



Kenya Pipeline Company Limited v Standard Group Plc & 2 others (Civil Suit E169 of 2024) [2025] KEHC 19126 (KLR) (Civ) (4 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19126 (KLR)

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

**CIVIL
CIVIL SUIT E169 OF 2024**

**JM OMIDO, J
DECEMBER 4, 2025**

BETWEEN

KENYA PIPELINE COMPANY LIMITED PLAINTIFF

AND

STANDARD GROUP PLC 1ST DEFENDANT

FRANCIS ONTOMWA 2ND DEFENDANT

NDUNG’U GACHANE 3RD DEFENDANT

RULING

A. The Notice of Motion Dated 30th August, 2024.

1. The Plaintiff’s notice of motion dated 30th August, 2024 is expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Rules 2010, Order 40 Rules 2, 3, 4 and 8, Order 51 Rules 1, 3, 4, 11 and 13 of the Civil Procedure Rules 2010, Articles 33(3), 3 (1), 50(1), 15 (2)(a) and 165(3) (a) and (e) of *the Constitution* of Kenya 2010 and all other enabling provisions of the law and seeks the following orders:
 - a. That [Spent].
 - b. That [Spent].
 - c. That [Spent].
 - d. That pending full and final determination of this suit, this Honourable Court be pleased to issue an order of injunction restraining all the Defendants/Respondents either by themselves or by their agents and subsidiaries from publishing and broadcasting defamatory posts and



articles on mainstream, social, digital, print, radio and any other media any information regarding the Mombasa to Nairobi Line 5 Oil Pipeline Construction Project.

- e. That following the full and final determination of this Honourable Court be pleased to issue a permanent injunction restraining all the Defendants/Respondents either by themselves or by their agents and subsidiaries from publishing and broadcasting defamatory posts and articles on mainstream, social, digital, print, radio and any other media any information regarding the Mombasa to Nairobi Line 5 Oil Pipeline Construction Project.
 - f. That this Honourable Court does issue an order compelling all the Defendants/Respondents either by themselves or by their agents and subsidiaries to immediately remove, delete and/or pull down any false and malicious publication against the Plaintiff/Applicant on mainstream, social, digital, print, radio and any other media any information regarding the Mombasa to Nairobi Line 5 Oil Pipeline Construction Project.
 - g. That this Honourable Court does issue an order compelling all the Defendants/Respondents either by themselves or by their agents and subsidiaries to publish a suitable retraction of all false and malicious publications and a written apology given prominent coverage similar to that of the malicious and defamatory publication against the Plaintiff/Applicant on mainstream, social, digital, print, radio and any other media any information regarding the Mombasa to Nairobi Line 5 Oil Pipeline Construction Project.
 - h. That any other order or relief that this Honourable Court may deem fit to grant.
 - i. That costs of this Application be provided for to the Petitioners (sic).
2. The grounds upon which the application is premised are laid out on its face and are as follows:
- a. The Plaintiff/Applicant has repeatedly had its reputation maligned by all the Defendant/Respondents following persistent libelous publications in The Standard Newspapers of Tuesday 20th August, 2024 and Wednesday 21st August, 2024.
 - b. The same defamatory story in form of libelous publications was preceded by an on-air broadcast on KTN News at 9:00pm on Monday 19th August, 2024 broadcasting the same falsehoods under the caption “The Pipeline Plunder: Did Kenya Get Value of Line 5 Pipeline Construction Pipeline Scandal?”
 - c. The 2nd Defendant/Respondent at the behest of the 1st Defendant/Respondent has issued a threat vide a letter dated Thursday 29th August, 2024 that there is impending thirty-minute documentary to be aired soon on KTN News which will further damage the Plaintiff/Applicant’s reputational damage.
 - d. The Plaintiff/Applicant has the unfettered right to access this Honourable Court to protect its name and reputation from being maligned by all the Defendants/Respondents.
 - e. This Honourable Court has unrestricted powers and jurisdiction to grant the orders ought in the Application.

B. The Affidavit In Support Of The Application.

3. The application is supported by the affidavit of Gloria Khafafa, the Plaintiff’s Legal Services Manager, sworn on 30th August, 2024.



4. In her affidavit, Ms. Khafafa has expounded on the above grounds and states that 1st Defendant aired a defamatory and highly malicious story on KTN News 9:00pm prime time news on Monday 19th August, 2024 under the caption “The Pipeline Plunder: Did Kenya Get Value of Line 5 Pipeline Construction A Pipeline Scandal” with the same live streamed on its YouTube Channel, and that on Tuesday 20th August, 2024, the 1st Defendant went on to publish a highly malicious and libelous article on the front page of The Standard newspaper with the main headline reading “Kenya pays Ksh.40b extra in Pipeline construction deal”.
5. The deponent further stated that on Tuesday 20th August, 2024 the 1st Defendant published in The Standard newspaper a publication that was malicious and libelous to the Plaintiff under the following subheadings:

“Kenya Pipeline was supposed to replace its old line to Mombasa and granted tender to Lebanese company at a cost of Ksh.48 billion. The amount to be raised by six banks. However, documents indicate two banks stand to gain more than Ksh.40bn in an opaque process.”

and;

“KPC is also paying billions of shillings to two subsidiaries of West African lender, Ecobank Nigeria Limited and Ecobank Kenya Limited, which claim to have financed the construction of the new pipeline.”

6. That in her further deposition, Ms. Khafafa stated on oath that the 1st Defendant went further to advance a false publication in The Standard newspaper of Tuesday 20th August, 2024 and that the 2nd Defendant/Respondent published a libelous article under the following headings and sub-headings:

“Taxpayers may have paid twice for Ksh48b project.”

and,

“No additional compensation was to be paid to parties not in the original contract, yet KPC is paying two subsidiary banks.”

7. The deponent of the supporting affidavit stated further that the Plaintiff wrote a Cease-and-Desist Letter on Tuesday 20th, August 2024 to the 1st Defendant demanding a written apology and full retraction of the false publications and as well sent a press statement to the 1st Defendant denying all the false publications levelled against it. On Wednesday 21st August 2024, the 1st Defendant through the 3rd Defendant published the Plaintiff’s denial on page 4 of The Standard newspaper but declined to issue a written apology and declined to fully retract the false publication.
8. Ms. Khafafa further complained in her affidavit that on Wednesday 21st August, 2024, the 2nd Defendant yet again published another malicious and libelous publication in The Standard newspaper, under the following headings:

“Kiboko oil leak exposed bad job, affected many people.”,

“Whereas Kenya Pipeline gave the project a clean bill of health, the spill at Kibwezi was a disaster.”

and,



“Company says it cleaned the affected area but locals say they still fear the effects could crop up.”

9. That following the further publications, the Plaintiff wrote to the 1st Defendant a second “Cease-and-Desist Letter” to the 1st Defendant reiterating the contents of its first such letter and issued new demands to have the publications retracted and a written apology issued, which the 1st Defendant failed to do.
10. In her further depositions, Ms. Khafafa stated in her affidavit that the three Defendants were on a sustained libelous and smear campaign against the Plaintiff and had indicated that they had an intention of airing a thirty-minute documentary on their television channel – KTN News – which would further advance their defamatory acts against the Plaintiff. She stated that the new threats were revealed by the 2nd Defendant’s letter dated Thursday 29th August, 2024 (Annexure GK-7).
11. The Plaintiff, through the deponent, complained that it has never been approached by any of the Defendants to offer a factual background regarding the construction of the Mombasa - Nairobi pipeline and that as a result of the above publications, the Plaintiff has suffered, continues to suffer and will suffer further immense prejudice as being portrayed as a corrupt state corporation that embezzled public funds to construct a substandard oil pipeline on account of the actions by all the Defendants, unless this court intervenes.

C. The Replying Affidavit.

12. The Defendants resisted the application and to that end filed a replying affidavit sworn on 27th September, 2024 by Francis Ontomwa, the 2nd Defendant herein, who therein describes himself as an investigative reporter working with the 1st Defendant.
13. In his affidavit in response to the Plaintiff’s motion, Mr. Ontomwa admitted that the Defendants published the words complained of but denied that the same were false and malicious. He took the position that the words, in their natural and ordinary meaning, were statements of fact, true in substance and in fact and were a fair comment on matters of public interest concerning loss of public funds and defective works. He further stated that the Defendants published the said words in exercise of the 1st Defendant’s freedom of media under Article 34 of *the Constitution*.
14. The 2nd Defendant stated that on 1st July, 2014, the Plaintiff awarded Zakhem International Construction Limited a contract for what he dubbed the Line 1 Pipeline Replacement Project (Line 5) with the contract cost being USD 484,502,886.40 inclusive of VAT and that Zakhem completed the works and handed over the project to the Plaintiff on 23rd January, 2018 and a certificate was issued to that effect.
15. It was Mr. Ontomwa’s further deposition that the contract sum was later varied by a sum of USD 20,199,065.78, which was within the permitted 10% variation condition, which then meant that the revised contract cost was USD 504,701,952.18, inclusive of financial variation and VAT. That out of that amount, the Plaintiff was entitled to retain USD 6,600,000 from the contract sum towards payment of power stations, USD 40,183,996.34 being retention funds for one year after the completion date for purposes of addressing defects, USD 28,305,560.86 being withholding tax and USD 2,422,514.93 being NCA levy withholding.
16. It was Mr. Ontomwa’s further deposition that the Plaintiff paid Zakhem the full amount as per the completion date of USD 426,547,082.42 after VAT remission, withheld taxes and retention. Additionally, the Plaintiff refunded to Zakhem the full retention amount of USD 40,183,996.34 in



five tranches before Zakhem completed the works, defeating the purpose of the retention, whereafter the Plaintiff sought to source from the taxpayer Ksh.40,000,000/- defective works.

17. In his further deposition, Mr. Ontomwa stated that despite being paid in full, Zakhem, working in concert with the Plaintiff filed Milimani HCCOM No. E322 of 2019 Zakhem International Construction Limited versus Kenya Pipeline Company Limited claiming payment of USD 126,255,812.62 from the Plaintiff. The parties in that matter attempted to record a consent for the Plaintiff to pay Zakhem USD 69,684,238.46 which the court however declined to adopt and/or endorse, whereafter the suit was withdrawn.
18. That notwithstanding the court's refusal to endorse and/or adopt the consent, the Plaintiff went ahead to pay to Zakhem USD 43,500,945.76.
19. Mr. Ontomwa stated in his replying affidavit that on 19th August, 2024, he reached out to the Plaintiff's Managing Director for his comments and side of his story and further visited the Plaintiff's offices on 20th August, 2024 but the Plaintiff's agents insisted that nothing was to be recorded by the journalist.
20. The deponent therefore took the position that no prima facie case had been established by the Plaintiff that would warrant issuance of an interlocutory injunction.

D. The Further Affidavit.

21. Ms. Khafafa swore a further affidavit on 7th November, 2024 in which she stated, in response to the replying affidavit, that no signed authority and/or consent was presented by the Defendants as proof that the 1st Defendant and 3rd Defendant gave the 2nd Defendant any consent and authority to swear the replying affidavit on their behalf and that without any such consent or authority tabled, there is no opposition by the 1st and 3rd Defendants to the Plaintiff's application.
22. Ms. Khafafa further stated that some of the documents that were annexed to the affidavit of Mr. Ontomwa were not genuine. She stated that at no point did the Plaintiff in Contract Number SU/QT/032N/13 lose billions of taxpayers' monies and that the allegations of the loss by the Defendants was false.
23. In her further depositions, Ms. Khafafa stated in her further affidavit that an agreement dated 1st July, 2014 was entered into between the Plaintiff and Zakhem whereby the Plaintiff offered Zakhem USD 520,970,845.60 inclusive of VAT subjected to a 7% discount resulting in a contract price of USD 484,502,886.40 and that on 26th September 2014, following a request by Zakhem and in discharge of its financial obligations under the agreement dated 1st July, 2014, the Plaintiff applied for and secured a Prepaid Irrevocable Letter of Credit from Citibank Nairobi for an amount of USD 105,000,000.00 as a form and mode of payment to Zakhem.
24. She stated that at no point did the Plaintiff refund the full retention fund amount of United USD 40,183,996.34 to Zakhem that the contention by the Defendants was therefore an entirely false narrative that was being used to maliciously malign the Plaintiff.
25. Regarding Milimani HCCOMM E322 of 2019 Zakhem International Construction Limited versus Kenya Pipeline Company Limited, Ms. Khafafa stated that in a ruling delivered on 16th June, 2020, the Plaintiff was compelled to pay Zakhem a total of USD 44,019,024.64 with interest as indicated. That the reason as to why the consent judgment dated 25th September, 2023 was not endorsed and/or adopted was because it became apparent that the same was incapable of being enforced as there existed a Mareva injunction in Milimani HCCOMM 292 of 2018: Ecobank Nigeria Limited and Ecobank Kenya Limited versus Zakhem International Construction Limited (Nigeria), Zakhem Construction



Nigeria Limited, Zakhem International Construction Limited (Cyprus), Zakhem Construction (Kenya) Limited and Kenya Pipeline Company Limited. The court therefore declined to endorse and/or adopt the consent in order to avoid the possibility of conflicting decisions being rendered in the two matters.

E. Issues For Determination.

26. The parties herein filed their respective submissions on the application. The issues that emerge for determination are as follows:
 1. Whether the Plaintiff has met the threshold for grant of an interlocutory injunction.
 - i. Whether the Plaintiff has established a prima facie case with a probability of success.
 - ii. Whether the Plaintiff will suffer irreparable harm.
 - iii. If in doubt, where does the balance of convenience lie.
 2. Whether the nature of the relief sought is appropriate.
 3. Disposition.

F. Analysis And Findings

1. Whether the Plaintiff/Applicant has met the threshold for grant of an interlocutory injunction.

27. Having considered the Notice of Motion dated 30th August 2024, the supporting affidavit sworn by Gloria Khafafa, the replying affidavit of Francis Ontomwa, the further affidavit of Gloria Khafafa, the parties' rival submissions, and the entire record the Court is guided by the well-settled principles governing the grant of interlocutory injunctions.
28. The leading authority remains *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where the Court set out the tripartite test requiring an Applicant to demonstrate: first, a prima facie case with a probability of success; second, that the Applicant stands to suffer irreparable loss not compensable by an award of damages; and third, should the court be in doubt, the balance of convenience.
29. These principles were later refined by the Court of Appeal in *Nguruman Limited v Nielsen & another* (Civil Appeal 20 of 2018) [2023] KECA 274 (KLR) (17 March 2023) which clarified that the test must be applied sequentially when considering interlocutory injunctions. The court stated as follows:

“If the applicant establishes a prima facie case, that alone is not sufficient basis to grant an interlocutory injunction; the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted — however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
30. It is also well settled that at this interlocutory stage, the Court is not required to and must not undertake a deep or definitive analysis of contested factual material, as that would amount to prematurely determining the suit without the benefit of viva voce evidence and cross examination. With these guiding principles in mind, the issues for determination crystallize.



i. Whether the Plaintiff/Applicant has established a prima facie case with a probability of success.

31. A prima facie case, as defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR is not a case that must ultimately succeed but one that discloses a right apparently infringed by the opposite party, thereby calling for rebuttal or defence. The court stated thus:

“A prima facie case in a civil application includes a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
32. In the present matter, the Plaintiff’s claim is that the Defendants, acting jointly, have embarked on a sustained and ongoing defamatory campaign targeting the Plaintiff’s reputation, focusing on allegations of corruption, financial impropriety, loss of public funds, defective workmanship in the Line 5 pipeline project, and collusive dealings with contractors and financial institutions.
33. The Plaintiff has exhibited several publications from The Standard newspaper dated 20th and 21st August 2024, as well as a 9.00pm KTN News broadcast aired on 19th August 2024, drawing attention to the publication captions, the headlines used and the statements conveyed.
34. The Plaintiff asserts that the publications were malicious, false and misleading; that the Defendants made no reasonable effort to verify the truth of the information; that the Defendants did not afford the Plaintiff an opportunity to comment prior to publication; and that the Defendants appear intent on continuing the publications, including producing and airing a 30-minute investigative documentary.
35. The Defendants on their part admit publishing the words complained of but contend that the words are true in substance, accurate in fact and constitute fair comment made in the public interest pursuant to the constitutionally protected freedom of the media under Article 34 of *the Constitution*. They further contend that investigative journalism, especially regarding the expenditure of public funds by state corporations, is a vital constitutional role and that the Plaintiff, being a public institution, must be subject to scrutiny.
36. The Defendants further argue that they made attempts to contact the Plaintiff’s Managing Director on 19th and 20th August 2024 but were denied meaningful engagement by the Plaintiff’s officers.
37. These rival positions raise deep factual disputes concerning: (a) the true contract price of the Line 5 project; (b) the alleged refund of retention funds; (c) the circumstances under which Zakhem received certain payments; (d) the Plaintiff’s alleged role in the earlier Milimani HCCOM E322 of 2019; and (e) the relationship between the alleged financial flows and the ongoing HCCOMM 292 of 2018. All these matters form the core of the Defendants’ justification for their investigative reports.
38. The Court must emphasize, however – and this is fundamental – that at this interlocutory stage it cannot and must not engage in a granular examination of those contested factual controversies. That is the province of the main trial, where parties will have the opportunity to tender primary documents, call witnesses, subject each other to cross-examination and invite the Court to make definitive findings on the truthfulness or falsity of the allegations contained in the publications.
39. The Court also notes that the litigations referenced by the parties – Milimani HCCOM E322 of 2019 and Milimani HCCOMM 292 of 2018 – are not matters currently before this Court, and it would therefore be inappropriate to comment substantively on their facts, filings or findings, even though the parties have sought to rely on them to bolster their positions.



40. In light of the material placed before this Court and the admitted fact that the Defendants have published several articles and intend to publish more, the Plaintiff has shown that it enjoys a legal right to reputation and dignity and that the impugned publications, if ultimately shown at trial to be false or malicious, would constitute a violation of that right.
41. Whether those publications are in fact true, accurate, justified or protected by constitutional privilege is a matter that will be determined later. For now, the Court is satisfied that the Plaintiff has established a prima facie case with a probability of success, sufficient to pass the first limb of the Giella test.

ii. Whether the Plaintiff will suffer irreparable harm that cannot be compensated by an award in damages.

42. The second limb requires the Plaintiff to demonstrate that it stands to suffer irreparable harm that cannot be adequately compensated by damages.
43. The view I take is that in defamation matters, harm to reputation, particularly where the defamatory publications are repetitive, wide-reaching and disseminated across digital, electronic, print and social media, may not be adequately and fully compensated through monetary damages. Once reputation is tarnished, particularly of a public entity entrusted with sensitive and strategic national infrastructure, the public perception, stakeholder confidence and institutional credibility may be permanently altered in ways that cannot be reversed even with financial compensation or a subsequent apology.
44. Here, the Plaintiff has demonstrated that the publications in issue have already received significant public attention, including front-page coverage in The Standard newspaper and prime-time broadcasting on KTN News.
45. Moreover, the Defendants have expressly indicated an intention to continue publishing on the same subject, including airing a 30-minute documentary. It is this imminent and continuing threat, rather than past publications alone, that in my view heightens the possibility of irreparable harm.
46. The Plaintiff avers that such continued publications will portray it as a corrupt, inept or complicit state corporation, thereby undermining its operational effectiveness, its interactions with regulators, financiers, contractors and the general public and its standing. The Court accepts that such harm, if ultimately shown to be based on falsehoods, may not be remedied merely through damages. I therefore find that the Plaintiff has satisfied the second limb of the Giella test.

iii. Where the balance of convenience lies.

47. The third limb, balance of convenience, is considered where the Court is in doubt. Even though this Court is not in doubt after considering the first two limbs, it is necessary to address it for completeness.
48. The balance of convenience in the present dispute requires the Court to weigh the competing constitutional values at stake. On one hand is the freedom of expression and freedom of the media protected under Article 34 of *the Constitution*; on the other hand is the right to dignity and reputation, the right not to be subjected to false or misleading information under Article 33(3) of *the Constitution*, and the Plaintiff's right to fair protection of its name. The balance cannot be struck mechanically. The Court must consider the nature of the threatened harm, its imminence, the magnitude of potential injury and whether temporary restraint is necessary to prevent a possibly irreversible situation.
49. The Defendants have argued that any restraint constitutes unjustified prior censorship. However, the Court reiterates that *the Constitution* does not permit the publication of false or malicious statements in the guise of investigative journalism. Freedom of the media is not absolute. The injunction sought



is also not a blanket gag order. It is narrowly directed at restraining the Defendants from publishing material concerning the subject matter of the dispute pending trial.

50. The Defendants are not restrained from engaging in responsible journalism in all other areas. Conversely, if the injunction is denied, the Plaintiff faces the risk of continued publications which may permanently damage its reputation before this Court has the opportunity to determine whether the publications are truthful or malicious. The balance of convenience therefore favours the Plaintiff.

2. Whether the nature of the reliefs sought is appropriate.

51. The Court is mindful that injunctions in defamation cases are granted sparingly because they border on prior restraint and may impede the media's constitutional oversight role. Nonetheless, where a Plaintiff satisfies the Giella test, the Court is empowered to prevent ongoing publication where such publication, if ultimately found to be false or malicious, would result in irreversible harm.
52. On the material before the Court, the threatened 30-minute documentary and the prior pattern of publications reinforce the need for temporary restraint. The Court again underscores that this ruling does not involve a conclusive determination of the truth or falsity of the statements, nor does it evaluate the financial transactions or contractual variations of the Line 5 project. Such inquiries require full evidence at the hearing and cannot be undertaken at this interlocutory stage.
53. Likewise, the Court refrains from commenting on the two earlier litigations referenced extensively by the parties, which are not before this Court.

G. Disposition.

54. In the result, and for the reasons that I have stated above, the Court is satisfied that the Plaintiff has met all three limbs of the Giella v Cassman Brown test as refined in Nguruman. Accordingly, the Notice of Motion dated 30th August, 2024 is merited and is hereby allowed on the following terms:
- a. Pending the hearing and final determination of this suit, an interlocutory injunction is hereby issued restraining the Defendants/Respondents, whether by themselves, their agents, servants, employees or subsidiaries from publishing, broadcasting, circulating or disseminating any further material concerning the Mombasa–Nairobi Line 5 Oil Pipeline Construction Project in the manner complained of by the Plaintiff/Applicant.
 - b. Prayers 5, 6 and 7 of the application cannot be granted at this stage as the same should be addressed at the full trial.
 - c. For avoidance of doubt, the order issued in (a) above is temporary and does not amount to a final finding on liability on the part of the Defendants and the Court reiterates that the truth, falsity, justification or maliciousness of the publications complained of can only be fully determined at the main trial.
 - d. Costs of the application shall abide the outcome of the suit.
55. The Deputy Registrar of this court to transmit this file to Milimani High Court Civil Division and the same to be mentioned before the Deputy Registrar, Milimani High Court Civil Division for directions on further proceedings on 21st January, 2026.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 4TH DAY OF DECEMBER, 2025.

JOE M. OMIDO.

JUDGE



For Plaintiff: Mr. Kisigwa.

For Defendant: No Appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

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