

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 330 OF 2012

PATRICK NYOIKE.....PLAINTIFF/APPLICANT

VERSUS

LINUS GITAHU.....1ST DEFENDANT

NATION MEDIA GROUP LIMITED.....2ND DEFENDANT

RULING

1. The Plaintiff seeks to rely on a supplementary list of documents as his evidence herein. It is alleged that the Defendants through their agent, one Cyprian Nyakundi have continued to write defamatory material concerning the Plaintiff. That the said document is a twitter thread dated 18th June, 2018 by the said Cyprian Nyakundi.
2. The application is opposed. It is stated that the said Cyprian Nyakundi is not an employee of the Defendants. That if the said document is admitted as evidence then the said Cyprian Nyakundi ought to be the one to produce it in accordance with the provisions of the Evidence Act.
3. The Plaintiff's reply is that the said Cyprian Nyakundi is unknown to him and will not be called as a witness. It is further argued that the republication of the story is evidence of the damage being occasioned to the Plaintiff.
4. I have considered the application and the response to the same.
5. Although the supplementary list of documents was filed without the leave of the court, I will delve into the merits of the application without undue regard to technicalities of procedure.
6. One Cyprian Nyakundi is not a Defendant herein. The question of republication by the Defendant herein does not therefore come in.
7. The Plaintiff's only avenue if he wishes to produce the said document, should in accordance with the provisions of the Evidence Act Cap 80 Laws of Kenya. Based on what the Plaintiff's counsel has stated in his oral application, the alleged republication is not linked to the Defendants herein. Consequently, the objection is sustained and the application dismissed.

Dated, signed and delivered in Nairobi this 12th day of March, 2019

B. THURANIRA JADEN

JUDGE