



REPUBLIC OF KENYA



**Ichungwa v Ndung'u (Civil Case E013 of 2024)  
[2025] KEHC 13722 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13722 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE E013 OF 2024  
DO CHEPKWONY, J  
OCTOBER 3, 2025**

**BETWEEN**

**HON. KIMANI ICHUNGWA ..... PLAINTIFF**

**AND**

**SAMUEL KURIA NDUNG'U ..... DEFENDANT**

**RULING**

1. This ruling determines to Plaintiff's the Notice of Motion application dated 12<sup>th</sup> April, 2024 which seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. Pending the hearing and determination of this suit a temporary injunction be issued restraining the Defendant/Respondent whether by himself, his agents, employees or any person acting under his direction from further publishing, posting, reposting and/or republishing the defamatory information in any manner whatsoever about the Plaintiff/Applicant.
  - d. Pending the hearing and determination of this suit an order be issued directing the Defendant/Respondent to pull down, expunge, retract and erase from all forms of social media platforms in any events, not more than 24 hours of the service of the order, the allegations uttered.
  - e. Costs of the application be in the cause.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit sworn by the Hon. Kimani Ichungwa on the same date. The Plaintiff/Applicant avers that on diverse dates in April, 2024 the Defendant/Respondent published statements through public forums and social medial platforms which were calculated to injure his reputation as a leader, public servant and Majority



Leader in the National Assembly. That specifically, on the 2<sup>nd</sup> April, 2024, the Defendant/ Respondent made the following remarks:-

“Thank you so much, jioni ya leo I want to address myself to our Member of Parliament, Mheshimiwa Kimani wa Ichung’wa who is also known as the Majority Leader. Vijana wetu wa Kikuyu wamekuwa wakicomplain wanakuandikia mabarua wewe haupatikani, wewe huwajibu. Hawa vijana, they are asking for what is rightfully theirs. The law stipulates that 2 percent of the CDF allocation should be put in youth and sports. There is a big ongoing war against illicit liquor and alcohol. Wewe Mheshimiwa tumekuona umekuwa ukizurura from one constituency to the other. Unaenda kushabikia wabunge wengine wakichezeshwa CDF, wakichezeshwa mpira, lakini wewe kwako in your own constituency, pesa yote ya vijana unachukua ,sijui ni kukula unakula, unanunua manyumba ama mashamba lakini huhezeshi hiyo football ama any other sport within the constituency. In the Constituency hapa tunapewa 150 million. 2 per cent ya hiyo ni 3 million kila mwaka. So, mwaka wa 2022, million tatu hukupatia vijana, 2023, million tatu hukupatia vijana, hii ni 2024, million tatu ya vijana unataka kukula. Already, hiyo ni million tisa. The other day tumeona sana ulikuwa umemwita Waziri wa roads, Mheshimiwa Kipchumba Murkomen, yeye akasimama na akatangaza kwamba yeye amepea vijana shilingi million moja ya kucheza na shilingi million moja ingine ya kuvaa. So in total, that is 11 Million. We are demanding from you Mheshimiwa Anthony Kimani wa Ichung’wa, can you tell us pesa ya vijana umepeleka wapi. Kama kuna pesa hatutakubali ukule, kama kuna pesa hatutakubali ucheze nayo, angikoruo he mbeba utekumbana nacio, ni mbeba cia youth ya Kikuyu constituency...Ndukuria mbeba cia youth ringi tukirite...”

3. The Plaintiff/Applicant avers that those words imprinted among other things that he habitually plunders and routinely diverts Kikuyu Constituency resources specifically, the NGCDF funds intended for youth and sports development, and misappropriates monies allocated under the National Government Constituency Development fund (NG-CDF). According to the Plaintiff, these words are false, malicious and intended to depict him as corrupt, dishonest and unfit for public office. He depones that despite a demand for retraction and apology, the Defendant/Respondent not only refused to retract but published the demand letter on Tiktok, thereby aggravating the defamation.
4. The Plaintiff/Applicant further avers that again on 9<sup>th</sup> April, 2024, in an interview, the Defendant/ Respondent extended his attack against him and made the following utterances:-

“Angikorwo he mundu jui murumani, mundu urumaga atongoria aria angi, ungijitia murumani ucio datwara Kimani wa Ichung’wa. Tondue ni njui ongorwo ni magabana ambirie kuruma kuma Kabogo, akiambia kuruma kuma Waititu, akiruma nginya Nyoro, na thaa ici niwe urathiururuka guku akirumaga Wamatangi akimuitaga anga muici anga ki. Araruma ningi nyinga mubunge waa kuria Githunguri wita guo Gathoni was Muchomba aramuita nyakanga. Uyu mundu ndari gitio arumire akiruma kinya Uhuru wa Kenyatta.”
5. According to the Plaintiff/Applicant, these words were meant to cast him as a fraudster, lustful and an unethical man who lacks integrity or credibility. The Plaintiff avers that these words circulated through mainstream and online platform, spread widely and were viewed by millions, including his constituents, colleagues, friends and family. He asserts that he has suffered and continues to suffer irreparable damage to his personal and professional reputation unless the Defendant/ Respondent is restrained.



6. The Defendant/Respondent opposed the application through a Replying Affidavit sworn on 19<sup>th</sup> April, 2024. He admitted making the impugned statements but denied malice, contending that he was raising issues of public interest relating to the management of NG-CDF. He maintains that his words were not defamatory and further contends his words were not published widely as averred. In his view, the Plaintiff has not demonstrated how the words complained of portrayed him as a man who habitually plunders or routinely diverts Kikuyu Constituency's resources for personal gain while conceding that he did not respond to the demand letter issued by the Applicant. He explains that this was because the words were not defamatory and posting the demand letter was not a furtherance of a defamation case actionable in law. The Respondent further avers that the natural and ordinary meaning of his words when reading in context cannot be construed to mean that the Applicant is charlatan, fraudster, swindler and lustful man. On the contrary, he maintains that the statements were published only on Tiktok, a platform whose viewers is quantifiable and not as vast as claimed by the Plaintiff/Applicant.
7. The Respondent further avers that the Applicant has a habit of posting NG-CDF Projects as his own while knowing they are funded by the National Government. He also takes issue with the Applicants own behaviour contending that the Applicant has in the past taken to both private and public platforms to disparage him using offensive and derogatory words. As an example, he cited the remarks allegedly made by the Applicant on 10<sup>th</sup> December, 2023. He argues that despite those personal attacks, he did not institute any legal action against the Applicant and hence the Applicant should not in his words seek to present himself as a paragon by virtue while at the same time silencing the Respondents criticisms.
8. While maintaining that his words were neither defamatory nor malicious, the Respondent has nonetheless indicated that he is prepared to make amends by withdrawing the videos posted on Tiktok should the Plaintiff/Applicant still find them offensive.
9. Thereafter, the Court directed that the application be canvassed by way of written submissions. The Applicant duly filed his submissions dated 29<sup>th</sup> April, 2024, while the Respondent filed submissions dated 10<sup>th</sup> May, 2024. Both submissions are on record and have been considered by the court in arriving at this decision.

### **Analysis and Determination**

10. In considering this application, I have carefully read through the affidavits in support and in opposition thereof together with the respective submissions filed by the parties and find the main issue that falls for determination is whether the Applicant has met the threshold for the grant of interlocutory injunctive orders in a defamation claim. It is trite law that in defamation suits, such orders are granted sparingly and with great caution. The guiding principle as laid out in the case of *Cheserem –v- Immediate Media Services & 4 Others* [2000] eKLR is that injunction in defamation matters will issue only in the clearest and most obvious of cases where the words complained of are plainly defamatory and lawful defence is available. In the said case of Justice Khamoni (as he then was) had this to say:-

“Applications for interlocutory injunction in defamation cases are treated differently from ordinary cases because they bring out a conflict between private and public interest. Though the conditions applicable in granting interlocutory injunctions set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 258 generally apply, in defamation cases those conditions operate in special circumstances. Over and above the test set out in *Giella's* case, in defamation cases 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 or matter complained of are libelous and also that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse. Normally the court would not grant an interlocutory injunction when the defendant pleads justification or fair comment because of the public interest that the truth should be out and the court aims to protect a humane, responsible, truthful and trustworthy defendant.”

11. Another essential ingredients of defamation were reiterated in the case of *Musikari Kombo -v- Royal Media Services Limited* 156 of 2017 [2018] e KLR to include the following:-

“It follows that a claimant in a defamation suit ought to principally establish in no particular order:

- i. The existence of a defamatory statement;
- ii. The defendant has published or caused the publication of the defamatory statement;
- iii. The publication refers to the claimant.”

12. Similarly, the Court of Appeal in the case of *Selina Patani & Another -v- Dhiranji -v- Patani* [2019]eKLR set out the four elements of defamation as follows:-and the Court of Appeal stated that:-

“In rehashing, we note the ingredients of defamation were summarized in the case of *John Ward v Standard Ltd* HCC 1062 of 2005 as follows:

- i. The statement must be defamatory
- ii. The statement must refer to the plaintiff
- iii. The statement must be published by the defendant
- iv. The statement must be false.”

13. In the instant matter, it is not disputed and indeed admitted by the Respondent, that he uttered and published the impugned words and that the words referred to the Plaintiff. The first two elements as regards publication and reference to the Plaintiff are therefore satisfied. What remains for the court to determine is whether the statements are prima-facie defamatory, and if so, whether they were false, or otherwise defensible as fair comments or truth.

14. The term defamation has been defined in *Halsbury's Laws of England* 4th Edition Vol. 28 paragraph 10 as:-

“....a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business”.

15. The East African Court of Appeal in the case of *Onama -v- Uganda Argus Ltd* (1969) EA where the East African Court of Appeal further stated as follows:-

“In deciding whether the words are defamatory, the test is what the words could reasonably be regarded as meaning, not only to the general public, but also to all those “who have a greater or special knowledge of the subject matter”.



16. Applying these principles to the facts before me, it is manifest that the words complained of which accused the Plaintiff of misappropriating public and constituency funds, painted him in a negative light and were capable of tarnishing his reputation as a leader. Such words if untrue, would lower him in the estimation of right thinking members of society, thereof meeting the test of defamation. The question of falsity, justification or fair comment is one that will be fully ventilated at trial.
17. In light of the foregoing analysis, and being satisfied that the Applicant has established a prima facie case with a probability of success, and stands to suffer irreparable injury to his reputation if the defamatory words continue to circulate. As such this Court finds merit in the application and accordingly proceeds to grant the following orders/ terms:-
  - a. The court hereby issues a temporary injunction restraining the Defendant/Respondent whether by himself, his agents, employees or any person acting under his direction from further publishing, posting, reposting and/or republishing the defamatory information in any manner whatsoever about the Plaintiff/Applicant.
  - b. The court hereby directs the Defendant/Respondent to pull down, expunge, retract and erase from all forms of social media platforms in any events, not more than 24 hours of the service of the order, the allegations uttered.
  - c. The costs of the application shall be in the cause .

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF OCTOBER , 2025.  
(UPLOADED VIA ELECTRONIC MAIL).**

**D. O. CHEPKWONY**

**JUDGE**

