

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 499 OF 2013

JULIUS KUNDUPLAINTIFF

V E R S U S

TIMOTHY MURIITHI.....DEFENDANT

R U L I N G

1. The Plaintiff's suit against the Defendant is founded on the tort of defamation. The publication complained of, however, is novel: it is a letter of demand addressed to the Plaintiff by the Defendant's advocates to the effect that the Plaintiff has been having a love affair with the Defendant's wife who is the Plaintiff's junior at their place of work, a demand that the Plaintiff should desist and accept liability for causing the Defendant emotional distress, etc. under pain of being reported to his employer, and that thereafter the matter can be resolved amicably between the Plaintiff and the Defendant.
2. The Plaintiff has not alleged that the letter of demand was copied to any person or otherwise published to any person other than himself. But that has not stopped him from claiming general and exemplary damages for defamation and an order for an apology.
3. However, it is the threat to report to his employer his alleged love affair with the Defendant's wife that appears to have alarmed the Plaintiff. He has pleaded that the Defendant's claim that he has in his possession "details of telephone conversations and text messages" between the Plaintiff and the Defendant's wife is an invasion of his constitutional right to privacy, and that the threat to report him to his employer is an unlawful endangerment of his employment. In that regard he has sought the relief of permanent injunction to restrain the Defendant from "in any way interfering with (his) employment...by communicating with the Plaintiff's employers based on the allegations contained in the demand letter and any related allegations".
4. Together with the plaint the Plaintiff filed **notice of motion dated 27th November 2013** which is the subject of this ruling. He seeks the main order framed as follows –

"This Honourable Court be pleased to issue AN INJUNCTION directed at the Defendant by himself, his servants, employees and/or agents acting for and on their behalf or any other person whosoever from in any way interfering with the employment of the Plaintiff by communicating with the Plaintiff's employers based on the allegations contained in the demand letter and any related allegations".

I will take it that what the Plaintiff seeks is a temporary injunction pending disposal of the suit.

5. The application is brought upon the grounds stated on the face thereof and is supported by the Plaintiff's affidavit in which he has re-stated his case as pleaded in the plaint. A copy of the demand letter complained of is annexed.

6. The application was served upon *Messrs Waiganjo Wachira & Co.*, the advocates who wrote the letter of demand upon which the suit is founded. They appear to have accepted service. No papers in response to the application have been filed. The copy of the application served had the hearing date

endorsed thereon. There was no appearance for the Defendant on 20th January 2014 when the application came up for hearing.

7. As it is then, the application is unopposed. The Plaintiff's learned counsel canvassed the application by written submissions, which I have considered.

8. I will in the event allow the application and grant a temporary injunction as sought pending disposal of the suit. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 12th DAY OF FEBRUARY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 14TH DAY OF FEBRUARY 2014.