



**Ndambuki v Nation Media Group Ltd & another (Civil Suit E035 of 2021)  
[2025] KEHC 2219 (KLR) (Civ) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2219 (KLR)

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

**CIVIL  
CIVIL SUIT E035 OF 2021**

**JN MULWA, J**

**FEBRUARY 20, 2025**

**BETWEEN**

**JAPHETH KISILU NDAMBUKI ..... PLAINTIFF**

**AND**

**NATION MEDIA GROUP LTD ..... 1<sup>ST</sup> DEFENDANT**

**NGINA KIRORI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling determines the Plaintiff's application dated 23/02/2024 in which he seeks orders of interlocutory injunction to issue restraining the defendants by their agents and/or servants from further publication of false and defamatory stories concerning the plaintiff in relation to the demise of Mr. William M. Mutilangi in the USA.
2. The motion is premised on Order 40 Rule 3 of the Civil Procedure Rules (CPR), Section 1A, 1B and 3A of the Act and Article 31 and 33 of the Kenya Constitution, 2010; and the supporting affidavits of the plaintiff sworn on 23/02/2024 and 13/05/2024.
3. The grounds for the application are that upon the death of William M. Mutilangi in the USA the defendant published in its Sunday Nation Edition of 21/01/2024 and in its digital channel alleging that the plaintiff was linked with the death of the deceased in the USA and was contesting the release of his remains to his family for burial in Kenya.
4. The applicant therefore claim the said publication to be false, malicious and defamatory of him that has caused significant damage to his character and reputation and continues to escalate every day. On the basis that the defendant has failed to offer an apology upon demand, he now seeks the orders sought to be granted.



5. The defendant/respondent opposes the application by way of Grounds of Opposition dated 11/03/2024 as hereunder:-
  1. The application has not met the test of the grant of an interlocutory injunction.
  2. The application in seeking an order of the first defendant's print and digital channels is seeking the grant of a mandatory order of injunction.
  3. The application seeks the grant of a mandatory injunction directed at the defendants to publish a retraction and apology of the allegedly defamatory articles.
  4. A mandatory injunction ought not to be granted at the interlocutory stage.
  5. No special circumstances have been established to warrant the grant of a mandatory injunction at the interlocutory stage.
  6. Courts ought to be cautious in granting temporary orders of injunction in defamation cases due to competing interests between private interest to reputation and public interest to free speech and the right to know especially in matters touching on public interest.
  7. A court ought not issue a temporary injunction in a defamation matter as doing so will curtail the freedom of expression and freedom of the media as enshrined in Article 33 and 34 of the constitution especially in relation to matters of public interest.
  8. A court ought not to issue a temporary injunction in a defamation matter without first having seen the defence raised by the defendants.
  9. The applicant has not established sufficient cause for the grant of the prayers sought in the application.
  10. Other grounds to be set out in the replying affidavit of Ngina Kirori to be filed herein.
6. Further, the defendant/respondent filed a replying affidavit sworn by the 2<sup>nd</sup> Defendant Ngina Kirori and filed herein.
7. The parties have also filed their respective submissions.
8. The court has carefully considered the parties respective pleadings and submissions.
 

Issues for determination

  - a. Whether the plaintiff/applicant has met the test for grant of an interlocutory injunction.
  - b. Who bears costs of the application
9. Order 40 Rule 2 CPR provides for Order of an injunction where there appears to be a breach of contract other injury whether compensation is claimed in the suit or not upon application by the plaintiff for a temporary injunction order to restrain the defendant from committing the breach or injury of a like kind arising out of the matter complained of, upon terms as the court may deem fit to grant.
10. In a defamation suit as is the issue herein, should the defendant's freedom of expression be curtailed by an order of temporary injunction, which right to freedom of expression is provided at Article 33 and 34 of the constitution?
11. The court in the case of Giella V. Cassman Brown [1973] EA 358 set out the tests for grant of injunction orders (including interlocutory injunctive orders) thus:-



- a. First, an applicant must show a prima facie case with probability of success.
- b. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be a quarterly compensated by an award of damages;
- c. Thirdly, if the court is in doubt it will decide an application on the balance of convenience.

**Prima facie case.**

12. In *Mrao Ltd vs. First American Bank of Kenya & 2 Others* [2003] KLR 123, the Court of Appeal defined a prima facie case as:-

“ a prima facie case in a Civil Application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation of rebuttal from the later”

13. Additionally, the above principles were further amplified in the case of *Alnashir Visram V. Standard Limited* [2016] eKLR where it was held that:-

“ 84 the big question is whether the words as published of and concerning the plaintiff are defamatory of his character and reputation.

A publication is considered to be defamatory of a person’s character as reputation if it conveys a meaning which is likely to either lower the persons reputation in the eyes of ordinary reasonable members of the community; lead those people to ridicule, avoid or shun or despise the person, or injure the persons reputation in business, trade or their profession”.

**Irreparable loss.**

14. It is defined as loss or damage as one that may not be compensated or atoned by an award of damages, one that keeps on accruing over and over, and so long as the malicious publication remains in the internet domain or in the print media.

15. The Court of Appeal in *Nation Media Group & 2 Others v. John Harun Mwau* [2014] eKLR rendered that:-

It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... on a different standard higher than that in prohibitory injunction is granted. Besides existence of exceptional and special circumstances, must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.

16. Interrogation of the impugned publication of and concerning the Applicant/Plaintiff in the Respondents newspaper, it is not in doubt that indeed the same caused the plaintiff mental anguish as they touched on very sensitive matters arising from the death of the deceased, and his estate.

17. Further, the court notes that as stated in the plaint, the plaintiff was under investigation by the Federal Bureau of Investigations (FBI) and Directorate of the Criminal Investigation (DCI) on allegations that he was one of the persons contesting for the remains for the remains of the deceased, yet he deposes that he did not know the deceased before his death and only got involved after his death as he was taxed with passing the information of the death to his family in Kenya, a fact confirmed by the deceased’s



brother Edward Nzesa Mutilangi in his affidavit he swore on 9/03/2024 in an attempt to shed light on the circumstances relating to the deceased death.

18. It is without a doubt that the impugned publications by the defendant to the world over raises serious issues.

It is the courts considered view that a prima facie case with a probability of success has been demonstrated by the plaintiff *Giella v. Caswsman Brown* (Supra).

19. Further, the continued publication and or staying or accruing publication of the impugned publication in the media, Print, Internet, YouTube and others will continue to cause irreparable injury and loss to the plaintiffs character pending hearing and determination of the suit.

20. As rendered in the *Alnashir Visram Case* (Supra,) the continued publication of the impugned articles will cause irreparable injury to the plaintiffs reputation in business trade and or his profession, yet the suit may take sometime to be heard and determined.

21. It is this court's finding that there exists special circumstances to warrant grant of the interlocutory injunction which in the courts opinion have been demonstrated as being not only exceptional but also special due to the unique circumstances surrounding the suit *Nation Media Group v. Harun Mwau Case* (Supra).

22. The court is acutely aware that freedom of expression and freedom of the media are anchored in the constitution of Kenya at Articles 33 and 34. However, these freedoms are not absolute but are limited. In *Mrao Ltd vs. First American Bank of Kenya & 2 Others* [2003] KLR 123, the Court of Appeal defined a prima facie case as:-

23. Article 17 and 19 of the International Covenant on Civil and Political Rights protects every person from unlawful attacks on their honour and reputation.

24. While not attempting to venture into the merits and/or otherwise of the suit that is pending hearing and determination, The plaintiffs reputation and character ought to be protected as ably captured in the case of *Renton Company ltd vs. Philip Kisia & 2 others* [2012] eKLR where the court rendered itself that every person shall respect the rights and reputation of others.

25. The upshot is that the court finds that the plaintiff/applicant has met the threshold for grant of an interlocutory order of injunction having demonstrated existence of a prima facie with high chances of success irreparable injury, loss should the order sought is not granted and that the balance of convenience tilts in favour of plaintiff.

26. Consequently, the application dated February 23, 2024 is granted in terms of prayers No. 3 and pending the hearing and determination of the plaintiff's suit.

27. The suit shall be listed for pre-trial Directions before this court on 17/03/2025.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

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**JANET MULWA**

**JUDGE**

