



**Saini v Nation Media Group Plc (Civil Case E047 of 2025)
[2025] KEHC 9893 (KLR) (Civ) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9893 (KLR)

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

CIVIL

CIVIL CASE E047 OF 2025

JN MULWA, J

JULY 10, 2025

BETWEEN

JAYESH UMESH SAINI PLAINTIFF

AND

NATION MEDIA GROUP PLC DEFENDANT

RULING

1. For determination is the motion filed by Jayesh Umesh Saini (hereafter the Plaintiff/Applicant) dated 3/03/2025 against Nation Media Group PLC (hereafter the Defendant/Respondent) seeking inter alia -
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit, the Honorable Court be pleased to issue a temporary injunction restraining the Respondent whether by itself, its agents, employee, servants, assigns, affiliates, subsidiaries or any other person acting under its instructions, from publishing, printing, circulating, disseminating or causing to be published any further defamatory, false and malicious statements concerning the Applicant.
 - d. That this Honorable Court does issue a mandatory order compelling the Defendant to publish an apology with equal prominence to the defamatory articles, retracting all false allegations made against the Plaintiff.
 - e. That this Honorable Court be pleased to order that the costs of this application be borne by the Respondent



- f. That this Honorable Court be pleased to grant such further orders and or other relief as it may deem just, expedient and fit to grant in the circumstance.
2. The motion is brought pursuant to Orders 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules (CPR) and Section 1A, 1B & 3A of the Civil Procedure Act (CPA) on grounds on the face of the motion amplified by the supporting affidavit deposed by the Applicant. The gist of his deposition is that he is a businessperson of good repute, operating various legitimate business ventures in Kenya and has over the years built a solid reputation in the medical, pharmaceutical and health industries. That for a significant period, particularly on 27/09/2024, 26/11/2024 and 12/02/2025, the Respondent has engaged in a sustained and deliberate campaign against him by publishing multiple articles containing defamatory, false, baseless and malicious statements despite repeated demand that they cease and desist from such conduct.
 3. The Applicant goes on to depose that he has never been involved in any fraudulent or corrupt activity let alone the schemes alleged by the Respondent, adding that the challenges captured in the impugned publications concerning the teacher's medical insurance scheme are due to the government's delay in disbursing funds and have nothing to do with him, and that the Respondent's false and defamatory publications have occasioned and continue to occasion him reputational injury meanwhile the Respondent's persistent publication of the defamatory articles despite protest is clear proof of malice therefore the motion ought to be allowed as prayed.
 4. The Respondent opposes the motion by way of a replying affidavit deposed by Sekuo Owino dated 22/05/2025. He confirms that on the dates in question the Respondent published a series of articles in its Daily Nation Newspaper however it is untrue that the said articles were defamatory of the Applicant as alleged. He goes on to depose that the articles were substantially true as they were based on Court proceedings within the public domain and are of public interest, that in the exercise of its freedom of expression is it allowed and has a public duty to report on any and all matters of public interest.
 5. The Respondent posits that the words complained of in their natural, ordinary or by innuendo do not depict the Applicant as imputed in his affidavit meanwhile the said articles were published as fair comment on matters of public interest. He concludes by deposing that the motion ought not to be granted as the same would be highly prejudicial to the Respondent having not been accorded an opportunity to be heard.
 6. In rejoinder by way of a further affidavit dated 05/06/2025, Jayesh Umesh Saini, maintains that none of the defamatory statements in the impugned publication were derived from Court proceedings and or pleadings in Versailles, which it purports to rely on, stating further that the Respondent's conduct of publishing and disseminating such unverified and false allegations under the guise of reporting on Court proceedings amounts to a deliberate and malicious attempt to injure his reputation. He surmises by deposing that the right to freedom of expression pursuant to Article 33 of the Constitution though protected, is not absolute and does not extend to shield publications of a defamatory nature or those intended to sensationalize and malign the reputation of an individual.
 7. Parties filed written submissions, which the court has considered alongside affidavit material placed before it.

Issues for determination concern: -

- a. Whether the Applicant has met the threshold for grant of temporary and mandatory injunctions?
- b. Whether the reliefs sought for are tenable in the circumstance?



- c. Who ought to bear the costs of the motion?
8. The Court proposes to address the first two (2) issues contemporaneously.
 9. In presenting the instant motion, the Applicant has relied on among others provisions of the CPA, Section 3A which specifically reserves “the inherent power of the court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court.” This Court’s inherent powers was judiciously addressed by the Court of Appeal in Rose Njoki King’au & Another v Shaba Trustees Limited & Another [2018] eKLR and requires no restatement. Alongside the above, the Applicant has saliently relied on Order 40 Rule 1 of the CPR that concerns the granting of temporary injunctions and or interlocutory orders. The principles governing the grant of interlocutory injunctions, was settled in the celebrated case of Giella v Cassman Brown & Co. Ltd [1973] EA 358.
 10. The Court of Appeal in Cheserem v Immediate Media services [2000] 2EA 371 while addressing itself on the principles for the grant of injunctions in defamation cases and citing the Giella Cassman Brown added that the Applicant has to satisfy the triple requirement of -:
 - a. Establishing his case only at a *prima facie* level.
 - b. Demonstrating irreparable injury if a temporary injunction is not granted and;
 - c. If in any doubts as to (b) by showing that the balance of convenience is in his favour.
 11. Further the Court of Appeal in Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR restated the principles governing the grant of interlocutory injunctions as enunciated in Giella case and observed that the role of the Judge dealing with an application for interlocutory injunction is merely to consider whether the application has been brought within the said principles, and in addition, the Court stated that the three (3) conditions apply separately as distinct and logical hurdles to be surmounted sequentially by the Applicant, thus an Applicant who establishes a *prima facie* case must further establish irreparable injury, being injury, for which damages recoverable can not be an adequate remedy; And where the Court is in doubt as to the adequacy of damages in compensating such injury, the Court will consider the balance of convenience; and finally, where no *prima facie* case is established, the Court need not investigate the question of irreparable loss or balance of convenience.
 12. The Court in Cheserem case (supra) particularly addressed itself as follows concerning granting of an interlocutory injunction in defamation cases -:

“.....in defamation cases those conditions operate in special circumstances. Those conditions have to be applied together with the special law relating to the grant of injunction in defamation cases where 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. It must be satisfied that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse.

.....

From the authorities and the law, I considered in the case of Francis P Lotodo, I found that defamation cases are special actions as far as the granting of injunctions is concerned. This is because generally and basically, actions or cases of defamation bring out a conflict between private interest and public interest, and this is more so in Kenya where we have the



country's Constitution which has provisions to protect fundamental rights and freedoms of the individual including the protection of freedom of expression”.

13. As to what constitutes a *prima facie* case with a probability of success, is one that a Court would conclude upon material presented before it, that there exists a right that has been violated or infringed by the opposite party that calls for explanation as held in the *Mrao v First American Bank of Kenya Ltd & 2 others* [2003] eKLR. The aforesaid decisions have been reaffirmed and applied by superior Courts in countless subsequent decisions, including the decisions cited in this case by the respective parties.
14. With the above in reserve, here the Respondent does not dispute publication of the impugned articles, but rebuffs the Applicant's allegation on defamation by stating that the articles were substantially true as they were based on Court proceedings (Annexure SO-1) within the public domain that piqued public interest.
15. The Respondent further argues that the articles were published as a matter of fair comment on matters of public interest. The Court has taken the liberty of reviewing the impugned publications appearing as (Annexure JUS-1), (Annexure JUS-2) and (Annexure JUS-4) respectively. The first article (Annexure JUS-1) canvasses issues surrounding the infamous Adani deal and appears to link the Applicant to a company that was involved in importation of the Covid-19 vaccines from Russia and a company with shares that operations and runs Social Health Authority (SHA) software. The second article (Annexure JUS-2) on its part links the Applicant to litigation concerning acquisition of a controversial software by the Government of Kenya wherein the Applicant alongside high ranking government officials have been sued for fraudulent misrepresentation and breach of contract. The third article (Annexure JUS-4) seems to insinuate and place a company purportedly owned by the Applicant at the center of a medical insurance controversy involving teachers medical scheme.
16. The Applicant has contended that aside from the inaccuracy of the said publications, the latter have affected his personal reputation by portraying him as a corrupt businessman within his dealings with the Government of Kenya and a mastermind behind the Adani, SHA and teachers medical insurance fund. Ex facie, the publications tend to impute underhand or unscrupulous dealings by the Applicant in connection with forestated dealings.
17. Whereas the conduct alluded to in the impugned publications if true would portend criminality and attract penal sanctions, the Applicant maintains that the publications are false; do not arise from Court proceedings and or pleadings in Versailles, France, (Annexure SO-1); are actuated by malice; and that the same are not protected and are not covered by Article 33 of the Constitution.
18. The Court is fully alive to the words of Lord Coleridge C.J in *Bonnard and another v Perryman* (1891 -4) ALLER 968, later quoted by Denning MR in *Fraser v Evans & Others*, to the effect that:-

“Until it is clear that an alleged libel is untrue, it is not clear that any rights at all have been infringed, and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions”.
19. While the evidence of the respective parties will be fully tested at the trial, the duty lies at this stage with the Respondent to furnish tangible material tending to support the deducted pleading of privilege and justification. In the case of *Uhuru Muigai Kenyatta v Baraza Leonard* [2011] eKLR it was stated:-

“While taking the defence of justification, or qualified privilege in a defamation case, the defendant was required by law to establish the true facts and the plaintiff has no burden to prove the defence raised by the defendant. Once verified, the justification of qualified



privilege does not insure the defendant and in any event, the onus that the same is true rests on the defendants to make it a fair publication.”

20. Further, the defence of justification and privilege may be displaced by evidence of malice. In *Shah v Uganda Argus* (1972) EA 80 it was held that a defendant is only entitled to protection of the privilege if he uses the occasion in accordance with the purpose for which the occasion arose, but he will not avail himself of such protection if he uses the occasion for improper or indirect motive. The circumstances in which publications are made could lead to a suggestion of malice.
21. To the foretated end, the Applicant deposed that there is an insider within the Respondent who has since informed him that the Respondent intends to publish other articles. This is neither here nor there as the said individual has not sworn any affidavit nor has the Applicant led any evidence on the same. However, having reviewed (Annexure SO-1), it is not entirely true that the said Court proceedings cannot be deemed as the source and or subject of the impugned publications by the Respondent and/or has no correlation to the said publications. Additionally the Respondent has equally not demonstrated that it published the impugned articles after obtaining comments from the Applicant.
22. Can malice be imputed? In the case of *Phineas Nyagah v Gilbert Imanyara* [2013] eKLR the Court held that;

“Malice here does not necessarily mean spite or ill will but recklessness itself may be evidence of malice. Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts.

....malice may also be inferred from the relationship between the parties before or after the publication or in the conduct of the defendant in the course of the proceedings. Courts should however be slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of privilege unless they are satisfied that he did not believe that what he said or wrote was false true or that he was indifferent to its truth
23. Meanwhile, as stated in *Dorcas Florence Kombo v Royal Media Services* [2014] eKLR-:

“--- qualified privilege can be rebutted by proof of express malice, and malice in this connection may mean either lack of belief in the truth of the statement or the use of the privileged information for an improper purpose...”
24. For the foregoing, and while the Court is alive and is duty bound to champion the competing rights in Article 34 that guarantees the freedom of the media, and whereas Articles 25 and Articles 31 of the [constitution](#) protect the inherent dignity of every person and the right to privacy, it would appear that the Applicant has demonstrated a *prima facie* case. The assertions made by each party will eventually be determined through evidence at the trial, but clearly, no award of damages could possibly compensate the Applicant for such loss if it were eventually found that the publications are false and defamatory. See the case of *Brigadier Arthur Ndoj Owuor v The Standard Limited* (2011) eKLR. Therefore, without addressing the issues further it would seem that Applicant has also jointly established the potential of suffering irreparable harm with the balance of convenience tilting in his favour to warrant granting of temporary injunction.
25. On the Applicant’s quest for a mandatory injunction compelling the Respondent to publish an apology, the Court is not persuaded that it would be proper to grant the same at this point given that the respective parties’ evidence has not been tested by way of trial. As held by the Court of Appeal



in *Kamau Mucuba v Ripples LTD* (1993) eKLR reiterating the decision in *Kenya Breweries Ltd. v Washington Okeyo* [2002] eKLR:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then, only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple ... act which could be easily remedied, or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than required for a prohibitory injunction.”

26. Whereas in *Nation Media Group & 2 Others v John Harun Mwau* [2014] eKLR the Court of Appeal held that a temporary mandatory injunction can only be granted in exceptional cases, it behooves this Court to mention in conclusion, that it is acutely alive to the quest of a name being the only thing a person has and that once it is destroyed or lost it may never be redeemed, as held in the case of *Amir Grinberg & 2 Others v Andrew Baker* [2021] eKLR.
27. Ultimately, the Court is persuaded that the Applicant has demonstrated that he is deserving of the reliefs sought while keeping in mind that it would be a grave injustice to interfere with the freedom of the media which should be exercised in very extreme circumstances particularly at this interlocutory stage of proceedings.
28. The upshot is that the Court finds merit in the Applicant’s motion dated 03/03/2025 and the commending orders would entail grant of prayer No. (a) of the motion that:-
 - a. That pending the hearing and determination of this suit, a temporary injunction is hereby issued restraining the Respondent whether by itself, its agents, employees, servants, assigns, affiliates, subsidiaries or any other person acting under its instructions, from publishing, printing, circulating, disseminating or causing to be published any further defamatory, false and malicious statements concerning the Applicant.
 - b. Costs of the application shall abide by the outcome of the suit.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 10TH JULY, 2025

.....
JANET MULWA.
JUDGE

