



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 215 OF 2014

LINDA OKELLO.....PLAINTIFF

VERSUS

1. THE STANDARD GROUP MEDIA GROUP

2. THE NAIROBIAN NEWSPAPER

3. P KEMOI NGENO

4. CHARLES OTIENO.....DEFENDANTS

RULING

1. The 2nd Plaintiff in its issue No. 00065 for 16th to 22nd May, 2014 at the front page published an article titled "***LINDA IS BACK: Kenya's most booty-full police woman to take Nairobi by storm at car-wash for panty drive,p8***". At page 8 of the said issue the 2nd Defendant published "***Linda to headline carwash-for-pads, panty campaign...and is expected to rub shoulders with city's big shots. Internet sensation Linda Okello will be the main guest at a charity event to raise funds to buy sanitary towels and underwear for poor girls. Okello who faced her boss wrath for her tight derriere photo that caused a buzz on social media might soon be hitting the city's bigwig list. She is no longer the cop next door as she has been honoured as a guest during Galpad's sanitary towel event, where she is expected to interact with the city's who's who. The brainchild of the project, Dr. Jude Olunga, told The Nairobiian they settled for Okello since she is a 'celeb' and will pull a large crowd to the event. "We have already talked to her and she will be the day's girl pad ambassador. We are looking forward to working with her to make the day's success." Dr. Olunga. The initiative hopes to raise money through washing Governor Kidero's ceremonial classic cars in the city. "The car owners will pay Sh 1,000 and anyone who pays more than this amount, will be declared winner of the event. Volunteers will also part with Sh 500 for every car washed. It is all about charity and we intend to raise as much money as we can." he said. Olunga said most girls from poor families cannot afford sanitary towels. "Most girls from poor families cannot afford sanitary towels and panties. From the funds, we will ensure that every girl receives five packets of sanitary pads and five panties for one year," he said. "The sanitary towel idea struck me after attending a medical camp in Uriri, Migori in 2011. A woman came rushing with a girl who was bleeding but unknown to her, she was on her periods. The nurse rolled a bandage and tied it around her waist to prevent her from soiling her clothes." he said.***"
2. It is the above said publication that has elicited the filing of the notice of motion dated 24th July, 2014. In the motion, the Plaintiff seeks temporary injunctive orders restraining the Defendants, their agents, employees and or servants from further publishing of any defamatory article, words,

material or remarks against, of and concerning the Plaintiff in relation to the discharge of her duties as a police officer, in relation to the Defendants' published article subject matter of the suit herein or in any other way.

3. Vide her supporting affidavit sworn on 24th July, 2014, the Plaintiff denied having knowledge of the contents of the article and that she had been contacted as alleged in the article. She lamented that the Defendants did not seek verification from her. She stated that despite her advocates M/s. Professor Tom Ojienda and Associates seeking a withdrawal of the article and an appropriate apology from the Defendants, the Defendants did not make good the request. The Plaintiff stated that due to the publication, she has had to defend herself from colleagues' and superiors' opinion that she is an attention seeking socialite, crowd mobilizer, headliner and undisciplined police officer. That if the article is not withdrawn, and a further similar publication made, the same may form a basis of inquiries into her conduct by her employer, the National Police Service in orderly room proceedings. That if the said proceedings are initiated, there is a possibility of her being sanctioned by the National Police Service or a combination of the penalties prescribed under Section 89(1) of the National Police Service Act, 2011 which penalties include reprimand, suspension, an order of restitution, stoppage of salary increment for a specified time, reduction in rank and dismissal from the service.
4. The Respondents did not file any response to this application.
5. The Plaintiff filed written submissions to the application. It was submitted that the words published were defamatory of the Plaintiff. It was contended that the failure by the Defendants to verify the correctness of the allegation is a pointer to malice. To buttress the argument the Plaintiff relied on **Phineas Nyagah v. Gitobu Imanyara (2013) eKLR**. where Odunga J held that:-

" Evidence of malice may be found in the publication itself if the language used is utterly beyond or disproportionate to the facts. That may lead to an inference of malice...Malice may also be inferred from relations between parties...The failure to inquire in the facts is a fact from which inference of malice may properly be drawn. "

6. It was argued that the words booty, panty drive, carwash-for-pad, panty campaign, washing Governor Kidero's ceremonial limousine and other classic cars in the city were defamatory in view of the holding in **Phineas Nyagah** (supra). It was also submitted that the publication was false since she has never been honoured as a guest during Galpad's sanitary towel event nor is she part of the alleged initiative hoping to raise money through car washing Governor Kidero's ceremonial limousine and other classic cars in the city. She stated that the words lowered her reputation since they in their natural and ordinary meaning meant that she had no respect for her job, had no regard to the Police Code of Conduct and the rules and regulations governing the conduct of officers in the Police Service and that she engages in other conflicting employment, trade, business or office outside her scope of duties.
7. I have considered the submissions herein and the relevant law. While dealing with injunctions in defamation cases courts ought to weigh between the freedom to express oneself and impart information against the respect for other's rights and reputation. The general principles for grant of injunctions have thereby been modified to suit the uniqueness of defamation cases. The principles were well laid in **Cheserem v. Intermediate Media Services [2000] 2 EA 371** as follows:-

"An interlocutory injunction is temporary and only subsists until the determination of the main suit...In defamation, the question of injunction is treated in a special way although the conditions applicable in granting injunction as set out in the case of *Giella v. Cassman Brown & Co. Ltd (1973) EA 358* generally apply...In defamation cases, those principles apply together with special law relating to the grant of injunctions in defamation cases where the court's jurisdiction to grant an injunction is exercised with the greatest caution so that an injunction is granted only in clearest possible cases. The court must be satisfied that the words complained of are libellous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside perverse...The reason for so treating grant of injunction in defamatory cases is that the action for defamation bring out conflict between private interest and public interest, and more so in cases where the country's Constitution has provisions to protect fundamental rights and freedoms of the individual including the protection of the freedom of expression." (Emphasis own)

8. The issues raised by the Plaintiff have not been contested as the Defendants did not file a replying affidavit. This court shall therefore take them to be true. The failure to file a replying affidavit in contention of a fact amounts to an admission of facts. This was the holding in the case of **Crown Berger Kenya Ltd v. Kalpech Vasuder Devan and Another Civil Case No. 246 of 2006 (UR)** quoted with approval in **Kennedy Otieno Odiyo & 12 others v. Kenya Electricity Generating Company Limited (2010) eKLR**. It was held in the Kennedy case(supra) as follows:-

"It the absence of the replying affidavit rebutting the averments in the applicant's supporting affidavit, means that the respondents have no claim against the applicant. "

9. In the circumstances, I find that the Plaintiff has prima facie proved that the publication was false and is damaging to her reputation. I am therefore inclined to grant injunctive the orders in favour of the Plaintiff. Accordingly, the application is allowed in terms of prayer 3. Prayer 1 and 2 have been dispensed with. Costs shall be in the cause. Orders accordingly.

Dated, Signed and Delivered in open court this 8th day of May, 2015.

J. K. SERGON

JUDGE

In the presence of:

Kaka h/b for Ojienda for the Plaintiff

N/A for the Defendants