



**Kabu v Nyaga (Civil Suit E286 of 2024) [2025] KEHC 8682 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8682 (KLR)

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

**CIVIL**

**CIVIL SUIT E286 OF 2024**

**JN MULWA, J**

**JUNE 19, 2025**

**BETWEEN**

**SIMON WAITHAKA KABU ..... PLAINTIFF**

**AND**

**SARAH NJOKI NYAGA ..... DEFENDANT**

**RULING**

1. The application for consideration is the Plaintiff's Notice of Motion dated 23<sup>rd</sup> December 2024 brought under section 3A of the *Civil Procedure Act*, Order 40 Rules 1 and 2 of the Civil Procedure Rules, and Order 51 Rule 4 of the Civil Procedure Rules, seeking inter alia the following orders:-
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. That pending the hearing and determination of the suit, an injunction order be issued compelling the defendants to remove, pull down, expunge and erase from all forms of media including print, broadcast, digital, and social media any form of defamatory statements whatsoever or similar words or statements or content of like effects relating to the Plaintiff.
  - v. That pending the hearing and determination of this Application, the Respondent, her agents, employees, or any other persons acting under her authority, be restrained from publishing, disseminating, or causing the dissemination of defamatory statements concerning the Plaintiff.
2. The application is premised on the grounds on the face of the application and Supporting Affidavit of his advocate one Kaimong Judith, sworn on an even date and a supplementary affidavit that he swore on 10/3/2025 with leave of court to the effect that the respondent had made and continues to disseminate



false defamatory statements of and concerning his reputation professional standing and integrity in internal memos social media and public forums, including false allegations of misconduct, fraud and personal impropriety which collectively have disrupted his workplace operations and jeopardized his ability to perform his role as CEO of his company, necessitating him to approach the court for reliefs he seeks by the motion before the court.

3. In response to the application, the Defendant/Respondent filed a Replying Affidavit she swore on 14<sup>th</sup> February 2025 deposing that the actions complained of were based on what she believed to have been true at the time and further that the statements attributed to the plaintiff, if made, being husband and wife, who are now estranged, and pending hearing and determination of a divorce in court, are substantially true and the course of the breakdown of their union.
4. The Respondent therein, proceeds to make detailed responses to the specific allegations on conflict of interest, and finally stating that the impugned statements are substantially true and therefore not defamatory of the Plaintiff/Applicant.
5. The application was canvassed by way of written submissions which the Applicant filed on 23<sup>rd</sup> April 2025. The Respondent did not file submissions.

### **Applicant's Submissions**

6. The Applicant sought to rely on Halsbury's Laws of England (4th Ed., Re-issue, Vol. 28, page 7, at paragraph 10) for definition of what constitutes defamatory statement as one that "tends to lower a person in the estimation of right-thinking members of society, cause him to be shunned or avoided, expose him to hatred, contempt or ridicule, or disparage him in his office, profession, trade or business" citing the cases of Musikari Kombo v Royal Media Services Limited [2018] eKLR; John Ward v Standard Limited [2006], affirmed by Selina Patani & another v Dhiranji V. Patani [2019] eKLR as to requirements that the Plaintiff has to comply with to establish defamation that:
  - i. the impugned words are defamatory;
  - ii. they refer to the Plaintiff;
  - iii. they were published by the Defendant; and
  - iv. they are false.
7. The Applicant further submitted that publication was a threshold question and cited the case of Wycliffe A Swanya v Toyota East Africa Ltd & another [2009] KECA 379 (KLR) the Court of Appeal had this to say:

"For the purpose of deciding a case of defamation, the Court is called upon to consider the essentials of the tort generally and to see whether these essentials have been established or proved. It is common ground that in a suit founded on defamation the plaintiff must prove: - "(i) That the matter of which the plaintiff complains is defamatory in character. (ii) That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed. (emphasis added) (iii) That it was published maliciously (iv) In slander, subject to certain exceptions, that the plaintiff has suffered special damage."
8. It is the Applicant's submission that the Defendant did publish the impugned statements and that the statements were defamatory and went on to point out instances in a table. (numbered 6.2.1).



## **Analysis and Determination**

9. I have considered the material filed herein by both parties from which the following ISSUES have been identified for determination:-
- a). Whether the Applicant/Plaintiff meets the threshold for grant of an interlocutory injunction pending hearing and determination of the suit.
  - b). Who bears the costs of the application.
10. An order for an interlocutory injunction is a discretionary remedy that is granted on the basis of evidence and sound legal principles. In an application for an interlocutory injunction, the onus is on the Applicant to satisfy the Court that it should grant an injunction. In the case of *Giella vs Cassman Brown* [1973] EA 358, the Court set out the conditions necessary for an order of injunction to be granted as hereunder;
- i. The plaintiff must establish that he has a prima facie case with high chances of success;
  - ii. That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages; and
  - iii. If the court is in doubt it will decide on a balance of convenience.
11. In the case of *Micah Cheserem v Immediate Media Services & 4 others* [2000] eKLR it was held that:-
- “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 & Co Ltd* [1973] EA 258 generally apply. In defamation cases those conditions operate in special circumstances. Over and above the test set out in *Giella’s* case, in defamation cases 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 humane, responsible, truthful and trustworthy defendant.”
12. It is therefore trite that an applicant must meet the threshold as stated in the *Giella v Cassmam Brown* case (*supra*).

## **Prima facie case**

13. 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”



14. 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**

15. 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.

16. 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 his trade and profession.
17. 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 as rendere in Nation Media Group v. Harun Mwau Case (Supra).
18. 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.
19. 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.



20. It is evident from reading of both antagonists affidavits, that there exists deep and painful emotions due to the breakdown of the parties marriage , which has now, or has a potential of escalating to a breakdown of their business created jointly over a long period of time, and the alleged conflict of interest, moral depravity, workplace immorality and misconduct as well as criminality conduct in the operations of the business.
21. At this interlocutory stage, the court is only required to consider at the face of the record whether a prima facie case has been established, as proof of the specific allegations must await proof at the hearing of the case on merit, see the case of Wycliff A Swanya v Toyota East Africa Ltd & Another (2009)KLR.
22. It is not in dispute that the impugned publications were authored by the defendant, indeed she admits having published and disseminated the same to all forums stated by the Plaintiff. By the said material facts and elements stated in learned judicial precedents cited, every utterance and post made by the defendant has potential of causing irreparable injury and loss to the plaintiff in his reputation, profession and business which as stated in Article 17 and 19 of the International Covenant on Civil and Political Rights ought to be protected. The Court of Appeal underscored the constitutional and societal value of reputation when it pronounced itself in the case of Musikari Kombo v Media Services Ltd (2018) KLR.
23. Further in the case of Brigadier Arthur Ndoj Owuor vs The Standard Limited [2011] eKLR the Court observed as follows:-
 

“In my view, with the facts placed before me, the applicant has demonstrated a prima facie case. The proof or otherwise of his case will be determined after the substantive hearing. His reputation is at stake in view of the content of the impugned statements, memos and publications in all media forums as stated. Once a reputation is lost, in my view, monetary damages might not be an adequate compensation. Monetary damages might be a consolation, yes, but they will never be an adequate compensation for a lost reputation. In the eyes of the public, once a person’s reputation has been damaged it will remain in memory possibly throughout his life.”
24. In the end the court is satisfied and persuaded to grant the prayers sought by the Plaintiff in his application dated 23/12/2024.
25. In the matter of costs, circumstances appertaining to the dispute between the parties hereto persuade me to order that each party bears its own costs of the application.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE, 2025**

.....

**JANET MULWA.**

**JUDGE**

HCCC E286 OF 2024 Page 3 of 3

