



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 105 OF 2016**

**ROBERT KASAIN OLE PERTET ..... PLAINTIFF**

**VERSUS**

**SAMSON H.M. KIMULU ..... DEFENANT**

**RULING**

Both the plaintiff and the defendant are employees of Kenya Airports Authority holding senior positions in the management. The plaintiff is the General Manager Information and communication technology (ICT) while the defendant is the General Manager, Risk Management and Internal Audit.

The defendant according to the material before me was tasked to undertake a routine audit on information and communication technology (ICT) projects for the financial year 2015-2016 in line with the Kenya Airports Authority Annual Risk Management and Audit Plan. This he did.

Just about the time of presentation of the said report to the Board and Management, the plaintiff moved the court under certificate of urgency for orders that the defendant be restrained from writing, printing, airing and or in any other way publishing defamatory statements regarding the applicant or otherwise defaming him.

The plaintiff cited page 7 and page 31 of the said report which alleged that the plaintiff was intimidating the defendant and added that there was some fraud that had been committed by the plaintiff and or officers in his office, and that they should be surcharged.

The plaintiff alleged that by including the said allegations in the report the defendant was imputing malice and criminal intent which had greatly injured the plaintiff's standing, reputation and profession, which ridiculed and embarrassed him in the eyes of his employer, colleagues and other right thinking members of the society, hence the restraining orders sought.

The allegations were denied in a replying affidavit sworn by the defendant which justified the allegations as having been factual, accurate and objective. Further, that the audit was conducted in good faith and was awaiting deliberations by the Board and Management. Both learned counsel have filed written submissions to address the application.

I have considered the material before me. I am alive to the fact that this court should guard against micro managing institutions with set internal mechanisms for addressing disputes. In some cases however, where there are allegations of violation of individual rights, the court is mandated to step in, inquire and give appropriate orders.

Relating to the allegations raised in the application, I believe the allegation of intimidation is a state of mind which the court is unable to address. However, imputation of fraud or any other criminal allegation against a party is an affront to somebody's character and reputation, however framed. It is even more demanding that the court should intervene where a conclusion seems to have been arrived at as the wording in page 31 seems to suggest.

Without delving any deeper in the allegation raised in the report, the concern by the plaintiff and the rejoinder by the defendant, I am persuaded that at this stage the plaintiff has established a *prima facie* case with a probability of success to warrant restraining orders as against the defendant until this case is

heard and finalized.

So as to avoid stalling the internal operations of the Kenya Airports Authority, this order shall be limited to the extent that the report due to be discussed by the Board and Management of the Kenya Airports Authority shall be tabled excluding the offending remarks in page 31. To that extent only the plaintiffs application succeeds. The costs shall be in the cause.

Orders accordingly

**Dated and delivered at Nairobi this 5<sup>th</sup> day of July, 2016.**

**A. MBOGHOLI MSAGHA**

**JUDGE**