



**Johnson v Nation Media Group Plc & 2 others (Civil Case E169 of 2025)  
[2025] KEHC 13737 (KLR) (Civ) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13737 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE E169 OF 2025**

**NW SIFUNA, J**

**SEPTEMBER 30, 2025**

**BETWEEN**

**HON SAKAJA ARTHUR JOHNSON ..... PLAINTIFF**

**AND**

**NATION MEDIA GROUP PLC ..... 1<sup>ST</sup> DEFENDANT**

**EVANS HABII ..... 2<sup>ND</sup> DEFENDANT**

**NYABOGE KIAGE ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a libel suit filed by the Plaintiff who is the current Governor of Nairobi County. The first Defendant the Nation Media Group PLC is a registered company that is the proprietor and publisher of the Daily Nation Newspaper which is a prominent newspaper of national-wide circulation within Kenya. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are journalists working the Newspaper.
2. In his Plaint dated 19<sup>th</sup> June 2025, the Plaintiff has complained about a story that was carried in the newspaper’s issue of Thursday 19<sup>th</sup> June 2025. Which story titled “How Chaos Was Planned”, was carried on the front page, and continued on Page 2.
3. The story was about the chaos that had been witnessed on Tuesday 17<sup>th</sup> June 2025 in the streets of Nairobi. In which protesters were allegedly attacked by a group of goons. From the photocopy of that story filed with the suit papers, the story carried photographs of certain leaders together with quotes of the statements they are reported to have issued concerning the protests, and concerning the chaos. Among them was the photograph as well as quotes of statements reportedly issued by the Plaintiff.



4. The Plaintiff considers the story defamatory and has in his Complaint sued the Defendants, accusing the paper of branding him as a sponsor of violence and chaos during the protests of 17<sup>th</sup> June 2025; and claims that the story has defamed him.

### **The Application Dated 19/6/2025**

5. Filed together with the Complaint, was a Motion dated 19<sup>th</sup> June 2025, in which the Plaintiff has sought an interlocutory injunction to restrain the Defendants from publishing, broadcasting, printing and/or disseminating any story/stories or new items against him, that pertains to the organizing, planning and/or funding of the criminal goons who appeared during the protests on the streets of Nairobi on 17<sup>th</sup> June 2025.
6. The Application which was principally brought under Order 40 of the Civil Procedure Rules and Supported by the Plaintiff's Affidavit sworn on 19<sup>th</sup> June 2025, was based on the grounds listed in it, and which I do not need to reproduce here. He has stated that unless the injunction issues, the Defendants are likely to publish a similar story in future, especially on the days commemorating the Gen-Z led anti-Finance Bill protests.
7. The Motion has been opposed by the Defendants through a Replying Affidavit. Upon this opposition, the Motion was heard orally. With each side making oral submissions.

### **Analysis and Determination**

8. The singular issue for determination in this Motion, is whether or not the interlocutory injunctive orders that the Plaintiff has sought in this Application, should be granted. In determining this, the Court has considered the Application (and its Supporting Affidavit), the Defendants' Response, the parties' rival submissions, as well as the relevant law and applicable legal principles.
9. This being an Application for interlocutory injunction, it has to first meet the legal threshold of the three pillars set in *Giella v. Casman Brown* [1973] EA 358. That is, the test as to:
  - (a) a prima facie case;
  - (b) sufficiency or otherwise, of damages; and
  - (c) the balance of convenience. In defamation suits and those for press gag orders, such as this suit, the Application has to pass an additional test. That of balancing two constitutional imperatives, namely,
    - (a) press freedom (free press), and
    - (b) the Plaintiff's right to reputation and protection of dignity.

This is a delicate balancing act. In defamation suits therefore, the legal threshold for interim injunctions and interlocutory injunctions, is essentially higher than the one set out in *Giella v. Casman Brown*.

10. Unlike the largely amorphous and rag tag informal media sector such as social media that is largely unregulated, Kenya's formal media sector (also known as the mainstream media sector), that includes the Defendants' Daily Nation newspaper, is regulated by the Media Council and even has a Code of Conduct. Which Code is intended to not only maintain uniform standards across the sector, but also to ensure ethical, credible, objective and responsible reporting. Besides, even the individual newspapers have internal self-regulation mechanisms- such as approval by Sub-editors and Chief editors.



11. Notably, freedom of the press (Media freedom) is one of the main pillars of the Kenya Constitution. This is provided for in Article 34 of *the Constitution*. This provisioning stems from not only the media's right to report, but also from the public's right to know what is going on around them.
12. Pre-trial injunctions against the mainstream media platforms (formal media sector) ought to be issued very sparingly and only in exceptional and most deserving circumstances. When setting aside a pre-trial injunction, the Supreme Court of India in *Bloomerg Television Production Services India Private Limited & Others v. Zee Entertainment Enterprise*, 2024 SCC OnLine SC 426, cautioned courts to exercise caution when granting pre-trial injunctions in defamation cases against the press. It emphasized that pre-trial injunctions against media publication must be granted with caution.
13. It need be emphasized that pre-trial injunctions if dished out in a wanton, reckless and cavalier fashion, have the effect of stifling media freedom and cutting back of the gains made in promoting a free press. Especially the ex parte injunctions issued at the ad interim stage.
14. This is because in defamation suits, these are two competing equities that should be delicately balanced; namely,
  - (a) the right to privacy and protection of reputation,
  - and
  - (b) press freedom (and journalistic expression).

Both of which are legal imperatives. Therefore in considering whether or not to issue a pre-trial injunction in defamation suits against the media, the court ought to strike a balanced between the right to reputation and privacy, and free press (together with the right to journalistic expression).
15. When it comes to judicial censorship of the press, courts should tread carefully, and intervene only in the most justified, most compelling, and most deserving circumstances. And as an exception rather than as the norm. This is because in balancing public interest and private rights, public interest ought to always prevail except in limited exceptional and deserving circumstances such as where there exist factors such as witch-hunt, malice, vendetta and bad faith.
16. More so in defamation suits by public figures, and holders of public office. Whose conduct and actions even in the private space, are a matter of public interest. The rule of the thumb here being, "the higher the privilege, the higher the responsibility and scrutiny". More less like the geography axiom "the higher you go the cooler it becomes."
17. Generally, courts should refrain from the mere gagging of the media and silencing of journalists. Press freedom and journalistic expression is a necessary evil.
18. The Plaintiff is in this Application seeking to restrain the Defendants and their media house from, in the intervening period (the period between now and the judgment date), publishing any story linking him to the goons that disrupt protests in Nairobi streets.
19. From the Motion, it is clear that the Plaintiff is seeking a rolling or free-flowing injunction sought as a precaution to the general likelihood of the media house in future publishing such a story/report. For an injunction of that manner to issue, there will have to be evidence of an imminent or immediate future threat of such publication. For instance where the Applicant has evidence that the publication has been printed and is ready for distribution to the general public, or he has accessed an advance copy of an upcoming publication. Not where he is merely speculating or afraid is merely of possible publication hence seeking the injunction out of the abundance of caution.



20. In the pre-trial period, a rolling gag order such as the one the Plaintiff is seeking in this Motion, is most undesirable. I describe it as “rolling” in the sense that it is continuing and anticipatory and intended to insulate against all eventuality. At its worst, such an injunction can in its terms be rather speculative, hypothetical and remote. Especially when based on speculation, sheer apprehension, or paranoia; and no evidence of immediate future threat of further publication has been presented.
21. May add, that in the unforeseeable event of the media house publishing any defamatory story while this suit is pending, a cause of action in defamation will still lie, and the harm is compensable in damages. In a court of law unlike in the “court of public opinion”, damages for defamation are quantifiable. With regard to the prayer that the Defendants be enjoined from ever in future publishing a similar story or any other defamatory matter against the Plaintiff, this will not only be speculative, but is also undesirable at a pre-trial stage when the pleadings have not closed, and evidence has not yet been taken at trial.
22. In the end, this Court is not satisfied that the Plaintiff has established a sound enough and legally sufficient enough basis for a grant of the injunctive orders sought in this Motion. The Motion is therefore for dismissal, and I hereby dismiss it, with no order as to costs.

**DATED AND DELIVERED AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

