



Bogle v Samwel (Civil Case E040 of 2025) [2025] KEHC 8303 (KLR) (Civ) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8303 (KLR)

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

CIVIL

CIVIL CASE E040 OF 2025

JN MULWA, J

JUNE 12, 2025

BETWEEN

DORETTE BOGLE PLAINTIFF

AND

JOHN TEMBO SAMWEL DEFENDANT

RULING

1. The plaintiff's suit against the defendant was initiated by a plaint dated 27/01/2025 in which the plaintiff accuses the defendant of defaming her vide a radio broadcast on an online platform YouTube @I am_marwa sometimes in the year 2023, and by a further podcast on the same platform via his handle @JJ_Podcast title Breaking News! I am Marwa Defendants its passport Bro- Mr. Cecil on passy Saga & Distances himself of which the thumbnail is a picture of the plaintiff.
2. The plaintiff alleges that the defendant by the said podcasts has not abused her personally and image rights in violation of her statutory and common-law rights by using her photograph without her consent contrary to Article 31 of *the Constitution* and Sections 25 and 26 of the Data Protection Act for what she claims to be purely commercial and nefarious reasons .
3. The plaintiff thus seeks from the defendant numerous reliefs including restraining orders from uttering any defamatory statements against her, disseminating or causing to be disseminated any defamatory material against her, mandatory injunction compelling the defendant to take down, withdraw or remove from the online YouTube platform the said alleged defamatory, among others compensatory reliefs.
4. Simultaneous with the plaint, the plaintiff filed a Notice of Motion application dated 27/01/2025 in which she seeks orders;
 1. Spent



2. That this Honourable court do issue injunctive orders restraining the defendant by himself, his servants and or agents or anyone acting under his authority or direction from uttering any defamatory statements against the Applicant or further disseminating or causing to be disseminated any defamatory material of or concerning the applicant pending the hearing and determination of this application.
 3. That this court do issue a mandatory injunction compelling the defendant to take down, withdraw and/or remove from the online platform YouTube and all available online or offline platforms the video or its content titled Breaking News! I am Marwa Defends His Passport Bro- Mr. Cecil On Passy Saga & Distances Himself posted and/or uploaded and published and/or broadcast by him on 11th December, 2024 pending hearing and determination of the subject suit.
 4. The cost of this application be provided for.
 5. The application is supported by the plaintiff's affidavit sworn on an even date and grounds stated at its face. It is predicated upon provisions of Article s 28, 31 and 33(3) of *the Constitution*, Sections 1A, 1B and 3A and 63(c) & (e) of the *Civil Procedure Act* as well as Order 40 Rules 2, 3 and 491) of the civil Procedure Rules, 2021.
 6. The plaintiff case is that the impugned podcasts are grossly defamatory, fictionally, untrue, sordid, and immoral as they depict her as complicit in sexual deviance, morally bankrupt and part of a cartel of pornographers and sex trafficking and money laundering.
 7. Additionally, the plaintiff avers that as a school nurse in an institution in the USA the impugned podcasts are defamatory of her reputation as she constantly interacts with students and parents and therefore not only harming her wellbeing, mental health and also injurious to her profession.
 8. The Defendant/Respondent did not file any response to the motion nor 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

Analysis and Determination

9. Order 40 Rule 2 CPR provides for Orders 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 case herein, should the defendant's freedom of expression be curtailed by an order of temporary injunction, whose 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 person’s 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 person’s 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.

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 be issued, 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.

15. Interrogation of the impugned podcasts of and concerning the Applicant/Plaintiff, it is not in doubt that indeed the same caused the plaintiff mental anguish as they touched on very sensitive matters as deponed to. It is therefore the court’s view that a prima facie case with probability of success has been demonstrated by the plaintiff. As rendered in the *Alnashir Visram Case* (Supra,) the continued publication of the impugned articles will cause irreparable injury to the plaintiff’s reputation in her trade and profession.
16. It is this court’s finding that there exists special circumstances to warrant grant of the interlocutory injunction, which in the court’s opinion has been demonstrated as being not only exceptional but also



special due to the unique circumstances surrounding the suit in Nation Media Group v. Harun Mwau Case (Supra).

17. 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, they are limited as held by the Court of Appeal in the Mrao Ltd vs. First American Bank of Kenya & 2 Others [2003] KLR 123, see paragraph 14 above.

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

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.

19. In the end, the court is persuaded to grant the prayers sought by the Plaintiff/Applicant in her application dated 27/01/2025 in terms of prayer no. 3 and 4 thereof.

Costs of the application shall abide by the outcome of the suit.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE, 2025

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JANET MULWA

JUDGE

