



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL CASE NO. 7 OF 2025

HON. FAITH WAIRIMU GITAU.....PLAINTIFF

VERSUS

HON. RIGATHI GACHAGUA.....DEFENDANT

RULING

1. The plaintiff/applicant herein moved the court by way of a Notice of Motion dated the 23rd of July 2025. The application was brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 40 Rules 1, 2 & 4, Order 5 Rule 17 and Order 51 Rule 1 of the Civil Procedure Rules. She is seeking the following orders:

- a) This application is certified as urgent and be heard *ex parte* in the first instance.
[Spent]
- b) Pending the hearing and determination of this application *inter partes*, a temporary injunction is hereby issued restraining the respondent by himself, his agents, servants or any other person acting on his behalf from uttering, publishing, or disseminating any further defamatory statements or similar injurious remarks concerning the applicant.
- c) This Honourable Court be pleased to grant leave to the applicant to serve the respondent with the pleadings and other court documents by way of substituted service through one publication in the Daily Nation Newspaper having national circulation. [Spent]
- d) Pending the hearing and determination of this suit, a temporary injunction is hereby issued restraining the respondent by himself, his agents, servants or any other person acting on his behalf from uttering, publishing, or disseminating any further defamatory statements or similar injurious remarks concerning the applicant.
- e) The costs of this application be provided for.

2. The application was premised on the following grounds:
- a) The applicant is an Honourable Member of Parliament, held in very high regard, admired and an esteemed State Officer, currently serving as the Woman Representative for Nyandarua County and a Commissioner of the Parliamentary Service Commission, and a senior Unit Democratic Alliance (UDA) member. She is also a devout Christian, a mother, and a committed family woman known for her high integrity, compassion, and unwavering dedication to public service. Her reputation extends beyond her official duties to her personal and religious life, where she is widely regarded as a role model, particularly among young women and girls in leadership positions.
 - b) The applicant has instituted a suit against the respondent for defamation, arising out of false, malicious, and defamatory statements uttered by the respondent during a public funeral ceremony towards the applicant.
 - c) The statements were uttered in the presence of numerous attendees, including members of the press, and were calculated to injure the applicant's character, integrity, and reputation, particularly in her position as a nominated Member of the County Assembly.
 - d) The statements uttered referred directly and unmistakably to the applicant; her full name, title, and role were stated repeatedly and with emphasis.
 - e) The defamatory statements by the Respondent against the applicant have caused the Applicant to suffer ridicule, hatred, loss of political credibility, and psychological anguish.
 - f) The defamatory statements made by the respondent, which directly portray the Applicant as greedy, evil, and complicit in the alleged harm against children, were not only false and malicious but were clearly calculated to damage her moral standing and leadership credibility. These attacks have caused the applicant immense emotional distress and exposed her to public ridicule, undermining both her personal dignity and her professional capacity.
 - g) The impugned utterances by the respondent against the applicant have severely threatened the applicant's reputation as a principled and God-fearing leader, casting doubt on her character and fitness to hold state and public offices.
 - h) As such, the applicant urgently seeks the intervention of this Honourable Court to arrest the ongoing reputational harm and protect her constitutional and legal rights.
 - i) The respondent has demonstrated an intention to continue propagating these defamatory statements and there is a real danger of further publication or dissemination if the injunctive orders sought are not granted.

- j) It is in the interest of justice that the respondent be restrained from further defamatory conduct pending the hearing and determination of the suit.
 - k) It is imperative that leave be granted for substituted service upon the respondent, who is currently out of the country on extended travel abroad, making it practically impossible to effect personal service within the jurisdiction of this Honourable Court. In the circumstances, substituted service by way of advertisement in a newspaper with nationwide circulation is the most reasonable and effective means of bringing these proceedings to the attention of the respondent, and to prevent undue delay in the administration of justice.
 - l) Unless the respondent is restrained, the applicant stands to suffer irreparable harm, and her reputation will continue to be tarnished.
 - m) The balance of convenience tilts in favour of granting the injunction sought, and no prejudice shall be occasioned to the respondent.
 - n) This application has been made without unreasonable delay and raises serious legal and factual issues that require judicial determination.
3. The application was opposed by the defendant/respondent on the following grounds:
- a) The application is legally incompetent and fatally defective, having failed to meet the strict threshold for the grant of interlocutory injunctive relief in defamation matters.
 - b) The prayers requested in the application are vague, excessively broad, and cannot be enforced precisely. They do not specify the exact words or statements the defendant is barred from making, thus violating established legal principles.
 - c) The application amounts to prior restraint and unjustifiably curtails the defendant's constitutionally guaranteed right to freedom of expression under Article 33 of the Constitution, contrary to the public interest in the disclosure of truthful political commentary and the defendant's right to political opinion.
 - d) The plaintiff has failed to establish a prima facie case with a probability of success, has not demonstrated the likelihood of suffering irreparable harm, and has not shown that the balance of convenience tilts in her favour. In the absence of clear, false, and malicious statements, the injunction sought cannot issue.
 - e) The suit was improperly instituted at the High Court in Nairobi, Milimani, despite the fact that the entire cause of action arose within Nyandarua County, contrary to Section 15 of the Civil Procedure Act
 - f) The institution of the suit at Milimani Law Courts amounts to forum shopping, and is an abuse of the court process intended to secure a strategic advantage, contrary

to the principles of equity, convenience, and justice, which demand that the matter be heard where the cause of action arose.

- g) The applicant seeks to rely on alleged electronic evidence, yet no foundation has been laid for the admissibility of such evidence in accordance with Section 106B and Section 78A of the Evidence Act. In the absence of a certificate of authenticity and proof of the integrity of the digital source, such evidence is inadmissible and cannot form the basis for interim relief.
 - h) The application is otherwise frivolous, misconceived, an abuse of the court process, and intended to silence political criticism under the guise of defamation litigation. It ought to be dismissed with costs to the defendant/respondent.
4. In order for a party to be granted an interlocutory injunction, they must meet the following conditions that were stated by the Court of Appeal in the case of **Giella vs Cassman Brown & Co. Limited (1973) E. A. 358**. Initially, an applicant must establish a prima facie case indicating a likelihood of success. Second, an injunction is generally not granted unless the applicant faces imminent irreparable harm. Third, if there is uncertainty, the court will base its decision on the balance of convenience.
5. Interim orders in defamation cases were addressed in the case of **Ukur Yatani vs Dido Ali Raso [2021] eKLR** as follows:

The case of Giella vs Cassman Brown [1973] EA 358 sets out the conditions to be established before an order of injunction is granted, which are as follows:

(i) The plaintiff must establish that he has a prima facie case with high chances of success.

(ii) That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages.

(iii) If the court is in doubt, it will decide on a balance of convenience.

31. It is, however, noted that besides the conditions set out in the Giella case (supra), the need to be more cautious in a defamatory case is high. In the case of Cheserem v Immediate Media Services & 4 others [2000] eKLR, Justice Khamoni (as he then was) had this to say of such cases:

“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 vs 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 (emphasis mine). 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.

6. I have perused the application and the submissions by both parties. In my view, the applicant has not demonstrated that she will suffer irreparable loss which cannot be redressed by monetary compensation. Secondly, and most importantly, granting the sought orders will complicate the issues herein.
7. Based on the above, I find that the applicant has not met the necessary proof threshold for obtaining a temporary injunction in defamation cases. Therefore, I conclude that the Notice of Motion dated 23rd July 2025 lacks merit, and I dismiss it with costs awarded to the respondent.

Delivered and signed at Nyandarua, this 26th day of February 2026

KIARIE WAWERU KIARIE

JUDGE.