



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 101 OF 2016

KENYA POWER & LIGHTING COMPANY LIMITED.....1ST PLAINTIFF

DR. BEN CHUMO 2ND PLAINTIFF

- V E R S U S -

CONSUMER FEDERATION OF KENYA..... DEFENDANT

*(Being sued through its Secretary General namely Stephen
Mutoro & other officials)*

RULING

1. The subject matter of this ruling is the motion dated 31.5.2016 taken out by Kenya Power & Lighting Co. Ltd and Dr. Ben Chumo, the 1st and 2nd plaintiffs/applicants in which they sought for the following orders:

- 1. That this application be certified urgent and be heard ex parte in the first instance.***
- 2. That Mr. Stephen Mutoro and the other officials of Consumer Federation of Kenya, the defendant herein be committed to prison for a term of six months for disobedience of the order made on 16th May 2016.***
- 3. That the property of the Consumer Federation of Kenya, Mr. Stephen Mutoro and the other officials/office bearers and/or officers of the defendant be attached and sold.***
- 4. The officer Commanding parklands police Station or any other station the court may order be directed to enforce the warrants of arrest to be issued by this court.***
- 5. Leave be granted to the plaintiffs to file further affidavits to bring additional documents or material before the court touching on the matter in question.***
- 6. The court do grant any other order it deems appropriate in the circumstances.***
- 7. That the costs of this application be provided for.***

2. The motion is supported by the affidavit of Beatrice Meso. When served, Consumer Federation of Kenya, opposed the motion by filing and relying on the replying affidavit of Stephen Mutoro. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order

to have the motion disposed of by written submissions.

3. I have considered the rival written submissions filed and exchanged. I have further considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the applicant. It is the submission of the plaintiffs that on 16.5.2016, this court issued an order of injunction to restrain the defendant whether by itself, its officers, beneficiaries, employees and or agents from publishing any material concerning the plaintiffs or any other officer of the 1st plaintiff on its website, twitter page or any of its social media platform or any platform or medial whatsoever.

4. The plaintiffs aver that the order was served with a penal notice upon the defendant's advocates on 24.05.2016 and upon the defendant on 25.05.2016. The plaintiffs further averred that by an e-mail dated 27.05.2016, addressed to the 2nd plaintiff and the chairman of the 1st plaintiff's Board of Directors the defendant forwarded an e-mail dated 26.5.2016 from Firimbi Piga, blowerwhistle 78@gmail.com which contained false, misleading and defamatory allegations of and concerning the plaintiffs and the 1st plaintiff's officers. The plaintiff also pointed out that the order was extended on 26.05.2016 to 20.07.2016 in the presence of the defendant's advocate. According to the plaintiffs, the effect of the order was to restrain the defendant from publishing any material concerning the plaintiff on the platforms set out in the order or any other platform or media whatsoever while this matter was pending. It is the plaintiffs' argument that the contents of the email meant and were understood to mean that the 1st plaintiff was an institution that is riddled with corruption and lacks corporate integrity. It is further argued that the email portrayed the 2nd defendant as arrogant, dictatorial, incompetent, corrupt and dishonest. The plaintiffs' claim that there was no truth nor substance in the email which was copied to three of the defendant's employees and to other persons known to the plaintiffs. According to the plaintiffs, by coping the e-mails to other parties, this in itself amounts to publication of material against the plaintiff which was prohibited by the order which amounts to civil contempt. The plaintiffs urged this court to hold that the publication of the subject email by the defendant was defamatory to the plaintiffs and amounts to a blatant contempt of the order issued on 16.5.2016 which was later extended to subsist until 20.7.2016.

5. It is the submission of the defendant that the publication did not amount to contempt of the court order since the publication was not made on the defendant's website or twitter page as alleged. The defendant argued that it was merely seeking a clarification on issues raised by a third party and not the defendants, hence there was no breach of the court order. The defendant also stated that it tendered an unequivocal apology to the plaintiff/applicant on 2nd June 2016 by sending an email to all the parties who had received the email of 27.05.2016.

6. Having considered the material placed before this court and the rival submissions, it is apparent that the defendant admits having sent the email complained of. The defendant is of the view that the email was not defamatory and that the same was not published in breach of the court order issued on 16.05.2016. The question to be answered is whether the publication was published in breach of the aforesaid order? The order issued on 16.05.2016 read in part as follows:

“Pending the hearing and determination of this application interpartes, there be an order of injunction restraining the defendant whether by itself, its officers, beneficiaries, employees and or agents from publishing any material concerning the plaintiffs or any other officer of the 1st plaintiff on its website, twitter page or any of its social media platforms or any platform or media whatsoever.”

7. There is no dispute that the aforesaid order was served upon the defendant and its counsel. There is no dispute that the publication was made via email. With respect, I agree with the submissions of the plaintiffs that an email amounts to any platform or media whatsoever as set out in the aforementioned order. It cannot lie in the mouth of the defendant to state that it was merely seeking clarifications when it was aware that there was an order stopping the publication of any material against the plaintiffs. It is admitted by the defendant that the email was addressed to the chairman of the 1st plaintiff's Board of Directors and the 2nd plaintiff and copied to Florah Muyeshi, Jane Barng'etuny and Everlyn Mwikali. A

cursory look at the contents of the email will reveal that the 1st plaintiff was being depicted as an institution riddled with corruption, tribalism and lacking in corporate integrity. The email also portrayed the 2nd plaintiff as incompetent, corrupt, tribalist and dishonest. It is clear that the email was copied to the defendant's employees and other persons unknown to the plaintiffs. In my humble view, the email itself amounts to a publication of material against the plaintiff which was expressly prohibited by this court's order issued on 16th May 2016 and later extended to subsist upto 20.7.2016. The question as to whether or not the contents of email were defamatory is not an issue which can substantively decided at this stage. It is a matter which has to be determined in a full hearing. The court order specifically barred the defendant from publishing any material concerning the 1st plaintiffs or any other officer of the 1st plaintiff.

8. I am convinced that the defendant was in breach of the court order issued on 16th my 2016. I issue an order convicting the defendant for contempt of court. The defendant is hereby invited to submit facts in mitigation to enable this court pronounce the appropriate sentence.

Dated, Signed and Delivered in open court this 10th day of February, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant