

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 114 OF 2016

MAGDALENE MBUGUAPLAINTIFF

- V E R S U S -

LUISA WANJIRU MAINA alias LOUISA SHYX..... DEFENDANT

RULING

1. Magdalene Mbugua, the plaintiff herein, took out the motion dated 13.4.2016 in which she sought for the following orders:

1. THAT this application be certified urgent and be heard ex-parte in the first instance.

2. THAT a temporary injunction be issued restraining the defendants/applicant from publishing, broadcasting, uploading on her facebook page, twitter account and other social groups defamatory remarks and statements about the plaintiff/applicant pending the hearing and determination of this application interpartes.

3. THAT pending hearing and determination of this application and thereafter pending the hearing and determination of this suit, a mandatory injunction be issued compelling the defendant/ respondent to pull down/ withdraw defamatory remarks and or statements about the plaintiff/applicant posted on her facebook page, twitter account and other social media outlets.

4. THAT an order be issued compelling the defendant/ respondent to post an apology on her facebook page and twitter account as well as all other social media outlets within her scope of operation.

2) The motion is supported by the affidavit of Magdalene Mbugua. When served, Louisa Wanjira Maina alias Luisa Shyx, the defendant herein, filed a replying affidavit he swore to oppose the motion. When the motion came up for interpartes hearing learned counsels recorded a consent order to have the motion disposed of by written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival submissions. It is the submission of the plaintiff/applicant that the defendant is abusing the freedom of expression by making unsubstantiated remarks about the integrity, character and standing of the plaintiff with the objects of lowering her reputation in the eyes of society at large. The plaintiff further stated that on 11.4.2016, the defendant posted defamatory remarks about her, which is to the effect that she was a fraudulent person on her facebook page and other social media. She attached copies of those offending publications to her supporting affidavit. The plaintiff further stated that the postings on the said facebook page has now gone viral and is inviting more defamatory remarks from unsuspecting members of the public, her friends and associates. The plaintiff stated that her friends, clients, family members and associates have told him of the face book postings by the defendant with her photograph posted on facebook pages. It is her submission that the story is aimed at disparaging her, her character and professional calling as a pharmaceutical technologist. It is the submission of the plaintiff that unless restrained the respondent will continue publishing and posting these falsehoods to the wider public.

4) The defendant filed a comprehensive replying affidavit to resist the motion. She explained in detail how Magann Pharmaceuticals Ltd, a company she believed the plaintiff is a director made an order

through the internet to Lowama Pharmaceuticals, a wholesale and retail pharmaceutical Company based in Ongata Rongai, where the defendant was the operations manager. Pursuant to the aforesaid order, the defendant stated that Lowama pharmaceuticals supplied the plaintiff's company goods worth ksh.652,369/= who in turn issued Lowama Pharmaceuticals a cheque. When the cheque was presented on its due date, the cheque was dishonoured with remarks "refer to drawer." After strenuous efforts being made, Magann Pharmaceutical Ltd paid ksh.420,000 leaving a balance. The defendant stated that she made several attempts to reach the plaintiff and her company to pay the outstanding amount in vain. The defendant stated that as a result of desperation, she resorted to social media to tell the rest of the world the activities of the plaintiff especially her role in refusing or avoiding to pay debts legally due to and owing to Lowama Pharmaceutical. The defendant stated that the public needed to be warned against falling into a similar trap that she had fallen into. In a further replying affidavit, the plaintiff stated that she only made an order on behalf of Magann Pharmaceuticals Ltd and not on her personal account and that the dishonoured cheques were issued by the aforesaid company. The plaintiffs denied owing any money to anyone.

5) Having considered the material placed before this court and the rival submissions presented before this court, it is admitted by the defendant that she used the social media to publish the offending words. It is also not in dispute that the outstanding debt due to Lowama Pharmaceuticals Ltd is from a limited liability company and not from the plaintiff in her personal capacity. The defendant therefore had no justification to use the social media to disparage the plaintiff. I am convinced that the plaintiff has shown that she has a prima facie case with high chances of success. The sort of damage that may arise cannot be said that it can be compensated in monetary terms. The plaintiff's reputation cannot be ascertained in monetary value.

6) In the end, I find the motion to be well founded. It is allowed in terms of prayers 3 and 4 with costs to the plaintiff.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant