



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 218 OF 2017**

**H.E. ZAKARIA OKOTH OBADO.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**THE STANDARD MEDIA GROUP LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE NAIROBIAN.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**DAVID ODONGO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff/applicant herein has brought a Notice of Motion dated 10<sup>th</sup> October, 2017. The same is supported by the grounds set out on the face thereof and the facts deponed in the affidavit sworn by the plaintiff/applicant himself. The plaintiff/ applicant is seeking an injunction against the defendants/ respondents in respect to certain publications made by them.
2. The defendants/respondents have now raised a Notice of Preliminary Objection against the suit. Parties have filed their respective written submissions on the same.
3. The plaintiff/applicant instituted this suit against the defendants/respondents, seeking for inter alia a permanent and mandatory injunction respectively, together with damages for publications made between 29<sup>th</sup> September, 2017 and 5<sup>th</sup> October, 2017 by the defendants/respondents against the plaintiff/applicant, and which publications are said to be false and defamatory in nature.
4. I considered the arguments placed before this court over the Preliminary Objection raised by the defendants/respondents.
5. The defendants/respondents have challenged the jurisdiction of this court to entertain the matter by virtue of Articles 22, 23, 34 (b) and 165 (3) (b) of the Constitution; and on the basis that the suit has not been instituted within the provisions of Article 22 of the Constitution.
6. On his part, the plaintiff/applicant has taken the position that the law on defamation and civil procedure confer jurisdiction on this court.
7. I have looked at the aforementioned constitutional provisions. *Articles 22 and 23* by and large concern the Bill of Rights whereas *Article 34* provides for freedom of the media. *Article 165 (3) (b)* in truth grants this court jurisdiction to determine questions of infringement of a right or freedom under the Bill of Rights. It is apparent that there is nothing to point towards a lack of jurisdiction of this court or the fact that it was necessary for the suit to be instituted under Article 22 above. The orders/reliefs sought are injunctive and compensatory in nature. Furthermore, both the suit and application are matters under the tort of defamation, which this court has the unlimited jurisdiction to entertain pursuant to *Article 165 (3) (a)* of the Constitution. The mere reference to constitutional provisions does not in any way make the plaintiff's/applicant's suit a constitutional petition.
8. In the premises, the Notice of Preliminary Objection lacks merit and the same is hereby dismissed with costs abiding the outcome of this suit.

**Dated, Signed and Delivered at Nairobi this 2<sup>nd</sup> day of May, 2019.**

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**J.K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents