

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION

CIVIL CAUSE NO. E172 OF 2025

DANSTAN OMARI.....PLAINTIFF/APPLICANT

VERSUS

ROBERT ALAI.....DEFENDANT/RESPONDENT

RULING

1. Before the court for determination is the **Plaintiff Motion Dated 30/06/2025** filed under a certificate of urgency of an even date. The plaintiff's complaint arose from Defendant's publication on his facebook account as hereunder:-

"Kwani is another Robert Alai sued or myself? That joker called Danstan Omari is all over social media bragging how he has sued Alai while not serving his suit papers. Mjinga kwani the suit was for political campaigns or to be argued in a court of law? We have many pigs as lawyers".

2. The above publication forms the core of the suit filed by a plaintiff dated 30/06/2025 by the Plaintiff against the Defendant. At paragraph 5 of the Plaintiff, the Plaintiff who is an advocate of the high Court of Kenya working for gain at Nairobi asserts and claims that the said publication was false, unsubstantiated, disseminated with clear malice, with intention of injuring his character, reputation both in his

personal and professional capacities aimed at portraying him in a defamatory and contemptuous manner.

3. The plaintiff in his motion sought declarations; permanent injunction restraining the Defendant by himself, his associates or servants from further publishing or causing to be published against him the defamatory words, including general damages for libel and costs of the suit.
4. It is upon the above background that the motion under review was filed. It is premised **under Articles 28 and 33 (3) of the Constitution of Kenya, Sections 1A, 1B,3A and 63 (c) and (e) of the Civil Procedure Act, as well as Order 40 Rules 2, 3, 4(1); and Order 51 Rule 1 of the Civil Procedure Rules (CPR).**
5. The Defendant was served with the Plaintiff's pleadings including a hearing date for the motion for 2/072025 but as at 28/07/2025 when the motion was slated for hearing, the Defendant had not responded to the motion in anyway. The Plaintiff by his learned Advocate, Shadrack Wambui argued the motion orally before me.
6. Relying on the supporting affidavit sworn by the Plaintiff, the Advocate urged that the Defendant upon service of demand notice of intention to sue vide a letter dated 20/06/2025 the Defendant in repost in a letter dated 26/06/2025 stated that the impugned remarks/publication were protected under the

constitution under the rights to freedom of speech and expression.

7. It is the Plaintiff's depositions that the false and malicious publication were made to mislead and discredit the Plaintiffs character without any justification of lawful basis; that it provoked and generated wide continuous circulation with over 20200 reaction and 923 comments and was and remains accessible to online viewers which would amplify his reputational damage to his person and to his profession.
8. It is the Plaintiff's further assertions that the said publication has subjected him to public ridicule have undermining his professional reputation in the eyes of both existing and prospective clients, which is a violation of his dignity protected under **Article 28 of the Constitution**. He therefore urged the court to grant prayers sought more particularly at prayer 3 thereof thus:

(3) That pending hearing and determination of this suit, an order do issue restraining the Respondent/Defendant by themselves, their agents servants or any one acting on their behalf from posting, publishing and/or republishing defamatory information on any medium and in any manner whatsoever about the Plaintiff/Applicant.

Analysis and Determination.

9. **Halsbury's Laws of England - 4th Edition Vol. 28, Page 7 paragraph 10** define what constitutes defamatory statement as one that *"Tends to lower a person in my estimation of right-thinking members of society, cause him to be shunned or avoided, expose him to hatred, contempt or ridicule, or disparage him in his office, profession, trade or business."*
10. In the case **Musikari Kombo v. Royal Media Services Ltd [2018] eKLR John Ward v. Standard Limited [2006] eKLR and Selina Patani & Another v. Dhiranji Patani [2019] eKLR** the courts across board held that a Plaintiff has the onus to proof and establish that the defamatory publication that:-
- 1) *The impugned words are defamatory*
 - 2) *They refer to the Plaintiff*
 - 3) *They were published by the defendant and*
 - 4) *They are false.*
11. As much as the said prove must come at the hearing of the suit, they are relevant in interlocutory applications where interlocutory injunctions are sought pending hearing and determination of the suit - see also **Simon Waithaka Kabu v. Sarah Njoki Nyaga [2005] eKLR; Micah Cheserem V. Immediate Media Services & 4 Others [2000] eKLR; Alnashir Vishram v. Standard Limited [2015] eKLR.**
12. In the Interlocutory stage as is the issue here, the court in **Nation Media Group & 2 Others v. John Harum Mwu [2014] eKLR;** rendered that:-

“It is trite law that for an interlocutory mandatory injunction to be issued, an applicant must demonstrate existence of special circumstances on a different standard higher than that in prohibitory injunction is granted...”

13. The court is aware that freedom of expression expressed under **Article 33 and 34 of the Constitution** must be safeguarded. It is however also clear that such freedom is not absolute, and is limited wherein a party for no good reason or at all attempts to or out rightly attacks another on their character and or profession which must be protected as ably captured in the case of **Renton Company Ltd vs. Philip Kisia & 2 others eKLR**, adding that every person shall respect the rights and reputation of others.
14. **Order 40 Rule 2 CPR** provides for grant of an interlocutory injunction where there appears to be a breach or injury whether compensation is claimed in the suit upon application for such an interlocutory injunction.
15. The test for grant of an injunction were set out in the case of **Giella v. Cassman Brown [1973] EA 358**; thus an Applicant must show:
 - a) *A prima facie case with probability of success;*
 - b) *Irreparable damage or injury, which would not be adequately compensated by an award of damages.*
 - c) *If the court is in doubt, it will be decide on a balance of convenience.*

Prima Facie Case

16. In **Mrao Ltd vs. First American Bank of Kenya & 2 Others [2003} KLR 123**, the court of appeal defined a prima facie case as:-

*“a prima facie in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has been apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later - see **Abnashir Vissram case (supra)***

Irreparable Loss

17. This is loss or damage that may not be compensated or atoned by an award of damages, one that keeps on accruing over and over and so long as the malicious publication remains in the internet or in print media, the damage continues. See **Nation Media Group & 2 others v. Harun Mwau (supra)**.
18. **Article 17 and 19** of the **International Convent on Civil and Political Rights** protects every person from unlawful attacks on their honour and reputation.
19. There is able affidavit material placed before the court to come to the finding that indeed the Plaintiff's character and honour as an advocate of the High Court has been put on the line by the Defendants publication.

20. While not attempting to venture into the merits or otherwise of the suit that is pending hearing and determination, the Plaintiff's reputation and character must be protected. Should there be deeper issues between the antagonists, they will surely pop up during the hearing of the suit.
21. It is trite that once a person's reputation is lost, monetary damages might not be adequate compensation, but maybe a consolation.
22. In the end, I am persuaded that the Applicant/Plaintiff has demonstrated a prima face case, with chances of success.
23. **In the eyes of the right-thinking members of the society and particularly on line readers, the Plaintiff's reputation in his professional career has been called to question.**

Consequently, prayer number 3 of the motion dated 30/06/2025 is granted in its entirety.

Costs of the motion shall abide outcome of the suit.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 5th day of February, 2026.

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JANET MULWA.

JUDGE

ORIGINAL