



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 27 OF 2016**

TABITHA MUKAMI KAMAU .....1<sup>ST</sup> PLAINTIFF

TROJAN NOMINEES .....2<sup>ND</sup> PLAINTIFF

- V E R S U S -

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

ENOCK SIKOLIA ..... 2<sup>ND</sup> DEFENDANT

KENYA AGRICULTURAL & LIVESTOCK

RESEARCH ORGANIZATION ..... 3<sup>RD</sup> DEFENDANT

TITUS LANYASUNA ..... 4<sup>TH</sup> DEFENDANT

**RULING**

1) The subject matter of this ruling is the Further Amended Motion dated 11<sup>th</sup> July 2016 taken out by the plaintiffs herein namely; Tabitha Mukami Kamau and Trojan Nominees Ltd. In the aforesaid motion the plaintiffs are basically praying for:

***An order of injunction to restrain the Defendants/Respondents or their agents, or servants from airing, broadcasting or presenting, referring to the applicants in any manner whatsoever adverse to their reputation and standing or which ridicules or portrays them negatively in the eyes of the general public pending the hearing and determination of the suit.***

2) The motion is supported by the affidavit jointly sworn by the plaintiffs. When served, Nation Media Group and Enock Sikolia, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed grounds of opposition to resist the motion. Kenya Agriculture and Livestock Research Organization and Titus Lanyasunya, the 3<sup>rd</sup> and 4<sup>th</sup> defendants filed the replying affidavit of Titus Lanyasunya 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 Further Amended Motion and the grounds of opposition.

I have further considered the facts deponed in the affidavits filed in support and against the application. I have also considered the rival written submissions.

4) It is the argument of the plaintiffs that there is an investigation report dated 2<sup>nd</sup> July 2005 by the National Police Service requested by the 3<sup>rd</sup> defendant which confirms that the 2<sup>nd</sup> applicant owns the land in question i.e Naivasha BlockV/289 and that the 3<sup>rd</sup> respondent has never owned the land in question. The plaintiffs further submitted that the airing and publication of the story by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is a clear act of malice. It is argued that unless the orders sought are granted, the plaintiffs will continue to suffer loss and damage. It is said that on 13.1.2016 in the NTV news bulletin at 7.00pm and 9.00pm, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents aired or caused to be aired a story entitled “**Kari Land Grab**” in which the story alleged that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were politically connected individuals and companies grabbed the 3<sup>rd</sup> defendant's land as reported by the 2<sup>nd</sup> defendant. It is said that the story was also trending on social media as “**KARI LAND GRABS**”.

5) The 1<sup>st</sup> and 2<sup>nd</sup> respondent opposed the motion by filing grounds of opposition. They argued that the article raised issues touching on the irregular allocation of the 3<sup>rd</sup> defendant's land herein. It is also stated that the article complained of, the plaintiffs were not named.

6) The 3<sup>rd</sup> and 4<sup>th</sup> defendants stated that it is indeed true that public land has been grabbed and that has been evidenced by court documents that have been filed in the Land and Environment Court. It is also argued that the plaintiffs have not shown how the said publication is defamatory to warrant orders of injunction.

7) The principles applicable in determining an application for injunction in defamation cases are similar to those applied in other civil cases. Those principles were stated in the case of **Giella =vs= Cassman Brown & Co. Ltd (1973) E.A 358**.

First, an applicant must show that he has a prima facie case with a probability of success.

Secondly, an applicant must show that he would suffer irreparable loss if the order is denied.

Thirdly, that where the court is in doubt, the application would be determined by considering the balance of convenience.

8. However in the case of **Cheserem =vs= Immediate Media Services (2000) E.A** this court stated that applications for interlocutory injunctions in defamation cases are treated differently from ordinary cases as they bring out conflicts between private and public interest.

9) To answer the question as to whether or not the plaintiffs have shown a prima facie case with a probability of success, the court will look at the material placed before it. The plaintiffs have referred to a broadcast done on 13<sup>th</sup> January 2016 which they alleged was defamatory to them. It has already been pointed out that there are pending two lawsuits over the 3<sup>rd</sup> defendant's land. In those cases the pleadings reveal that there are allegations that the 3<sup>rd</sup> defendant's land has been illegally allocated and transferred. Those cases have generated a lot of public interest. The question as to whether or not the plaintiffs legitimately acquired the property in dispute will have to be adjudicated by the court trying those suits. Trials are done in public and the pleadings in the public domain. The words grabbing of land is used severally in those suits. The documents are accessible to the members of the public. In the circumstances the 1<sup>st</sup> and 2<sup>nd</sup> defendants may legitimately raise the defence of fair comment and qualified privilege. Of course, this court is minded to state at outset that the 1<sup>st</sup> and 2<sup>nd</sup> defendants must act responsibly while reporting and without exaggerating their reports and broadcasts. In the circumstances of this case I am not satisfied that the plaintiffs have a prima facie case.

10. The other question is whether the plaintiffs will suffer irreparable loss if the order for injunction is denied. There is an averment in that the defendants actions have caused irreparable harm and damage to her career. When faced with such a situation, the applicant is required to give particulars of actual damage. It is not enough to just make sweeping averments. In this case the plaintiffs have just made general averments without giving specifics on the nature of damage.

11) The third principle to consider is that which relates to a balance of convenience. There is no doubt that issues raised in the alleged broadcast and the court pleadings touch on land grabbing of public land. Here there is a conflict between public interest and private interest. It is important to allow balanced and objective reporting to continue flowing freely for the consumption of the public. I think the balance of convenience tilts in favour of the dismissal of the motion.

12) In the end, I find no merit in the motion. It is dismissed with costs to the defendants.

Dated, Signed and Delivered in open court this 10<sup>th</sup> day of March, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant