



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.134 OF 2018**

**FRANCIS AMINA JUMA.....PLAINTIFF**

**VERSUS**

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

**GEORGE OGOLA.....2<sup>ND</sup> DEFENDANT**

**CYRUS OMBATI.....3<sup>RD</sup> DEFENDANT**

**PATRICK ALUSHULA.....4<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff/Applicant has moved this court by way of a Notice of Motion dated the 8<sup>th</sup> day of June, 2018 under Article 33(3) of the Constitution and Order 40 of the Civil Procedure Act for orders that:

**1. Spent**

**2. Pending hearing and determination of this application inter-partes, an order of injunction be and is hereby granted restraining the defendants either directly or through their servants, agents or persons acting under them or on their behalf from writing, publishing or disseminating any statements defamatory of the plaintiff/applicant.**

**3. Upon inter partes hearing of this application but pending hearing and determination of the suit herein an order of injunction be and is hereby granted restraining the defendants either directly or through their servants, agents or persons acting under or for them or on their behalf from writing, publishing or disseminating any statements defamatory of the plaintiff/applicant.**

**4. Any other or further orders that this Honourable Court may deem fit to grant in the interest of justice**

The application is premised on the grounds of opposition set out on body of the application and it's supported by the affidavit of Francis Amina Juma, sworn on 8<sup>th</sup> June, 2018.

The plaintiff who is a senior employee of Kenya Pipeline Company (KPC) Limited avers that he has worked with the said company for 40 years rising through the rank upto the position of Principal Technician (Mechanical). That since he was first employed by KPC, he has never worked in the procurement department and he has never been a procurement officer.

He avers that due to the many years of service, he has become famous within the entire petroleum and oil sector in Kenya which sector has tens of thousands of employees and other stakeholders.

That, on the 28<sup>th</sup> June, 2018 the 1<sup>st</sup> – 3<sup>rd</sup> Defendants published statements that were false and defamatory of his person and despite his advocate writing a letter to the defendants dated the 28<sup>th</sup> June 2018 complaining about the publication, the Defendants on 5<sup>th</sup> June 2018 carried a similar story about him which story was written by the 4<sup>th</sup> defendant.

The plaintiff contends that the publication is full of malicious falsehood and that the defendants never bothered to verify the authenticity or otherwise of the statements even after his lawyers wrote to them. The plaintiff is apprehensive that the defendants are out to damage his reputation irreparably and that is why they are publishing statements about him without verification and repeating the same in spite of his formal complaint. He avers that he stands to suffer harm unless the defendants are restrained from publishing any defamatory statements about him, pending the hearing and determination of the suit herein.

The first and 3<sup>rd</sup> defendants filed a Replying affidavit sworn by the 3<sup>rd</sup> defendant, on the 2<sup>nd</sup> July 2018. He avers that he is an employee of the 1<sup>st</sup> defendant as a journalist. That, on the 24<sup>th</sup> May 2018, the secretary of Ethics and Anti-corruption Commission issued a press statement complaining about the irregular procurement by the Kenya Pipeline Company Limited, of Hydrant pit valves, insulation valves and spare, and in the said statement, the plaintiff is among the persons under investigations and he was arrested within the month of May, 2017 and arraigned in court and charged.

He avers that, the publication made on the 25<sup>th</sup> May, 2018 is based on accurate facts as the reporting related to concerns raised in relation to procurement by a public entity that directly relates to public funds which, the media has a society duty to cover and report and the public is entitled to receive news in relation thereto. He denies that there was malice in the reporting and he contends that the plaintiff has not denied the facts as reported.

The 2<sup>nd</sup> and the 4<sup>th</sup> defendants filed grounds of opposition dated the 26<sup>th</sup> June, 2018. They have opposed the application on the grounds that;

- 1) The threshold for the grant of an interlocutory injunction has not been met.**
- 2) The application and the supporting affidavit makes generalized claims of falsity; but falls short of lucidly substantiating the basis of the claims.**
- 3) The defendants have a societal obligation recognized under the Defamation Act to accurately report on a matter relating to a public interest which obligation is entrenched at Article 34 of the Constitution 2010, the prayers sought in the application seek to unjustifiably and arbitrarily abridge media freedom.**

The application was disposed off by way of written submissions which both parties filed and which the court has considered. The plaintiff herein has sought for an order of injunction against the defendants. This being a defamation matter, the principles governing the issuance of interlocutory injunctions were set out in the case of **Cheserem Vs. Immediate Media Services (2000) 2 EA 371** as cited in the case of **Ruth Ruguru Nyagah Vs. Kariuki Chege & Another (2015) eKLR** where the court held;

*“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.”*

The Plaintiff contends that he has a *prima face* case as the defendant published the statements without verifying the truth and that the defendants relied on a press statement which does not refer to the plaintiff by name and which states that the investigations are ongoing. That, the defendants refer to him as a procurement officer yet he is not, and by so referring to him, the statement is understood by ordinary just and right thinking members of the society to mean that the plaintiff is a procurement officer of KPC who is corrupt and has been charged in law with the offence of forgery of multi-million shillings from KPC through tender documents. The plaintiff has denied having worked as a procurement officer with the KPC. He also denied having been charged with the offence of forging KPC tender documents as published by the defendants.

As to whether the plaintiff will suffer irreparable loss or damage if the orders sought are not granted, it was submitted that the publication has lowered his reputation in the estimation of ordinary, just and right thinking members of the society. He has relied on the case of **Brigadier Arthur Ndong Owuor Vs. The Standard Limited (2011) eKLR** and that of **Bob Collymore & Another Vs. Cyprian Nyakundi (2017) eKLR**.

On the balance of convenience, it was submitted that the defendants continue to make money from their malicious and defamatory statements while the plaintiff’s reputation is at stake.

On whether the plaintiff’s application seeks to unjustifiably and arbitrarily abridge media freedom, it was submitted that in as much as the defendants have the right to freedom of expression and of the media, the same are not absolute and should be exercised with caution and in exercising the said rights, the defendants are expected to respect the rights and reputation of others.

In their submissions the defendants contend that;

**“normally the court would not grant an interlocutory injunction when the defendants pleads justification or fair comment because of public interest that the truth should come out and the court aims to protect a humane, responsible, truthful and trustworthy defendant”**

The defendants also relied on the case of **Ruth Ruguru Nyagah Vs. Kariuki Chege & Another (2015) eKLR** in which the court stated;

**“The jurisdiction to grant interim injunction to restrain publication of defamatory statement is a delicate nature which ought to be exercised in the clearest cases .... Thus, the court will only grant an interim injunction where:**

- a) The statement is unarguably defamatory.**

**b) There are no good grounds for concluding the statement may be true.**

**c) There is no other defence which might succeed.**

**d) There is no evidence of an intention to repeat or publish the defamatory statement.**

The defendants submit that they shall rely on the defence of justification as provided for under Section 15 of the Defamation Act in that, the matter was one of public interest. They relied on the case of **Joseph Njogu Kamunge Vs. Charles Muriuki (2016) eKLR** and that of **Star Publication Limited & Another Vs. Ahmed Nassir Abdullahi & 5 others (2015) eKLR**

It was submitted that the plaintiff did not deny the existence of the press release and that the EACC conducted raids at his residence and the fact that he was charged in court. That, there are good reasons to believe that the statements made were true and that the plaintiff is among the employees being investigated by EACC. The defendants further averred that the plaintiff's apprehension that the defendants will continue publishing the same is baseless and unfounded and should not be reason to curtail the defendant's constitutional freedom of expression. There is no evidence that the defendants have any intention of doing so.

As rightly submitted by both parties, an interim injunction in defamation matters should be granted in the clearest of cases as enunciated by the court in the case of **Cheserem Vs. Immediate Media Services (2000) E.A. 371**.

The defendants contend that the publication is factual and justified as it touches on a matter of great public interest. They have annexed a copy of the press release from EACC to the effect that some officers of KPC are being investigated in relation to irregular procurement. The plaintiff has not denied being an employee of KPC only that he states that he was not a procurement officer. The defendants have sworn under oath that the plaintiff was charged in a court of law which is not denied by the plaintiff. The fact that he is referred to as a procurement officer in itself does not negate the fact that he was charged in court. By and large, I am of the view that the Article is substantially true as deponed to, by the defendants. The defendants have relied on the defence of justification and fair comment on a matter of public interest and where such a defence is relied on, courts should be careful not to grant an interim injunction.

I find that the application has no merits and it is hereby dismissed with costs.

**Dated, Signed and Delivered at Nairobi 15<sup>th</sup> day of November, 2018**

.....

**L. NJUGUNA**

**JUDGE**

In the presence of:-

..... **For the Plaintiff**

.....**For the Defendant**