



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 27 OF 2014

HON. SAMUEL NDUNGU GITAU.....PLAINTIFF

VERSUS

1. THE STANDARD GROUP LTD.....1ST DEFENDANT/RESPONDENT

2. KIPKOECH TANUI.....2ND DEFENDANT/RESPONDENT

RULING

1. On the 20th May 2014, this court (Honourable Justice Wendo,J) issued an order of temporary injunction restraining the Defendants/Respondents by themselves, agents and employees from publishing, uttering and or causing to be published and or uttered defamatory materials and or slanderous information about the plaintiff/applicant pending hearing and determination of the application dated 12th May 2014. That order is in force to date.

The Plaintiff's/Applicants submissions by his advocate, Chege Munene seek that the interim orders of injunction be confirmed pending full hearing of the case.

The offending publications and subject of this case was so published in the first Respondents Newspaper, the Standard, on the 6th May 2014 in the following manner;

- 1. *Revealed, County Minister uttered fake certificates to get job.***
- 2. *“MP wants officer who used fake papers to get job sacked.***
- 3. *“Officer who forged papers quizzed by Criminal Investigating Department.”***

2. It is submitted that in their natural meaning, the said words were defamatory of the applicant who is currently the Executive Officer in charge of Trade, Tourism and industrialization in the county government of Nakuru and by their ordinary meaning, are meant and understood to mean that the applicant has committed a crime and is a criminal who should be in jail, that he suffers from academic disability, is a con man and deceitful and therefore should not hold a public office. It is urged that by their very nature, there is established a *prima facie* case with great chances of success as all the publications were false and were meant to deny the applicant the job that he sought with the County Government of Nakuru. Relying on the case **Giella vs Cassman Brown**. It is submitted that a *prima facie* with probability of success is established.

It is further submitted that the said publication if repeated would cause more injury to the applicant that may not be adequately compensated with an award of damages.

3. The respondents citing **Article 34 of the Constitution** submit that freedom of communication by way print and all other forms is guaranteed under the Constitution save the limitations stated in **Article 33(2)** thereof. It is further submitted that if the applicant felt aggrieved, he would have provided proof of his academic certificates by disclosing all material facts to the court.

4. I fully agree with the above submission that the applicant ought to prove that the allegation leveled against him are false by providing all materials relevant to disapprove the allegations. But, that can only be done during the hearing of the case when evidence may be produced. In the meantime, and to safeguard further character assassination, that in my mind may cause damage not capable of compensation in monetary terms, the court finds that pending full hearing of the case, an order of injunction is appropriate.

5. The respondent's publication of the alleged defamatory article may be a fair, just and accurate comment of events and of general public knowledge as it alleges, but on the other hand, the said publication too may have caused injury to the character of the applicant and continuation of the same before determination by the court of its truth may worsen the situation by causing more injury and prejudice. To that extent, the court finds that the balance of convenience tilts in favour of granting the injunctive orders as sought by the applicant. The court in coming to the above conclusion the court bears in mind the provisions of **Section 6 of the Defamation Act** which states

“A fair and accurate report in any newspaper of proceedings heard before any court exercising judicial authority within Kenya shall be absolutely privileged: provided that nothing in this Section shall authorise the publication of any blasphemous, seditious or incendent matter.”

6. This case is pending hearing by the court. Until such time that the parties shall ventilate their accusations and justifications before the court, the respondents are hereby barred and restrained by an order of injunction from further publication, uttering and or causing to be published of any defamatory and slanderous information of and concerning the applicant on the matters before the court pending the hearing and determination of the suit in terms of prayers sought in the applications dated the 12th May 2014.

7. Costs of the application shall be costs in the cause.

Dated, signed and delivered in open court this 14th day of July 2016

JANET MULWA

JUDGE