



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 92 OF 2014

RT. REV DAVID RIITHO GATHANJU

REV. FESTUS KABURU GITONGA.....PLAINTIFFS

(Suing on behalf of the Presbyterian Church of East Africa)

VERSUS

REV. DAVID MUHIA GITHII1ST DEFENDANT

THE STANDARD GROUP LIMITED2ND DEFENDANT

JAMES MWANGI3RD DEFENDANT

RULING

1. The application before this Court is the Notice of Motion dated 15th April 2012 brought under Order 40 rule 2(1), Order 51 rule (1) of the Civil Procedure Rules 2010 and section 3A, 63(e) of the Civil Procedure Act. The applicant seeks the following orders;

- i. a temporary order of injunction restraining the 1st defendant by himself, his servants and or agents from causing to be published, or publishing any article defamatory of the plaintiff church from disseminating any information, airing or giving interviews to broadcasting stations or any media of any kind any information against the plaintiff church with regard to alleged gayism, devil worship and homosexuality and or in any manner acting in furtherance of the said claims subject of this suit.
- ii. a temporary order of injunction restraining the 2nd and 3rd defendants by themselves, their servants and or agents from causing to be published, or publishing any article defamatory of the plaintiff church from disseminating, distributing, circulating, selling, broadcasting any information against the plaintiff church with regard to alleged acts of gayism, devil worship and homosexuality and or in any manner engaging in acts of furtherance of the claims the subject of this suit.
- iii. An order of interlocutory injunction be issued restraining the defendants jointly and severally by themselves, their servant and or agents from causing to be published and or publishing, any article defamatory to the plaintiff church from disseminating, distributing, circulating, selling, broadcasting any article, information, notice against the plaintiff church with regard to alleged acts of gayism, devil worship and homosexuality and or in any manner engaging in acts of furtherance of the claims the subject of this suit.

2. The application is grounded on the following grounds; that the defendants caused to be published in the Nairobi newspaper defamatory articles which alleged devil worship and gayism is prevalent in the

plaintiff's church and homosexuality had infiltrated the church and despite seeking an apology and amends from the said newspaper none was offered; that the articles were defamatory to the plaintiff's church, its leadership and membership at large, the reason they seek a permanent injunction and damages against the defendants; that the defendants have continued publication of articles which has occasioned the plaintiff church, its leadership and members loss of reputation, ridicule, serious injury and spite from the public; that the defendants allegations are atrocious, unjustified and grossly libelous and go beyond the publication of fair information in the interest of the public and are driven by personal vendetta to tenant the reputation of the plaintiff church.

3. The application is supported by the supporting affidavit of Rev. David Riitho Gathanju dated 15th April 2014; he deponed that the Nairobiian through their publication No. 00058 of March, 2014 which is owned by the 2nd defendant caused to be published in the said newspaper two articles in the front page and at page 12 of the said newspaper entitled, ***“Devil Worshipers, gays in P.C.E.A –Githii”*** and ***“claims of Devil worship and Homosexuality rock P.C.E.A”*** which he argues were defamatory of the plaintiffs' character, good will and reputation to the right thinking members of society.

4. The application was opposed and the defendants filed a replying affidavit dated 16th May 2014. He deponed that he has been a church moderator from April 2003 to April 2009 and had been vocal of the happenings in the PCEA church; that in the year 2004 he raised concerns over the practice of homosexuality and existence of satanic symbols in the church before the General Administrative Committee; that this resulted to removal of some of the symbols from some churches as the revision of the church logo and removal of symbols from St. Andrews and other churches; that the said issues raised are not new and are well documented in the church's reports, subsequent to the said articles he has authored a book by the title, ***“Exposing and Conquering satanic forces in Kenya”***. He denied making statements to embarrass the church or induce resignation of members but solely was aimed as a plea for the church to turn back to God; that the contents of the interview published in the said newspaper accurately captured his own observations in respect to issues raised. and added that he was ready to substantiate his claims as per the interview with the 2nd and 3rd defendants; that the plaintiff ought to openly confront problems afflicting the church and not hide them as this was not in-keeping with the scriptures and granting the orders sought would only bar him from pointing out the ills that are bedeviling the church which stems from his vocation as a minister with a responsibility to preach the gospel pointing out the evil influences that affect the PCEA church and the entire body of Christ and added that homosexuality and devil worshipping are not only unique in the PCEA Church but is a problem acknowledged worldwide.

5. Parties filed written submissions. The plaintiff/applicant submitted that at an interlocutory stage the plaintiff must demonstrate they have a *prima facie* case with a probability of success and that damages would not adequately remedy them and that the balance of probability tilts in their favor. The plaintiffs/applicants relied on the case of ***MICAH CHESEREM VS IMMEDIATE MEDIA SERVICES & 4 OTHERS (NBI) HCCC 398 OF 2000***.

6. The words contained in the said articles were attributed to the 1st defendant, published to the 2nd defendant and authorized by the 3rd defendant. It was submitted that the 1st defendant in his affidavit dated 16th May 2014 did not deny the published words are attributed to him; that the 1st defendant has since left the church and no evidence has been tendered by the defendant in regards to the allegations raised; that the church has a large following within the jurisdiction of the Honorable church and the continued publication of the said articles will continue to injure the reputation of the plaintiff church in the eyes of the public; that there is a special case that justifies the protection of the plaintiffs fundamental rights pending the hearing and determination of this matter and urged the Court to allow the orders sought.

7. The 1st defendant on his part relied on the case of ***Gilgil Hills Academy Ltd vs. The Standard Ltd Nakuru HCCC No. 88 of 2009*** Maraga, J (as he then was) expressed himself as follows: *In deciding whether or not to grant an injunction, each case should be considered on its own peculiar facts bearing in mind the fact that whether or not the defence of justification and or fair comment will hold is for the*

court to decide after hearing the case. To justify the granting of an injunction in defamatory cases at interlocutory stage, therefore, the court must have prima facie evidence to come to a decision that the words complained of are untrue...”

To succeed in this application he submitted that the applicant must satisfy the conditions set out in the case of *Giella –vs- Cassman Brown [1973] EA 358* .

8. It was further submitted that the conditions aforesaid are not conjunctive but disjunctive and the applicant has not demonstrated sufficient grounds upon which Court can exercise its discretion in granting the orders sought; that the averments in the articles cannot be termed as false as no denial by the defendants have not been shown that it is untrue; that the applicant has failed to bring out the fact that it has a valid claim against any of the defendants in this matter; that the 1st defendant has raised the alleged practice of homosexuality and existence of satanic symbols in the plaintiff church and the same has been documented by the General Assembly meetings; that the contents of the articles express an opinion of the 1st defendant, is fair comment and express his opinion, he relied on the case of *Micah Cheserem –vs- Immediate Media Services & 4 others Nairobi [2002]*. That the 2nd and 3rd defendant has failed to clearly show that they intend to continue publication of the words complained of and have indeed continued to do so. He relied on the case of *Dr. James Obondi Otieno vs. Nation Media Group Limited Kisumu HCCS No. 7 of 2005* cited *Renton Company Case* expressed the sentiment that unless the nature of the defamation is the continuing one, acts of defamation, being ordinarily singular, nothing is to be served by issuing an injunction. That Court do not grant orders in vain and urged the Court to dismiss the plaintiff’s application; that no evidence has been adduced to show that the applicant will suffer irreparable harm and those that allege a fact must prove it where such proof is not given the action must fail; that the balance of convenience tilts in the defendants favor.

DETERMINATION

9. I have read and considered the affidavits and submissions made by the parties. In the case of *Micah Cheserem vs. Immediate Media services & 4 Others* (supra) Justice Khamoni held that;

“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 vs. Cassman Brown & Co. Ltd. [1973] EA 358* generally apply...In defamation cases, those principles apply together with the 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 the clearest possible cases: the Court must be satisfied that the words complained of are libelous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside as 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”.

The 1st defendant does not refute stating the alleged defamatory words but alleges the same to be his opinion and fair comment. The plain meaning of the words complained of by the applicant in my view depict the church in a negative way. The 1st defendant after the publication of the said articles proceeded to author a book by the title, **“Exposing and Conquering satanic forces in Kenya”**, though I have not seen the same the 1st defendant has in his own words stated that the content in the said book are the same ones raised in the articles, he also attached the extracts of the said publication. In this regard I find that there is indeed danger of further publication by the 1st defendant as such and in order to prevent further injury to the plaintiff I find it is in the interest of justice to grant the temporary injunction orders sought by the plaintiff/applicant pending the hearing and determination of this suit. I grant the applicants the order that;

That an order of interlocutory injunction shall issue restraining the defendants jointly and severally by

themselves, their servant and or agents from causing to be published and or publishing, any article defamatory to the plaintiff church, from disseminating, distributing, circulating, selling, broadcasting any article, information, notice against the plaintiff church with regard to alleged acts of gayism, devil worship and homosexuality and or in any manner engaging in acts of furtherance of the claims the subject of this suit. Costs shall be in the cause.

Orders accordingly.

Dated, delivered and signed this *5th* Day of *November* 2014.

R. E. OUGO

JUDGE

In the Presence of:

..... Plaintiffs/Applicants

.....Defendants /Respondents

.....Court Clerk