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Wamatangi v Mendenhall & another (Civil Case E020 of 2024) [2025] KEHC 2992 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2992 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL CASE E020 OF 2024

FN MUCHEMI, J

MARCH 13, 2025

BETWEEN

DR PAUL KIMANI WAMATANGI .... PLAINTIFF

AND

PRESTON MENDENHALL .... 1ST DEFENDANT

TATU CITY LIMITED .... 2ND DEFENDANT

RULING

Brief facts

1. The application for determination dated 29th July 2024 seeks for orders of an injunction restraining the defendants, their servants and/or agents from publishing any defamatory posts or publications with reference to the applicant regarding any transaction touching on the approval of the Tatu City Master Plan or any other defamatory utterances concerning the applicant until the hearing and determination of the suit.

2. In opposition to the application, the respondents filed a Replying Affidavit dated 28th October 2024.

The Applicant's Case.

3. The applicant states that he is a former Senator for Kiambu County and currently the Governor of the said county. He further states that on 10/07/2024, the 1st defendant convened a press conference and displayed his photograph bearing the title "Extortion of Foreign Direct Investors" and the 1st respondent without any lawful justification and with malice aforethought, negligently and intentionally uttered false allegations of extortion and defamatory words against him which words and/ or utterances were entirely unfounded, untrue, defamatory, false, hurtful, embarrassing and lacking any basis at all and have caused significant damage to his personal and political reputation.

4. The applicant avers that the defamatory words uttered by the 1st respondent on behalf of the 2nd respondent are that:-

> " But today I would like to say that unfortunately that the success of Tatu City has attracted opportunistic politicians in Kenya. Today we are blowing the whistle, we are blowing the whistle on extortion and extorting attempt by the Governor of Kiambu County its governor Kimani Wamatangi and his aide Salome Wainaina who is the CEC member for lands housing, physical planning.....today we strongly, strongly condemn Salome Wainaina and Governor Wamatangi for attempting to extort foreign direct investors, international investors in Kenya from New Zealand, the United States, United Kingdom and Norway. These individuals here have held up an approval for more than a year and a half the approval of Tatu City's new master plan. All the while they try to seize Forty Acres of land from Tatu City including land for Governor Wamatangi's residence. The value of the land they are trying to take from the Tatu City is Four Point Three Billion Shillings that's about Thirty Three Million US Dollars. I will tell you the story of the extortion attempt and provide documents today which you will be able to take with you. This here on the screen is our master plan. The current one we have is on the left. It was approved in 2019. The one on the right was submitted in 2022. Updating our master plan is something we have the right to do every three years. We make updates to our master plan to adapt the development of Tatu City to Kenya's dynamic market. For example, when we find that we need more affordable housing, we might see a higher demand for affordable housing, we might see that we need more schools, we might see that we need more areas for call centres that create thousands of jobs. So at that point when we understand the demand for the market we evolve the master plan to meet the market demand. Its an arduous consultative legal process that we follow in order to update the master plan and we follow that process to the letter of the law. In 2022, we submitted the amended master plan to the Ministry of Lands and Physical Planning for its initial review....In June 2023, the National Director of Physical Planning invited further comments on the amended master through a newspaper advertisement which you can see through right here. After sixty day period without substantial feedback, or any objection the National Director of Physical Planning prior to approving the new master plan for Tatu City sought a letter of no objection from the Kiambu County Government. This was done according to the provisions of the Physical & Land Use Planning Act 2019. This is also where Salome Wainaina and her boss Wamatangi sought to usurp the National Authority and control of the master plan themselves and they used it as an opportunity to extort Tatu City. So where in this nice plan did Salome and Wamatangi find an opportunity to extort us. Its right here in the yellow blocks of land....They wanted the land for free. Even a parcel for the governor's own house. The governor and Salome visited us at Tatu City and told us the same to our face. Free land, free land, free land. There was a big, big focus interestingly on the land for the governor's own residence. In the meeting the governor and Salome would not hear of the laws and requirements for compensation. They didn't want to hear of the laws and requirements of compensation. They didn't want to hear it at all. They said that the Tatu City master plan which is key....would not be approved until they got their land. So I ask what does a politician and a bureaucrat, what is their best tactic to extort a business. Delay, delay, delay. We sought three additional meeting with the governor to put forth this clear legal requirement for Kiambu County to acquire public purpose land...but the governor never turned up. This is how he treats the biggest foreign direct investor and job creator in Kiambu County he doesn't turn up unless he gets free land. As one of the largest foreign investors in Kenya we won't acquiesce to extortion by two members of the Kiambu County

Government. Governor Wamatangi is abusing public office to thwart legal processes. He is a barrier to foreign direct investment in Kenya and he is a destroyer of youth job creation in Kiambu County. Tatu City estimates that the delay by Governor Wamatangi has cost the county and the county more than sixteen billion shillings that's about a hundred and twenty five US million dollars in additional investment in the country and county and it has also cost four thousand new jobs for young Kenyans. And what about CEC member Salome Wainaina. I have met her a few times and say that I struggle not to call her the Governor Chief extortion officer. Oops I just did that. She is aiding and abetting extortion by the governor. She is harassing local and foreign investors and she is destroying youth job creation in Kiambu County. This comes at a huge huge cost in Kenya.

5. The applicant states that the said defamatory words were broadcasted in various media houses and stations to wit, Kameme TV, Kenya Broadcasting Corporation (KBC) Channel 1, Kenya Television Network (KTN) LLN online platform and MN updates. The applicant further states that the said defamatory words were reported in newspapers namely the Standard Newspaper of 11th July 2024 at page 31 bearing the headline "Kiambu County on the spot for blocking developer's new Master Plan".

6. The applicant avers that the words uttered by the 1st respondent in their ordinary meaning meant and were construed by reasonable members of the society to mean that the applicant is a corrupt person and not worth of holding public office; the applicant extorts from foreign direct investors, international investors in Kenya from New Zealand, the United States, United Kingdom and Norway; the applicant has sought to usurp the National Authority and control of the master plan himself and used it as an opportunity to extort Tatu City; the applicant is an extortionist; the applicant is ought to grab private land; the applicant's integrity is questionable and unethical; the applicant is a barrier to foreign direct investment in Kenya and he is an impediment of youth job creation in Kiambu County; the applicant uses his aide Salome Wainaina as the chief extortionist; the applicant has cost the county and the country sixteen billion shillings, that's about a hundred and twenty five US million dollars in additional investment in the country and county and has also cost four thousand new jobs for young Kenyans; the applicant does not turn up for official meetings unless enticed with free land and the applicant is generally a corrupt person thus not fit to hold public office. The applicant argues that the words complained of are not true as alleged by the respondents. Further, the applicant argues that the defamatory words have painted and continue to paint him as a corrupt leader who does not deserve to hold any public office.

7. The applicant states that he continues to receive very many calls and queries from clients, constituent members, potential investors on the contents of the said defamatory utterances and publication by the respondents which continue to disparage his reputation and has affected the service delivery of the county government to its people therefore affecting revenue collection and allocation. Furthermore, the applicant avers that members of the county assembly called him informing him of the defamatory statements and that the said statements were posted on social media platforms such as Twitter, Facebook, YouTube channels which constitute an audience of over a billion viewers monthly where people have continued to make comments on the same.

8. The applicant states that due to the implications of the defamatory statements, he was forced to seek a press conference on 11th July 2024 to clarify the position of the county government of Kiambu.

9. The applicant avers that the utterances by the respondents have put his employment and that of his office in jeopardy and he may risk removal from official office on false allegations.

10. The applicant states that in a letter dated 14th July 2024 responding to an invitation to meet the Kiambu County Government on the Tatu City Master Plan, the 2nd respondent in a show of arrogance

wrote that : “Frankly, Tatu city finds itself too busy to respond to the wrongs of a governor.” The applicant further states that the same continued to be circulated and published on online platforms to his detriment and reputation garnering a lot of views within the county, country and internationally.

11. The applicant argues that the said actions by the respondents have a net effect of discouraging potential investors from investing in Kiambu County to the detriment of the people of the county. Further, the respondents offending publications are actuated by malice and contains statements which are false, unjustified and defamatory. Additionally, the respondents did not bother to seek clarification of the information contained in their utterances and publications.

12. The applicant avers that the respondents have failed to apologize or withdraw the defamatory statements and/or article and he has suffered and continues to suffer substantial damage to his reputation which has been brought into scandal, odium and contempt.

13. The applicant states that the county of Kiambu headed by him risks suffering huge losses on account of the false and malicious publication as the respondents have categorically asserted that he is an extortionist.

14. The applicant avers that the said defamatory words were untrue, reckless, malicious and defamatory in their ordinary meaning and were intended to damage his reputation and dignity as a consequence he has further been brought into serious public humiliation, ridicule, odium and contempt. The applicant further avers that reasonable members of the society have linked and continue to link him to involvement in graft and usage of underhand tactics to abandon his constitutional role as the governor for Kiambu County.

15. The applicant states that he has suffered a general loss in his profession and calling, and serious injury to his dignity and self confidence as a result of the distress and embarrassment suffered without any basis or justification on the part of the respondents. The defamatory words have caused pain, anguish and mental torture to him.

16. The applicant states that there is a high likelihood that the respondents will continue holding press conferences and publishing articles and or statements about him unless restrained by the court.

The Respondents’ Case.

17. The respondents state that the instant application is frivolous, a sham, inherently incompetent and amounts to a blatant abuse of the due process.

18. The respondents state that they convened a press conference on 10th July 2024 to blow the whistle on the applicant’s attempts to extort them of land worth a colossal amount of four point three billion shillings for his own selfish gain to their detriment and the detriment of the citizens of Kiambu County. The respondents further state that the applicant abused his position as the governor of Kiambu County to seize land from Tatu City for the construction of his private residence with no intention to pay for the same forcing them to convene the press conference to protect their interests of Tatu City and expose the barriers the applicant and his aid through their conduct have placed on foreign investments in Kiambu County and the impact of the same on the residents of Kiambu County and the economy of the country as a whole.

19. The respondents aver that through a letter dated 7th May 2024 addressed to the National Director, State Department for Lands and Physical Planning, they responded to the demands made by the County Government of Kiambu on the amended Tatu City Local Physical and Land Use Development Plan. The respondents further aver that through various correspondence, they have been following up on getting a letter of no objection from the county government of Kiambu noting that it has complied

with all the relevant laws. However their plans have severely been curtailed by such corrupt acts by the applicant hindering progress in key areas.

20. The respondents state that it was in public interest that they convened the press conference to expose the extortion of foreign investors which has an adverse effect on the country's ability to attract investment. The press conference was necessary to expose the ills perpetuated by the applicant as the governor of Kiambu County against Tatu City and restore the allure of the country as the hub for foreign investment. Furthermore, those corrupt actions have become a significant obstacle to both the county and national development as the individuals involved prioritize their own selfish interests over the well being of the people.

21. The respondents argue that by bringing those issues to light, the press conference aimed to hold those officials accountable and highlight the urgent need for transparency and ethical governance in order to foster growth and progress not just for the people of Kiambu but for the entire nation.

22. The respondents state that the statements made at the press briefing were true and justified and were informed by their interactions with the applicant as governor of Kiambu county and his aid. The applicant's attempt to forcefully seize land by leveraging the approval of the Tatu City Master Plan amounts to extortion and an abuse of public office and could not be left to stand making the press conference in question a matter of urgency to expose and combat corruption in the country. The respondents further state that the statements made at the press briefing were true and as such the applicant's description of the same as defamatory is deliberately misleading and an attempt to gain sympathy from this honourable court. Additionally, the respondents state that the applicant cannot hold them responsible for how the public receives and interprets the truth and the courts should not be used as an avenue to muzzle whistle blowers on corrupt practices in the county government.

23. The respondents aver that the applicant's conduct is unbecoming of a public officer of his calibre and influence. The applicant has wielded his immense influence as a tool to intimidate investors into doing his unlawful bidding and has become a barrier to foreign investment as no investor wishes to be extorted out of their hard earned gains.

24. The respondents argue that the applicant's demands to be given land for his private residence without just compensation by leveraging the Tatu City Master Plan is sufficient evidence of extortion and they were justified in their press briefing to describe his conduct and that of his aid as extortionist.

25. The respondents state that the applicant's press conference was an unfortunate attempt to garner the sympathy of the public by painting a deceitful picture of Tatu City as an aggrieved bully attempting to pressure the county government of Kiambu to do his bidding.

26. The respondents reiterate that the statements issued during the press conference was a true characterization of the conduct of the governor and his aid towards Tatu City and the same was purposed to expose the extortion attempts against Tatu City and not to disparage the governor, his aid or the county government of Kiambu. Further, the respondents state that Chapter Six of *the Constitution* requires all state officers including and especially the persons in positions of power such as the applicant to conduct themselves in a manner that avoids any conflict between their personal interest and official duties and every citizen has an obligation to ensure that state officers uphold the highest standard of integrity when discharging their official duties by exposing those who contravene the provisions of Chapter Six of *the Constitution*.

27. The respondents aver that the court has an obligation to aid citizens in the pursuit of good governance by protecting whistle blowers against frivolous suits like the instant one and embolden more people to come out and expose persons who abuse public office.

28. The applicant filed a Further Affidavit dated 15th November 2024 and states that pursuant to Section 56 of the *Physical and Land Use Planning Act* (Cap 303), Part 1 & 7(h) of the Third Schedule to the *Physical and Land Use Planning Act* and Regulation 10(1) to (9) of the Physical and Land Use Planning (Development Permissions and Control) (General) Regulations 2021, the Kenya Institute of planners via its letter dated 15th July 2024 communicated that although they sympathised with the plea of the developers of Tatu City, they underscore the importance of reservation of land for public purpose and public utility allocations in plan preparation and subsequent surrender based on *Physical and Land Use Planning Act* 2019 and the attendant regulations.

29. The applicant avers that the county government of Kiambu in line with the law relating to land sub divisions which require the surrender of land for public purpose to revert to the county government in order to facilitate their utilization for public purpose. Consequently the county government called upon Tatu City to surrender land set aside for public purpose through the letter dated 16th April 2024 by the County Executive Committee Member responsible for matters relating to physical and land use planning.

30. The applicant avers that the facilitation of utilization for public purpose includes public housing as defined by the *Land Act* 2012, which public housing encompasses the construction of the official governor's residence in line with the requirements of the Salaries and Remuneration Commission (SRC) as per SRC letters dated 20th May 2019 and 14th August 2020.

31. The applicant states that he has never demanded land from the respondents for construction of his own private residence.

32. The applicant states that the Tatu City Master Plan contains parcels of land set aside for public purpose. The respondents therefore fail to appreciate the provisions of Article 62(2) of *the Constitution* of Kenya which provides that public land shall vest in and be held by a county government in trust of the people resident in the county.

33. The applicant avers that the respondents were not whistle blowing on anything but they were out to defame him. Furthermore, whistle blowing is not a carte blanche for the respondents to mislead/ misinform the public and the respondents were under a duty to make sure that they acted in good faith and on accurate factual basis and supply reliable information to the public if any.

34. The applicant states that no public interest can be served by publishing or communicating deception as misleading people and purveying statements which are not true is destructive of the democratic society which does not therefore form the very essence of a democratic society. Hence no public interest can be served by the society being misinformed.

35. The applicant avers that the respondents have never reported any acts of extortion to any authorities such as the Ethics and Anti Corruption Commission or police station. Thus, the accusations of extortion by the respondents are baseless and amount to unsubstantiated allegations which are intended to defame the applicant.

36. The applicant states that the statements issued by the respondents and the publications are defamatory statements as they referred to him, were uttered and published by the respondents and were untrue. Further the applicant states that the said statements and publication caused him to be shunned and/ or exposed him to hatred, contempt and ridicule further disparaging his office, profession, leadership and calling.

37. The applicant states that it is in the public domain that the respondents are adversely mentioned in matters to do with tax evasion and money laundering contrary to public interest they avert to have

convened the press conference which went ahead to publish defamatory remarks against himself and the County Executive Committee Member in charge of physical planning.

38. Parties disposed of the application by way of written submissions.

The Applicant's/Plaintiff's Submissions

39. The applicant relies on the case of Cheserem vs Immediate Media Services (2000)2 EA 371 (CCK) and submits that in granting an injunction in defamatory cases as the instant one, the court must be satisfied that the words complained of are libellous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse.

40. The applicant further relies on the cases of Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR and Abno Softwares International Ltd vs Sammy Ocheing Onyango [2021] eKLR and submits that he has established a prima facie case with a probability of success. The applicant submits that he did not want private land for his own personal use and thus the words by the respondents that he never shows up for meetings unless he is enticed with land are defamatory.

41. The applicant submits that although freedom of expression is encouraged under *the constitution* of Kenya, the same does not extend to peddling falsehoods. Thus the law contemplates a scenario where the reputation and the right to have a person's dignity respected and protected as provided under Article 28 of *the Constitution*. Thus an injunction at the current stage is in consonance with the limitation of the right to freedom of expression. To support his contentions, the applicant relies on the cases of Bob Collymore & Michael Joseph vs Cyprian Nyakundi [2017] KEHC 9352 (KLR) and Renton Company Limited vs Philip Kisia & 2 Others [2012] KEHC 2808 (KLR) and submits that the freedom of expression should respect the rights and reputation of others.

42. The applicant submits that the respondents by maliciously defaming him by convening a press conference on 10th July 2024 and displayed his photograph bearing the title "Extortion of Foreign Direct Investors" and proceeded to utter the defamatory words violated his right and that calls for explanation or rebuttal from the respondents. Further, the applicant submits that the said actions by the respondents have a net effect of discouraging potential investors from investing in Kiambu County to the detriment of the people of the county since the respondents stated that he extorts foreign investors in Kenya from New Zealand, the United States, United Kingdom and Norway.

43. The applicant states that the respondents have not disputed holding such a press conference, uttering such words and making a PowerPoint presentation on the same.

44. The applicant relies on the case of Reynold vs Times Newspaper UKHL 45, 4 All ER 609, 2 AC 127 and argues that although the respondents have raised the defence of truth, there can be no truth in misleading the public. The applicant further submits that even though the media has the right to inform the public on issues affecting them so as to make informed choices on their leaders, once a person is defamed then their reputation is tainted forever and it is the society that and the individual who become losers. Thus the courts have strongly advocated for the protection of reputation of an individual as it is conducive to the public good and that it is in public interest that the reputation of public figures should not be debased falsely as the electorate need to make informed choices based on the information disseminated.

45. The applicant relies on the case of Philomena Mbete Mwilu vs Standard Group Limited (2018) eKLR and Gatley on Libel and Slander 6th Edition page 706 and submits that the alleged defences as pleaded by the respondents cannot in themselves mean that at the end of hearing the suit, the court will

believe their defences. Furthermore, the applicant submits that the respondents have still not filed their defence.

46. The applicant submits that the respondents ought to have reported the claim to the relevant authorities like the police and the Ethics and Anti Corruption Commission which they failed to do but necessitated the applicant to write to the Ethics and Anti Corruption Commission, the Director of Public Prosecution and the Director of Criminal Investigations to investigate the allegations of extortion as alleged by the respondents. To support his contentions, the applicant relies on the cases of Bob Collymore & Michael Joseph vs Cyprian Nyakundi [2017] KEHC 9352 (KLR) and Ole Sopia vs Kariankei (Civil Suit E003 OF 2023) [2024] KEHC 2744 (KLR) (29 February 2024) (Ruling).

47. The applicant submits that the respondents have already tried and convicted him without according him a fair chance to defend himself contrary to the principles of natural justice. The applicant further relies on the cases of Vickery vs McLean (2000) NZCA 338 paragraph *27* and Ukur Yatani vs Dido Ali Raso [2021] eKLR and submits that institutions charged with specific mandates should be allowed to conduct their work as they are established by the society.

48. The applicant further submits that for a defence of fair comment to succeed, the facts and the comments must be properly distinguishable. To support his contentions, the applicant relies on the cases of Adams vs Guardian Newspapers [2003] Scot CS 131 and Abno Softwares International Ltd vs Sammy Ochieng Onyango [2021] eKLR.

49. The applicant submits that his reputation has been tainted through the publications complained of and its business had been adversely affected; that the damage already suffered by him is grave and if the respondent is not restrained from further publishing the defamatory statements, he will suffer irreparably.

50. The applicant submits that the defamatory words were uttered during a live press coverage in full glare of the media, the public and the whole country. The defamatory statements were uttered carelessly and without any legal basis or justification and which words have harmed his reputation and greatly exposed him to public ridicule and contempt and have caused him emotional distress and unnecessary damage to his reputation.

51. The applicant further submits that the defamatory words were broadcasted in various media houses and stations and published in newspapers. The applicant relies on the cases of Ochieng Rauro vs Tatu City Limited (2019) eKLR; Ole Sopia vs Kariankei (Civil Suit E003 of 2023) [2024] KEHC 2744 (KLR) (29 February 2024) (Ruling); Abno Softwares International Ltd vs Sammy Ochieng Onyango [2021] eKLR; Ahmed Adan vs Nation Media Group Limited & 2 Others (2016) eKLR; Renton Company Limited vs Philip Kisia & 2 Others [2012] eKLR and Brigadier Arthur Ndoj Owuor vs Standard Limited [2011] eKLR and submits that his reputation is on the line and thus an injunction should issue to prevent such irreparable harm. The applicant further submits that no monetary compensation can recompense him as he has suffered and continues to suffer irreparable loss, damage and prejudice resulting from the respondents' publications which have not been withdrawn. The applicant further submits that in view of the fact that he is still a duly elected governor for Kiambu county, the said publication has an adverse effect on the running of the county and an injunction should be issued.

52. The applicant relies on the cases of Ole Sopia vs Kariankei (supra) and Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR and submits that the balance of convenience tilts towards granting the orders sought as that would stop further injury by the respondents. The applicant further submits that the same would stop further injury to the county as

the cations of the respondents have the net effect of negatively impacting investors who would want to invest in the county.

The Respondents'/Defendants' Submissions

53. The respondents rely on the cases of Mrao Ltd vs First American Bank of Kenya & 2 Others (2003) KLR 123 and Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR and submit that the applicants have not established a prima facie case with high chances of success as they have shown that they did not defame the applicant. The respondent further submit that the statements issued were substantially true and they have demonstrated the same through correspondence in their annextures. The respondents argue that it is a well settled principle of defamation law that truth is an absolute defence and no claim for defamation can arise from the publication of truthful information regardless of whether the applicant finds the information embarrassing or inconvenient.

54. The respondents submit that the applicant appears to rely solely on the argument that they are now embarrassed by the disclosure of their conduct. However, embarrassment, discomfort, or damage to personal pride does not suffice to establish a claim for defamation. The courts have consistently held that the law of defamation is not a shield for parties to hide behind when truthful information about their actions comes to light.

55. The respondents further submit that they have provided incontrovertible evidence confirming that the applicant attempted to manipulate them into issuing them land to which they had no lawful claim. The said evidence not only substantiates the truth of the statements but also underscores the public interest in exposing such conduct. The respondents submit that the applicant's claim is an abuse of the court process, seeking to use the judicial system as a tool to silence legitimate criticism and factual reporting.

56. The respondents argue that other than mere allegations, the applicant has not demonstrated what sort of irreparable damage he would suffer given that the averments are factual matters. The applicant's failure to provide specific, concrete evidence of how they will suffer irreparable injury absent the orders sought undermines their request for relief. Without a showing of harm that cannot be addressed through other legal means, their claim does not meet the stringent standard for injunctive relief. The claim of irreparable injury is speculative and insufficient.

57. The respondents submit that they have not repeated, endorsed, or otherwise reinforced the statements made during the press conference. That cessation demonstrates that the alleged defamatory conduct is not ongoing. The respondents further submit that their responsibility does not extend to how third parties have chosen to interpret, investigate, or disseminate the content of the press conference after the fact.

58. The respondents submit that any continued discussion or investigation of the news by third parties is beyond their control and cannot be attributed to their actions. The independent behaviour of the third parties does not create liability for the respondents particularly when there is no evidence suggesting that they encouraged or facilitated such discussions after the initial press conference.

59. The respondents submit that their lack of further engagement with the press conference issues and the independent actions of third parties absolve them of liability for any continuing harm.

60. The respondents argue that since the applicant has failed to show that he has a prima facie case with a probability of success, the court should not consider where the balance of convenience lies. The respondents argue that balance of convenience cannot and should not lie in favour of a party whose sole intent is to abuse the process of the court and is only intended to frustrate them.

Issue for determination

61. The main issue for determination is whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction in a claim based on defamation.

The Law Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction.

62. The principles of interlocutory injunction are now well settled. Those principles were set out in East African Industries vs Trufoods [1972]EA 420 and Giella vs Cassman Brown & Co. Ltd [1973]EA 358. Restating the said principles, Ringera J, (as he then was) in Airland Tours & Travel Limited vs National Industrial Credit Bank Nairobi (Milimani) HCCC No. 1234 of 2002 set them out as follows:-

a. A prima facie case with a probability of success at trial;

b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;

c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;

d. The conduct of the applicant meets the approval of the court of equity.

63. The parameters within which a temporary injunction should issue in defamation cases has been discussed in Micah Cheserem vs Immediate Media Services (2002) 1 EA 371 where the court held as follows:-

> Applications for interlocutory injunction in defamation cases are treated differently from ordinary cases because they bring out a conflict between private and public interest. Though the conditions applicable in granting interlocutory injunctions set out in Giella vs Cassman Brown & Company Limited (1973) EA 358 generally applies in defamation cases, those conditions operate in special circumstances. Over and above the test set out in Giella's case in defamation, 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 and also that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse. Normally, the court would not grant an interlocutory injunction when the defendant pleads justification or fair comment because of the public interest that the truth should be out and the court aims to protect a human, responsible, truthful and trustworthy defendant.

64. These principles are also reiterated in Gatley on Libel and Slander 12th edition Swett and Maxwell at paragraph 25.2 where the learned authors state as follows:-

The jurisdiction to grant interim injunctions to restrain publication of defamatory statements is of a delicate nature which ought only be exercised in the clearest of cases…Thus the court will only grant an interim injunction where:-

a. The statement is unarguably defamatory;

b. There are no grounds for concluding the statement may be true;

c. There is no other defence which might succeed;

d. There is evidence of an intention to repeat or publish the defamatory statement.

A prima facie case with a probability of success at trial

65. What then constitutes a prima facie case? In the case of Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125,

> "The principles which guide the court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an 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....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by "prima facie case" but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms "prima facie" case, and "genuine and arguable" case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words "prima facie" are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant's interest to adopt a genuine and arguable case standard rather than one of prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly, a standard, which is higher than an arguable case."

66. The applicant herein must demonstrate that he has an arguable case for this court to grant the orders sought. The applicant also requires to show that publishing of such defamatory matter will continue harming his reputation, It has not been denied that there was a press briefing whose details have bn attached and explained in the supporting affidavit. Photographs of the persons present have been annexed. I have examined the press statements which makes weighty allegations against the applicant pointing at him as a corrupt person having made demands through an employee of the County Government. At this interlocutory stage, this court is not required to make any findings on the material placed before it for the reason that the parties will have their day in court to prove their cases. However, in my view the said utterances in the press briefing are prima facie defamatory by the applicant has been portrayed as a corrupt person who has demanded bribes through his officer.

67. The applicant has asserted that in holding the press briefing, the 1st respondent was actuated by malice. The 1st respondent has denied that allegation and maintains that the utterances made at the press briefing are true and that he was blowing the whistle on the applicant's attempts to extort them of land for the applicant's own selfish gain to their detriment. The respondents maintain that the applicant abused his position as the governor of Kiambu county to seize land from Tatu City for the construction of his private residence with no intention to pay the same. The respondents further argue that they

are not liable in defamation since they held the press briefing in the public interest in exercise of their constitutional right to freedom of expression guaranteed under Article 33 of *the Constitution*.

68. It is my view that the matters touched on public interest on the aspect of exposing corruption. The right to freedom of expression pursuant to Article 33 of *the Constitution* is not an absolute right but is limited under Article 33(3) of *the Constitution* which provides in no uncertain terms that in the exercise of the right to freedom of expression, every person must respect the rights and reputation of others. The limitation under Article 33(3) of *the Constitution* means that in exercising his freedom of expression, the 1st respondent was enjoined to ensure that he made utterance that were true and did not vilify the applicant or violate his constitutional rights which includes the right to human dignity, privacy and reputation.

69. On perusal of the record, the respondents have not filed their statements of defence. However, from the replying affidavit it is clear that the respondents intend to raise the defences of justification and fair comment to the claim. These defences if pleaded are absolute defences to the claim of defamation and ought to be backed by evidence. In the case of Philomena Mbete Mwilu vs Standard Group Limited (2018) eKLR the court held:-

> In most cases, these defences are proved or established by evidence tendered in the course of the main trial and for this reason, I wish to respectively disassociate myself with the holding of Khamoni J in the Micah Cheserem Case (supra) to the effect that where the defences of justification and fair comment are raised, the court should automatically refuse to grant an order of temporary injunction.
>
> In my considered view, the mere pleading of the aforesaid defences does not by itself mean that they will eventually carry the day after the suit is heard since as stated earlier, they must be established by way of evidence and the court may not know at an interlocutory stage whether the evidence will be available in the course of the trial or not.
>
> My view is that where such defences are pleaded at the interlocutory stage by way of affidavit before a defence is filed, the defendant should avail to the court some material on the basis of which the court can make a prima facie finding that the defences are likely to succeed at the main trial.

70. In the instant case, the respondents have availed correspondence between them and the County Executive Committee member which shows that one of the pending items following their meeting held on 9th December 2024 was the identification and allocation of 2 acres for the governor's house. The respondents have further annexed correspondence to the National Director State Department for Lands & Physical Planning responding to the comments made by the County of Kiambu on the issues raised in the letter dated 16th April 2024. At this interlocutory stage, it is difficult for the court to make a determination as the respondents have produced correspondence backing their allegations. It will be during the trial that respondents will shed more light by way of evidence to support their defence. Accordingly, it is my considered view that the applicant has established a prima facie case.

Irreparable Injury

71. In Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others [2016]eKLR the court considered Halsbury's Laws of England on what irreparable loss is and stated that:-

> " First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff

may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages."

72. Therefore, has the applicant demonstrated that he will suffer irreparable loss unless the injunction is granted, which loss would not adequately be compensated by an award of damages? The applicant has argued that due to the defamatory words from the respondents' press briefing, they have circulated widely through various media houses and online platforms which have a wide circulation and reports in newspapers. The applicant further argues that his reputation has been tainted and its business has been adversely affected.

73. In the case of Philomena Mbete Mwilu vs Standard Group Limited (2018) eKLR the court held:-

> The defendant has advanced the view that in this case, even if the applicant was to succeed in her action, an award of damages would be an adequate remedy. However, I am alive to the fact that in some cases such as the instant one, once a person's reputation is damaged or lost, no amount of damages can be sufficient to compensate the offended party for such a loss. I wholly concur with the view expressed by Mbogholi J in Ahmed Adan vs Nation Media Group Limited & 2 Others [2016] eKLR that reputation like a name is priceless.

74. In the instant case, the applicant has shown how his reputation is at stake due to the press briefing. Furthermore, the applicant is currently the governor of the county of Kiambu and this may adversely affect the county's business. It is my considered view that the applicant has shown that he shall suffer irreparably and cannot be compensated by way of damages.

Balance of Convenience Test

75. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

> The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the inunction will be greater than which is likely to arise from granting it.

76. Having considered the foregoing decision and facts presented herein, it is my considered opinion that the balance of convenience tilts in favour of the applicant because the inconvenience caused to him will be much greater than that caused to the respondents if the court, at the conclusion of this case finds that the utterances made at the press briefing were defamatory. As such, the balance of convenience tilts in favour of the applicant.

Conclusion

77. I thus find that the applicant herein has established a prima facie case to the standard required in defamation cases to warrant the court to exercise its discretion in his favour by granting an order of injunction. Accordingly, the application dated 29th July 2024 is merited and is hereby allowed in terms

of prayer 3 for an injunction to issue against the respondents in favour of the applicant pending hearing and determination of the suit.

78. The costs of this application shall bide in the suit.

79. It is hereby so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE