceedings are pending on the very issues canvassed and conveyed in the advertisements. It is only just that some interim measure of relief is granted at this stage.
34. Accordingly, the 1st defendant, his agents, assigns, employees or servants or any other person is restrained from publishing, printing, distributing, airing or otherwise circulating the advertisements set out in paragraph 10 of the affidavit by Sammy Kanyi or such other similar advertisements in respect of Directline Insurance Company Limited in any forum or site or language, until the application dated 7th January, 2025 is heard and determined.
35. This order be served upon the media or any forum or site that published the advertisement.
36. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 22ND DAY OF JANUARY, 2025.

F. GIKONYO M

JUDGE

In the presence of: -

Mbogori for the plaintiff

Nduta h/b for Dr. Kamau Kuria for the 1st, 2nd and 6th defendants

Ms. Arora h/b for Oraro for the 7th defendant

Ms. Yala for Nyaosi for the 9th defendant

Ms. Jan Mohammed for the 10th defendant

Ms. Morara for Rapando for 5th defendant

Ms. Esther Ang'awa h/b for Havi for the 11th defendant

N/A for Equity Bank

N/A for 12th defendant

