



**Shah v Shah (Civil Case E177 of 2022) [2023] KEHC 1959 (KLR) (Civ) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1959 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL CASE E177 OF 2022**  
**AN ONGERI, J**  
**MARCH 17, 2023**

**BETWEEN**

**JITENDRA KUMAR LAKHAMSHI SHAH ..... PLAINTIFF**

**AND**

**RAJNIKANT LAKHAMSHI SHAH ..... DEFENDANT**

**RULING**

1. The application coming for consideration in this ruling is the Notice of Motion dated October 30, 2022 seeking the following orders:
  - i. Spent
  - ii. Spent
  - iii. Pending the hearing and determination of this suit, an order of temporary injunction be issued restraining the defendant, his servants, agents and any other person purporting to act under the defendant's authority or instructions from publishing and or causing to be published any statements, communicating with or corresponding with Zaad Holdings Limited or any other party in relation to the plaintiff in respect of the plaintiff's business and in connection with the transfer of assets from East Africa Seed Company Limited.
  - iv. Costs of and incidental to this application be borne by the defendant.
2. The application is premised on the grounds on the face of it and supported by the affidavit of Jitendra Kumar Itendra Lakhamshi Lakhamshi Shah dated October 31, 2022 in it is deponed that by a letter dated August 10, 2022 drafted by Coulson Harney LLP acting for the defendant and addressed to Zaad Holding Limited, the defendant published a defamatory statement concerning him.



3. The letter indicated that as a shareholder of the company, the defendant ought to have been invited to pass a shareholder's resolution in line with section 158 (1) of the [Companies Act, 2015](#) to approve the transfer of assets by the Company Agriscope (Africa) Limited. The defendant alleged in the letter that since a shareholders' resolution was not passed, the defendant did not approve the transaction. It insinuated that as a majority shareholder and director of the East African Seed Company he failed to acquire the approval of the transaction.
4. On September 1, 2022 he received an email from Antonie Jacobs of Zaad Holdings forwarding the aforementioned letter and concern over the reputational risks posed by it. It was communicated that there would be potential adverse financial consequences flowing from the contents of the letter.
5. He averred that as a consequence he served the defendant with a demand letter and in turn the defendant later served him with a petition dated September 8, 2022 where he sought among others for a declaration that the transfer of assets of the company was null and void while seeking the permission of the court to institute civil proceedings under section 162 of the [Companies Act](#).
6. The defendant/respondent filed grounds of opposition dated November 3, 2022 summarized as follows;
  - a. There is no *prima facie* case disclosed by the plaintiff for the grant of the injunctive orders.
  - b. All the statements in the letter dated August 10, 2022 by Coulson Harney LLP acting for the defendant and addressed to Zaad Holdings Limited are true and justified.
  - c. The matters in contest in this suit are the basis of the proceedings in Petition no E009 of 2022, Rajnikant Lakhamshi Shah v Jitendra Kumar Lakhamshi Shah and Nima Jitendrakumar Shah and 1 other filed on September 16, 2022 by the defendant in the Commercial and Tax Division of the High Court.
  - d. The honorable court ought to resist the invitation to grant the interlocutory orders sought as doing so will result in an embarrassing and conflicting situation should this court and the Commercial and Tax Division of the high court make varying decisions in relation to the same subject matter.
  - e. The application is an abuse of court process and ought to be dismissed with costs to the defendant
7. The plaintiff/applicant filed a supplementary affidavit.
8. The plaintiff/applicant submitted that he has a *prima facie* case of defamation against the defendant with a high probability of success. He indicated that his right to have standing in society has been violated due to the false statements made by the defendant. He argued that the defendant's defamatory statements were aimed at tarnishing his reputation with the intention of casting aspersions on his honesty and integrity. That the intent of the letter was to bring him to disrepute with Zaad Holdings.
9. The plaintiff/applicant argued that he stands to suffer irreparable harm as the defendant is likely to continue his false, defamatory and malicious allegations against him with the motive to adversely affect his commercial relationships with third parties in which case damages would not be sufficient as compensation.
10. It was the plaintiff/applicant's submission that on a balance of convenience he stands to suffer greater harm as it is his reputation that is on the line and libelous matters pose the risk of affecting the plaintiff's personal and business relations.



11. The defendant/respondent conversely submitted that the letter complained of did not relate to the plaintiff in the first instance and despite production of the email, the plaintiff did not demonstrate that the letter damaged his personal reputation. That in fact Zaad's response showed that they were more concerned about their own reputation.
12. The defendant/respondent argued that the plaintiff did not prove a prima facie case as he did not prove that the statements written in the letter were untrue. He further argued that this court cannot determine that the defendant was slanderous before the determination of the Petition which is pending before the High Court Commercial and Tax Division.
13. The sole issue for determination is whether the plaintiff/ applicant has established the conditions for grant of an injunction.
14. The three conditions enshrined in the case of *Giella vs Cassman Brown* are as follows
  - i. The applicant has to establish that he has a *prima facie* case with chances of success.
  - ii. The applicant has to show that he will suffer irreparable loss that cannot be compensated by an award of damages.
  - iii. The balance of convenience has to tilt in favour of the applicant.
15. I find that the plaintiff /applicant is seeking the same order in the plaint dated September 22, 2022.
16. The effect of allowing the application dated October 30, 2022 would be disposing of the suit at interlocutory stage without giving the parties an opportunity to fully ventilate their issues.
17. This case relates to dealings in the affairs of a limited company namely The East African Seed Limited whose operations are governed by the *Companies Act* and the same are not within the review of this court.
18. Companies cases are filed in the Commercial and Tax Division of the High Court.
19. In the circumstances, I find that the applicant has failed to establish that he has a *prima facie* case with chances of succeeding.
20. This court cannot determine the issue of defamation at this interlocutory stage.
21. I dismiss the application dated October 30, 2022 and direct that the plaintiff expedites the hearing of this case.
22. Since the defendant has filed a defence, I direct that each party files its list of documents.
23. The case will be mentioned on May 11, 2023 for compliance with order 11 and for a hearing date.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH, 2023.**

**A ONGERI**

**JUDGE**

**In the presence of:**

**.....for the plaintiff**

**.....for the defendant**

