

- (b) *Publishing any new articles or content related to the Plaintiff's connection to Banda Homes.*
 - (c) *Using the Plaintiff's name or image in any reporting related to real estate fraud or housing scams.*
- (4) *That Pending the hearing and determination of this suit, the Defendants whether by themselves, their agents, employees, affiliates, platforms, or media outlets under their control, be restrained from publishing, broadcasting distributing, or disseminating directly or indirectly any content, commentary, analysis, or reporting concerning the Plaintiff of any matter relating to WILLSTONE HOMES LIMITED that arises from or is connected to the allegations made in the publications dated 7th August 2024 and 4th June 2025, or the subject matter of these proceedings.*
- (5) *That the Defendants be prohibited from authoring or permitting the publication of any editorial, opinion piece, or analysis reiterating or referencing the Plaintiff in relation to the subject matter of this suit, pending hearing and final determination.*
- (6) *That Pending the hearing and determination of this suit, a temporary injunction be and is hereby issued restraining the Defendants from publishing, republishing, or otherwise*

distributing, whether in print or digital form, any material:

(a) Referring to the Plaintiff in connection with Banda Homes Limited,

(b) Associating the Plaintiff with fraudulent or scam-based housing projects,

(c) Referencing or relying upon the articles published by the Defendants on 7th August 2024 and 4th June 2025, and

(d) Portraying the Plaintiff as a fraudulent developer, scammer, or criminal actor.

(7) That the Defendants be restrained from issuing, approving, authoring, broadcasting, or permitting publication of any editorial, commentary, or article that reiterates, references, or builds upon the defamatory allegations the subject of this suit.

(8) Directions be issued for expedited hearing of the main suit, in view of the ongoing and irreparable nature of reputational and economic harm occasioned to the Plaintiff.

(9) That the costs of this Application be provided for.

2. The Application is based on following grounds that are stated in it:

(1) That the Plaintiff is a respected Kenyan entrepreneur and Managing Director of WILLSTONE HOMES LIMITED; with an unblemished record in the real estate sector, whose reputation and livelihood have been severely damaged by two defamatory

articles published by the Defendants on 7th August 2024 and 4th June 2025.

- (2) That the Defendants have, without any factual foundation, falsely alleged that the Plaintiff was a former employee of Banda Homes, a company associated with stalled housing projects, and have further labelled him a "face of scams" and likened him to the historical fraudster Gregor MacGregor all without evidence, verification, or right of reply.*
- (3) That the said publications were published with actual malice, reckless disregard for the truth, and with deliberate intent to cause reputational harm, economic sabotage, and public disgrace, in total violation of journalistic ethics and constitutional protections.⁴ The defamatory content remains publicly available online, indexed by search engines and accessible worldwide, and continues to generate irreversible reputational injury each time it is searched, shared, read, or republished.*
- (4) That the defamatory content remains publicly available online, indexed by search engines and accessible worldwide, and continues to generate irreversible reputational injury each time it is searched, shared, read, or republished.*
- (5) That the Plaintiff has already suffered demonstrable harm, including loss of business, investor withdrawal, cancelled transactions, professional blacklisting, and family distress, directly traceable to the publications.*

- (6) *That there exists a real and imminent risk of further publications or editorial commentary by the Defendants or their affiliated platforms that would deepen the injury already sustained and undermine the authority of this Court by allowing parallel litigation through the media.*
- (7) *That, freedom of expression under Article 33(1) of the Constitution does not extend to defamatory expressions, hate speech, or unverified allegations that injure the dignity, privacy, and reputation of others, as clearly provided under Article 33(3).*
- (8) *That the continued presence and circulation of the impugned articles amount to a continuing tort, exposing the Plaintiff to unending harm, public suspicion, ridicule, and loss of dignity, thus warranting urgent equitable protection.*
- (9) *That unless restrained, the Defendants may proceed to publish further false and injurious statements touching on the Plaintiffs private and professional life, thereby rendering the suit nugatory and the judicial process futile.*
- (10) *That the Plaintiff has a prima facie case with a high probability of success, stands to suffer irreparable harm that cannot be compensated in damages, and the balance of convenience tilts strongly in his favour as he only seeks to preserve his dignity and silence falsehoods pending trial.*
- (11) *That this Court has jurisdiction to issue interlocutory and protective reliefs where the*

circumstances disclose a grave violation of constitutional rights and imminent irreparable injury.

(12) That it is in the interest of justice and fairness that the orders sought herein be granted forthwith.

3. The Defendants opposed the Application through the Replying Affidavit of SIMON CIURI the 2nd Defendant, sworn on 9th July 2025; and through Grounds of Opposition. Both parties then filed their respective Skeletal Arguments as well as Legal Authorities; and thereafter argued the Application orally, with each party propounding its position.

Analysis and Determination

4. The singular issue for determination in this Application is whether this Court should on the material placed before it by both parties, grant the interlocutory injunctive orders the Plaintiff is seeking.
5. As for whether the statements complained of are defamatory of the Plaintiff, that shall be determined after the suit has been heard and evidence taken. It cannot be determined at this pre-trial stage. All that should do at this moment is, to gloss over the pleadings and facts as presented by the Plaintiff, and determine whether they disclose a *prima facie* or arguable case. It should not turn an Application of this nature, into a mini-trial of the suit.
6. This is a defamation suit that alleges damage to reputation. The Plaintiff is a Director of WILLSTONE HOMES LTD, an Off-Plan Housing Developer. His grievance in this suit, is that the Defendants have by a story carried in the Daily Nation Newspaper of Wednesday 4th June 2025, defamed him by

linking to a Housing Company that went under, and is alleged to have swindled investors of their investments.

7. That the said story, which was on the front page of the Newspaper, and had a picture of the Plaintiff, stated that the Plaintiff who is Director of WILLSTONE HOMES is a former Sales Manager of the said BANDA HOMES LTD that left investors in tears, after going under with Ksh 5 Billion of investors' money, after failing to distribute housing units that those investors had paid for.
8. He in his suit and Application contends that the said article's linking him with the said Company, was deliberate, malicious; and done with an intention of discrediting him to the public and his realtors. He has stated that he has never been an employee or director of the said BANDA HOMES LTD, or even associated with it.
9. In his oral submissions to court, his Advocate stated that the Plaintiff's reputation has been damaged, and also that the Application has met the legal threshold for interlocutory injunctions as stated in ***Giella v. Casman Brown & Co. Ltd [1973] EA 358.***
10. In their Response and submissions to court, the Defendants have defended the publication; and stated that the impugned article was highlighting a problem faced by Kenyans. Where individuals and companies involved in housing development projects, take deposits from members of the public but end up not giving them the houses. That the article was not about Mr ELJIDIO and BANDA HOMES LTD.
11. They have further contended that there is need to relate the individual's right to a good name, and the public right to freedom of the press. Further that damages will be

an appropriate remedy in the event the right to reputation has been injured. That the Plaintiff is a director of WILLSTONE HOMES LTD, which took money from Kenyans on the pretext that it is building houses for Kenyans, yet the land on which it said it is building the houses, belonged to another company called MAGIC CONSULTANCY LTD.

12. In his submissions, the Defence Counsel cited the case of **Micah Cheserem v. Immediate Media Services & 4 Others [2010] eKLR** where the court stated that in defamation suits, the court's jurisdiction to grant an injunction, is exercised in the clearest possible cases.
13. This was also the holding in the recent case of **Hon Sakaja Arthur Johson v. Nation Media Group PLC & 2 Others [2025] KEHC 13737 (KLR)**, where I similarly observed that in defamation suits, the legal threshold for interlocutory injunctions, is essentially higher than the one set out in **Giella v. Casman Brown.**
14. On the question of whether the potential harm that may result from a further publication of the subject statements is compensable by an award of damages, the Defence Counsel submitted that contrary to the Plaintiff's Counsel's submission that the harm is irreparable, that reputational harm can actually be compensated by way of damages.
15. That after all the Plaintiff has in the Plaint prayed for damages, which he has quantified at almost Ksh One Billion. Also that this is a court of equity, hence that any party seeking an interlocutory injunction should be ready to give an undertaking as to damages.

16. Further that there is no evidence of an immediate future threat of further publication; and that this Court should be careful in granting an injunction before a Defence is filed- as that pleadings in this suit, have not yet closed.

17. As I stated in **Hon Sakaja v. Nation Media Group PLC & 2 Others** (*Supra*), pre-trial injunctions against the mainstream media (the formal media sector) ought to be issued very sparingly and only in exceptional and most deserving circumstances. This is in light of the freedom of the press, which is guaranteed in Article 34 of the Kenya Constitution, as a fundamental freedom.

18. These 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. Generally, courts should refrain from the mere gagging of the media and silencing of journalists. This is partly because, press freedom and journalistic expression, is a necessary evil. For rolling gags on media publication, they are most undesirable in the pre-trial period.

19. These injunctions should be issued where the Application has satisfied the legal threshold in **Giella**, and additionally also demonstrated that there exist exceptional factors or circumstances that make the grant of the injunction, most compelling and most inviting. Such include, but are not limited to the following:

(a) Where the Defendant's utterance of the said statements or utterances against the Plaintiff, has been habitual or repetitive-hence giving rise to a reasonable fear of

continuation. In such a case, unless the Defendant has offered to court a formal undertaking that he will not make any further such statements/utterances while the suit is pending, a court may issue the injunction;

- (b) Where the Defendant has continued making the same statements or utterances against the Plaintiff, unperturbed- even after the institution of the suit, and in spite of the suit;***
- (c) Where there is a high likelihood that the Defendant will continue publishing or uttering the same statements or utterances against the Plaintiff, and is unlikely to stop, unless restrained by the court;***
- (d) Where there is evidence of imminent or immediate threat of repeat publication.***
- (e) The prejudice or loss the Defendant will suffer or is likely to suffer, if the injunction is granted;***
- (f) Where the words or expression used in the impugned statements or utterances, are so oppressive, so harsh, so bullyish, so impunitous, or so insensitive; or***
- (g) Where from their tone, the impugned statements or utterances are clearly laced with ill-will, malice, improper motive, vendetta, vengeance, bitterness, or they are***

clearly intended for retaliation or for the settling of scores or old grudges.

Final Determination

20. The Applicant has not demonstrated any such or similar exceptional circumstances as to necessitate the grant of the interlocutory injunctive orders sought in this Application. Hence granting the orders is a price too high to pay for the muzzling of freedom of the press and journalist expression. As I have stated elsewhere in similar cases, this freedom is a necessary evil.

21. This Application therefore fails, and is hereby dismissed. Each party shall bear its costs of the Application.

DATED and DELIVERED at NAIROBI on this 26th day of November 2025.

**PROF (DR) NIXON SIFUNA
JUDGE**