



REPUBLIC OF KENYA

IN THE HIGH COURT OF NAIROBI

CIVIL SUIT NO. E036 OF 2020

HTARI SECURITY GUARDS LIMITED..... PLAINTIFF/APPLICANT

VERSUS

STANDARD GROUP PLC.....1ST DEFENDANT/RESPONDENT

ZHRABANU MOHAMEDTAKI..... 2nd DEFENDANT/RESPONDENT

ROBIN SEWEL 3RD DEFENDANT/RESPONDENT

SHAUN ZAMBUNI..... 4TH DEFENDANT/RESPONDENT

JAMES BOYD MCFIE..... 5TH DEFENDANT/RESPONDENT

ORLANDO LUCHENDO..... 6TH DEFENDANT/RESPONDENT

EVANSON GITHINJI GITAHU.....6TH DEFENDANT/RESPONDENT

JULIUS KANGOGO..... 8TH DEFENDANT/RESPONDENT

JULIANA CHEBET ROTICH..... 9TH DEFENDANT/RESPONDENT

CHRISTOPHER KIPLAGAT.....10TH DEFENDANT/RESPONDENT

BRIAN OBUYA..... 11TH DEFENDANT/RESPONDENT

SIRAJURAHMAN ABDULLAHI.....12TH DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant took out the motion dated 10/2/2021 brought pursuant to *Section 5 (1) Judicature Act, Order 52 Rule 3 of the Rules of the Supreme Court of England & Wales as modified by the Civil Procedure (amendment No. 2) Rules 2012* seeking for interalia:

a) Spent

b) The directors of the respondent herein namely standard group limited, Zehraban Mohamedtaki Janmohamed, Robin Sewel, Shaun Zambuni, James Boyd Mcfie, Orlando Luchendo Wandera Lyomu, Evanson Githinji Gitahi, Julius Kangogo Kipngetich, Juliana Chebet Rotich, Christopher Kiplagat Kulei (all directors of Standard Group PLC), Brian Obuya and Sirajurahman Adbullahi, be committed to civil jail for a period of six (6) months each and/or until they comply with orders of this honorable court

c) The respondents be fined such amount as this honorable court shall deem fit and be committed to civil jail for a period of six (6) months until they comply with orders of this honorable court.

d) The contemnors do purge their contempt by directing their servants/employees and/or agent to be forthwith retained from in howsoever form airing or publishing or causing to be aired and or published or otherwise from posting on any social, any manner whatsoever the features titled "Rusty Gold: Investigating murders linked to the lethal scrap metal industry" and a

Kiswahili version of the same entitled “Tafrani ya vyuma vikuukuu: Ufichuzi kuhusu jinsi watu wanauawa katika Sakata ya wizi wa vuma” pending hearing and determination of this suit

e) This honorable court be pleased to make any other order as the justice of this case may demand

f) Costs of the application be awarded to the applicant.

2. The application is based on the grounds on the face of the motion and on the facts deponed in the supporting affidavit of Dr Steve Mwangi Kimani who stated that the plaintiff/applicant applied for interim orders which were granted by this court on 17/12/2020.

3. However, it is the submission of the applicant that despite being duly served with the said ruling the respondents have refused to comply with the said orders. The 1st respondent failed to remove the digital traces of the features from its social media platforms, the 2nd and 3rd respondents have also failed to delete the features and any commentaries of the same in their own social media pages.

4. The applicant further argued that the feature is still available to the general public thus the plaintiff/applicant continues to suffer loss and damage due to the defamatory statements made by the respondents.

5. The application is opposed by the respondent which filed grounds of opposition dated 13/4/2021 where the respondents argued that there have been no amendments sought or granted to introduce the 2nd to 10th defendants herein and neither has the plaint been amended to reflect the names of the 2nd to 10 defendants and therefore orders cannot be sought against persons who have not been properly joined to the proceedings.

6. The respondents added that the injunction that was granted was a negative injunction where the respondents were prohibited from publishing or otherwise, posting on any social media or publishing or disseminating in any manner whatsoever the aforementioned feature.

7. The respondents were therefore restrained from making further publications after 17/12/2020 but were not directed by this court to pull down, delete, withdraw and/or erase publications already made.

8. I have carefully considered the grounds set out on the application plus the facts deponed in the affidavits and the rival submissions. The following issues arose for the determination of this court:

a. Whether the 2nd to 10th defendants are properly enjoined as defendants?

b. Whether the defendants are in contempt?

9. On the first issue the defendants have argued that the application is defective as it introduces the 2nd to 10 defendants without any amendments being sought. Indeed, on perusal of the record the plaintiffs filed the instant suit against Standard Group PLC, Brian Obuya and Sirajurahman Abdullahi. The plaintiff/applicants have in this application listed the directors of the 1st defendant as the 2nd – 10th defendants.

10. **Order 1 Rule 10 (4)** of the **Civil Procedure Rules** provides as follows;

“Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.”

11. The plaintiffs in this suit have not filed an amended plaint nor have they served the new defendants with the summons and the plaint, therefore this court find that they are not properly enjoined in this matter. There is also no evidence that the directors were personally served with the court orders. The failure to effect service is fatal to the application for contempt.

12. In the end I find no merit in the motion dated 10/2/2020. The same is dismissed with costs abiding in the outcome of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 9TH DAY OF JULY, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent