



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 56 OF 2018**

**WHISPERING PALMS ESTATE LTD.....1<sup>ST</sup> PLAINTIFF**

**AFRISON EXPORT IMPORT LTD.....2<sup>ND</sup> PLAINTIFF**

**HUELANDS LTD.....3<sup>RD</sup> PLAINTIFF**

**- V E R S U S -**

**NATION MEDIA GROUP.....1<sup>ST</sup> DEFENDANT**

**IBRAHIM ORUKO.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The subject matter of this ruling is the motion dated 19.3.2018 taken out by the plaintiffs herein in which they seek for *inter alia*

**i. .... spent**

**ii. .... spent**

**iii. THAT pending the hearing and determination of the suit herein this honourable court be pleased to issue a permanent injunction restraining the defendants jointly and/or severally, their agents, servants and/or employees and/or business associates from writing or causing to be written, broadcasting and/or causing to be broadcasted, printing and publishing or causing to be printed and published, any words and/or matters and /statements libellous/ defamatory to the plaintiffs in any manner whatsoever and in particular in respect of the to the libellous/defamatory words/ matters/statements that that were printed/broadcasted by the defendants in the Sunday nation Newspaper of 11<sup>th</sup> March 2015.**

**iv. THAT the costs of this application be provided for.**

2. The application is supported by the affidavit of Francis Mburu Mungai. The defendants filed the replying affidavit of Sekou Owino to resist the motion.

3. When the motion came up for interpartes hearing, learned counsels made oral submissions. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting and replying affidavits. I have further considered the oral rival submissions. It is the submission of Mr. Nyamai, learned advocate for the plaintiffs, that the 1<sup>st</sup> defendant published an article in page 7 of the Sunday Nation Newspaper of 11<sup>th</sup> March 2018 which was defamatory to the plaintiffs. It is argued that the defamatory material is likely to be broadcasted, printed and or published further and carelessly.

4. The learned advocate further stated that the information relayed in the offensive article is in respect of an ongoing compulsory acquisition of the plaintiffs' parcel of land known as L.R. no. 7879/4 (part) by the National Land Commission. The plaintiffs are of the view that the defendants in publishing the story are driven by malice and ill will meant to extort money from the plaintiffs by a well known cartel led by one Mr. Meshack Onyango Dihay which cartel has been blackmailing the plaintiffs to extort money from them and to further sabotage the acquisition process of the aforesaid parcel of land. The plaintiffs have further argued that unless the defendants are restrained they will keep on publishing the defamatory words to frustrate the acquisition process. It is also pointed out that the defendants have also intentionally failed to publish the plaintiffs' side of the story thus condemning them unheard before the court of public opinion.

5. Miss Ogula, learned advocate for the defendants opposed the motion arguing that the defendants have pleaded the defence of justification, fair comment and qualified privilege. The learned advocate cited the decision of **Micah Cheserem vs= Immediate Media Services (2000) 2 E.371** where Justice Khamoni held *inter alia* that an order for injunction may be given in defamation cases only in the clearest of possible cases. The learned judge also stated that where the respondent has pleaded the defence of justification or qualified privilege, no injunction should be granted. The defendants have also argued that the portions of the articles complained of that make reference to the plaintiffs are true, therefore the defendants were justified in publishing those facts. They further argued that the article complained of contained or consisted of fair comment on a matter of profound public interest and involving the protection of public funds which were paid out to the 1<sup>st</sup> plaintiff. The defendants further argued that the article was intended to inform the public of the facts the defendants had investigated and that the defendants published the article complained of in the discharge of the aforesaid public duty without malice or ill will and believing that the facts set out in the article were true.

6. Having considered the material placed before this court together with the oral submissions made by learned counsels it is clear that the defendants admit having published the article titled: **“Land Agency on the spot over ksh.1.5 billion pay to suspicious company”**.

7. It is the submission of the plaintiffs that the article depicted them as crooks, dishonest and thieves. It is also stated that the article depicted the plaintiffs as fraudsters who conspired with the National Land Commission to unlawfully obtain ksh.3.3 billion from the Government of Kenya. The plaintiffs have annexed to the supporting affidavit of Francis Mburu a copy of the Kenya Gazette notice showing the process leading to the acquisition of the land in question by the National Land Commission. The plaintiffs have also annexed various documents and correspondences explaining the steps taken to have the land in question compulsorily acquired and the amount paid as compensation. It would appear from the document annexed to the supporting affidavit that the whole transaction appear to be transparent and above board. The question as to whether or not the transaction was fraudulent can only be determined after the suit has been fully heard. There is no dispute that the transaction is now being investigated by the Ethics and Anti-Corruption Commission(E.A.C.C).

8. There is no doubt in my mind that a reading of the offensive article may influence the thinking of the reader to form a negative opinion of the plaintiffs yet the facts relied upon are yet to be interrogated after hearing both sides. The defendants have not denied the assertion that they intend to continue publishing the article in discharge of its public duty to inform the public. The defendants aver that they will raise the defence of fair comment, qualified privilege and justification. It should be pointed out that the defendants are yet to file their defences. Therefore, save for what the 2<sup>nd</sup> defendant has deponed in the replying affidavit, it is difficult to determine whether or not such defences will be put forward. Consequently, I am unable to hold that the defendants have raised such defences. Even if those defences had been filed the question as to whether or not they are fair comment or justified will still have to be determined via a trial.

9. It is clear in my mind that the plaintiffs have put forward material showing that they have a prima facie case with high chances of success. They have also been able to show that unless the order for injunction is granted, the defendants are likely to further publish the offending article thus further damaging their reputation irreparably.

10. In the end, I am convinced that the motion dated 19.3.2018 has merit. It is allowed in terms of prayer 3 (now iii) with costs abiding the outcome of this suit.

**Dated, Signed and Delivered in open court this 11<sup>th</sup> day of May, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Plaintiff

.....for the Defendant