



**Reiya & another v Kiok (Civil Suit E004 of 2024)
[2024] KEHC 14399 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL SUIT E004 OF 2024
F GIKONYO, J
NOVEMBER 20, 2024**

BETWEEN

NELSON OLE REIYA 1ST PLAINTIFF

NASHULAI MAASAI CONSERVANCY 2ND PLAINTIFF

AND

JACOB LEKUMOK KIOK DEFENDANT

RULING

1. On or about 13/07/2024, the Defendant, wrote, published, and circulated on his Facebook page under the name Jacob Lekumok Kiok concerning the Plaintiffs. the post read;

.....Nashulai Maasai Conservancy is a scam and a modern day Conspiracy used by the CEO and founder to swindle donors funds to enrich himself at the expense of the community he purports to support. He takes advantage of the illiteracy of the community. more to follow ...”

2. In another post, the defendant wrote;

“...The defender of impunity see what you are trying to defend and I told facts are very stubborn using donors money to shop for his cattle herders no sanitizer can sanitize...”

3. According to the plaintiff, the Defendant maliciously and without justification wrote, published, and circulated these defamatory posts and/or statements containing false allegations concerning the Plaintiffs.

4. The Defendant, through the above posts and statement, has portrayed the 1st Plaintiff as a thief, fraudster, and felon who recklessly plunders the resources of the 2nd Plaintiff for his own benefit and



the 2nd Plaintiff as a bogus body and criminal enterprise set up to swindle financiers' and donors' funds and to perpetrate crimes.

5. The said posts and statements are still accessible to the general public both in Kenya and the world over on the Defendant's Facebook page and therefore, susceptible to being republished and further injure the reputation of the Plaintiffs.
6. As a result of the posts and statements, the Plaintiffs have been injured in their credit and reputation and the 2nd Plaintiff's activities have been brought into hatred, ridicule, contempt, disdain, scorn, public scandal, and disparagement in consequence of which the Plaintiffs have and continues to suffer loss and damage.
7. The plaintiffs claim that, the continued existence of the aforesaid posts and statements gravely impact the 1st Plaintiff and the business/activities of the 2nd Defendant which relies heavily on donations and funding of the well-wishers, and that the loss being incurred thereof cannot be adequately remedied by an award of damages.
8. It is on this basis that the plaintiffs have filed the application herein seeking injunctive orders to protect their image, credit, reputation, and noble activities.

The application.

9. The plaintiffs filed a notice of motion dated 17/07/2024 seeking the following orders;
 1. Spent.
 2. Pending the hearing and determination of the application inter partes, an order of injunction be and is hereby granted restraining the Defendant whether by himself or his agents from publishing and or causing to be published any posts or statements defamatory of the Plaintiffs in any nature, form and manner whatsoever on his Facebook page under the name Jacob Lekumok Kiok and/or any other of his social media platforms accounts wheresoever.
 3. Pending the hearing and determination of the application inter partes, an order of injunction be and is hereby granted compelling the Defendant whether by himself or agents to forthwith pull-down and/or delete each and every posts or statements defamatory of the Plaintiffs published on his Facebook page under the name Jacob Lekumok Kiok and/or any other of his social media platforms accounts wheresoever.
 4. Pending the hearing and determination of the suit herein, an order of injunction be and is hereby granted restraining the Defendant whether by himself or his agents from publishing and or causing to be published any posts or statements defamatory of the Plaintiffs in any nature, form, and manner whatsoever on his Facebook page under the name Jacob Lekumok Kiok and/or on any other of his social media platform accounts wheresoever.
 5. The costs of this application be provided for.
10. The application is premised on Order 40 Rule 2 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A,1B, 3, and 3A of the *Civil Procedure Act*.
11. The application is based on the grounds set out in the application and the supporting affidavit of Nelson Ole Reiya sworn on 17/07/2024.

The response.

12. The defendant did not file any response



Directions of the court

13. The application was to be canvassed by way of written submissions. However, the defendant did not file any response and on 15/10/2024, the plaintiffs/ applicants urged the court to consider the documents filed and determine the application.
14. On a prima face basis, the court on 19/07/2024 noted that the material complained of is defamatory and will injure the plaintiffs' reputation. Hence the need to prevent further defamation of the plaintiffs. Thus, pending the hearing of the application herein, the defendant was restrained from publishing any defamatory statements, posts, or material in any social account or any of his social accounts or handles. An order was issued to that effect.

Analysis And Determination.

15. Upon consideration of the application, affidavit in support thereof, and annexures thereto, the court discerns the main issue for determination to be: -

Whether the applicants have met the threshold for issuance of the orders of temporary injunction in defamation cases.

16. The applicants' complaint is based on a claim of defamatory publication by the respondent.
17. Defamation is defined by Gatley on Libel and Slanders as follows:

“The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally. To be defamatory an imputation needs have no actual effect on a person's reputation; the law looks only to its tendency. A true imputation may still be defamatory, although its truth may be a defence to an action brought on it; conversely untruth alone does not render an imputation defamatory.”

18. In the case of Joseph Njogu Kamunge Vs Charles Muriuki Gachari {2016} eKLR Mativo J stated:

“The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiff's reputation in the estimation of right minded persons in the society or they must tend to cause the plaintiff to be shunned or avoided by other persons. In other words, the words complained of must be shown to have injured the reputation, character or dignity of the plaintiff. Abusive words may not be defamatory per se. The words must be shown to have been construed by the audience as defamatory and not simply abusive. The burden of proving the above is upon the plaintiff to demonstrate that a reasonable man would not have understood the words otherwise than being defamatory.

Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of. Evidence showing the defendant knew the words complained of were false or did not care to verify can be evidence of malice the defamatory words must be shown to have been published by the defendant.”

Threshold for injunctions in defamation cases



19. Long before the enactment of *the Constitution* of Kenya 2010, the principles governing the issuance of interlocutory injunctions in defamation cases were set out in a judicial excerpt below;

“Application 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. Limited* (1973) E.A. 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.” *Cheserem v. Immediate Media Services* (2000) 2 EA 371 as cited in the case of *Ruth Ruguru Nyagah Vs. Kariuki Chege & Another* (2015) eKLR

20. ‘In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.’ Art. 33(3) of *the Constitution*.

21. The right to freedom of speech and expression must be exercised in a manner that does not injure the rights of others especially to dignity and reputation.

22. And where defamation occurs: ‘Every person has the right to the correction or deletion of untrue or misleading information that affects the person’. Art. 35(2) of *the Constitution*.

23. The foregoing provisions of *the Constitution* provide the functional context and foundation for determining whether an injunction should be granted to limit the right to freedom of speech and expression over matters which affect the person and reputation of the plaintiffs in this case.

24. According to the plaintiff, the Defendant maliciously and without justification wrote, published, and circulated these defamatory posts and/or statements containing false allegations concerning the Plaintiffs.

25. The plaintiffs have claimed that, the Defendant, through the above posts and statement, has portrayed the 1st Plaintiff as a thief, fraudster, and felon who recklessly plunders the resources of the 2nd Plaintiff for his own benefit and the 2nd Plaintiff as a bogus body and criminal enterprise set up to swindle financiers’ and donors’ funds and to perpetrate crimes.

26. As a result of the posts and statements, the Plaintiffs claims that, they have been injured in their credit and reputation and the 2nd Plaintiff’s activities have been brought into hatred, ridicule, contempt, disdain, scorn, public scandal, and disparagement in consequence of which the Plaintiffs have and continues to suffer loss and damage.

27. That the continued existence of the aforesaid posts and statements gravely impact the 1st Plaintiff and the business/activities of the 2nd Defendant which relies heavily on donations and funding of the well-wishers, and that the loss being incurred thereof cannot be adequately remedied by an award of damages.

28. From the material placed before this court, the respondent is a former employee of the 2nd applicant. The plaintiffs /applicants are business people.

29. Nothing shows the truthfulness of the defamation imputed; and the respondent did not so demonstrate. *Joseph Njogu Kamunge* (supra).

30. Thus, the posts complained of are defamatory and if left to continue would negatively affect the applicant’s personal lives plus their businesses. Even if the plaintiffs/applicants and the defendants had,



had an issue over the funding in issue that was not a reason for the defendant to publicize the issue through his posts to the entire world, and hide behind protecting members of the public.

31. This court, therefore, makes a finding that the said posts are negatively affecting the applicants.
32. The posts and statements are in online platforms- the Defendant's Facebook page- and are still accessible to the general public both in Kenya and the world over; and therefore, susceptible to being republished and further injuring the reputation of the Plaintiffs. These constitute special or exceptional circumstances which justify a mandatory injunction to delete defamatory information or publication that affects the plaintiffs and their reputation. Art. 35(2) of *the Constitution*.
33. Consequently, the applicants are deserving of the order of a temporary injunction as well as mandatory injunction.
34. The upshot is that this court finds merit in the application dated 17/07/2024 and grants the following orders:
 - i. That Pending the hearing and determination of the suit herein, an order of injunction be and is hereby granted restraining the Defendant whether by himself or his agents from publishing and or causing to be published any posts or statements defamatory of the Plaintiffs in any nature, form, and manner whatsoever on his Facebook page under the name Jacob Lekumok Kiok and/or on any other of his social media platform accounts wheresoever.
 - ii. Pending the hearing and determination of the suit, an order of mandatory injunction be and is hereby granted compelling the Defendant whether by himself or agents to forthwith pull-down and/or delete each and every posts or statements defamatory of the Plaintiffs published on his Facebook page under the name Jacob Lekumok Kiok and/or any other of his social media platforms accounts wheresoever.
 - iii. Costs to the applicants
35. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 20TH DAY OF NOVEMBER, 2024.

F. GIKONYO M

JUDGE

In the presence of: -

Otolo C/A

Lungwe for plaintiffs

N/A for respondent

