



**Murungi v Mwangaza & another (Civil Suit E033 of 2021)  
[2023] KEHC 18065 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18065 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL SUIT E033 OF 2021  
EM MURIITHI, J  
MAY 18, 2023**

**BETWEEN**

**KIRAITU MURUNGI ..... PLAINTIFF**

**AND**

**KAWIRA MWANGAZA ..... 1<sup>ST</sup> DEFENDANT**

**MWANGAZA ADVERTISERS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff's cause of action in the plaint dated December 2, 2021 is that the 1<sup>st</sup> defendant had during the period November 31, 2021 to November 18, 2021 made defamatory allegations against the plaintiff which were publicized in 2<sup>nd</sup> defendant's Baite Television Station, the particulars of which were set out in the Plaint.
2. The suit was filed in the run-up to the General Election 2022 and it is averred by the plaintiff that "the broadcasting and publication of the defamatory words has greatly injured him [the plaintiff] in his credit, stations and reputation as an honest and competent lawyer, businessman and state officer and he has been exposed to hatred, agony and odium and he as a result been injured and continues to be injured in the performance of his duties as the Governor of Meru County."
3. By reason of the matters pleaded in the plaint, the plaintiff sought specific relief against the defendants as follows:-
  1. A permanent injunction restraining the Defendants whether by themselves agents, servants, employees from uttering, broadcasting, publishing, or airing defamatory statements against the Plaintiff linking or associating the Plaintiff with theft, embezzlement or misappropriation of public funds in any manner whatsoever.



2. An order compelling the Defendants to apologize to the Plaintiff in an apology aired by the Defendants on their television station at a time of similar prominence as when the defamatory statements were aired.
  3. General damages for defamation;
  4. Aggravated and/or exemplary damages for defamation;
  5. Costs and interest of the suit.”
6. Contemporaneously with the plaint, the plaintiff filed a motion for interlocutory injunction by Notice of Motion dated December 2, 2021 and obtained an order that:-
- “Pending inter partes hearing of this application, a temporary injunction be and is hereby issued restraining the Respondents whether by themselves, their servants, employees and or agents from uttering, broadcasting publishing, or airing defamatory statements against the Applicant with theft, embarrassment or misappropriation of public funds in any manner whatsoever.”
7. The application was opposed by Defendants’ Grounds of Opposition dated November 21, 2022 and counsel for the parties subsequently filed written submission respectively dated December 16, 2021 and March 3, 2022.
  8. It is noteworthy that the plaintiff lost the election position of Governor of the County of Meru to the 1<sup>st</sup> defendant in the General Election of August 9, 2022.
  9. In this context it is an undeniable fact that the Notice of Motion has lost its urgency and purpose, to the extent that it was calculated to stop adverse publication of false information that would cause disaffection towards the plaintiff in the minds of the general public and especially the voters of the Meru County as complained of at Paragraph 13 of the Plaint “that the aforesaid words are not only blatantly false but also malicious and were uttered to injure the plaintiff’s reputation, lower the plaintiff’s estimation in the eyes of the public given his position in the County Government of Meru and damage the plaintiff’s political career and reputation as reputable leader.”
  10. In the circumstances of this case, the overriding objective of civil process under section 1A of the Civil Procedure Act for expeditious disposal of disputes demands that the matter proceeds to hearing of the main suit to determine whether the formal relief sought herein will be granted. This way, the court shall avoid restricting the doubted freedom of speech/expression under Article 33 of the Constitution on the basis of affidavit evidence untested by Cross-examination in full hearing.
  11. The Court shall, therefore, make an order for expeditious hearing of the main suit on the basis of oral evidence. In the meantime, the court shall consider the balance of convenience test of *American Cyanamid Co v Ethicon* [1975] AC 396 as applied in Kenya by the Court of Appeal in *Wairimu Mureithi v City Council of Nairobi*, CA 5 of 1979 and *Bananahill Investment Ltd v Panafrican Bank Ltd & 2 Others* [1987] KLR 351.
  12. The Balance of Convenience, seeing that the court is in terms of the direction above not able to go into the prima facie test of *Giella v Casman Brown* [1973] EA 358, lies with extending the interim order granted herein by a direction that the *status quo* existing as at the date of this ruling be maintained pending hearing and determination of the suit expeditiously, as damages may never adequately compensate loss of reputation, even though as a public personality the plaintiff must expect and accept criticism, sometime robust but necessarily fair comment.



## **Orders**

13. Accordingly for the reasons set out above, the court grants prayer No 4 of the Notice of Motion dated December 2, 2021 pending the hearing and determination of the suit expeditiously.
14. The defendants shall file their respective defences together with witnesses statements within 14 days, and the suit shall be set for pre-trial directions on a date to be fixed in consultation with counsel.
15. Costs in the cause.

Order accordingly.

**DATED AND DELIVERED THIS 18TH DAY OF MAY, 2022.**

**EDWARD M MURIITHI**

**JUDGE**

**APPEARANCES:**

**Mr Omagwa Advocate for Mr Kibanga Advocate for plaintiff.**

**Mr Mwirigi Batista Advocate for Defendants.**

