

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO.E230 OF 2025**

**RASLI BAHARI KENYA LIMITED.....1<sup>ST</sup>**  
**PLAINTIFF STANLEY KARUTHAI MURAGE.....**  
**.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NATION MEDIA GROUP.....1<sup>ST</sup>**  
**DEFENDANT BUSINESS DAILY NEWSPAPER.....**  
**.....2<sup>ND</sup> DEFENDANT DOMINIC OMONDI.....**  
**.....3<sup>RD</sup> DEFENDANT**

**RULING**

**Background**

1. **Rasli Bahari Kenya Limited** and **Stanley Karuthai Murage** (the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs) instituted the present suit against **Nation Media Group, Business Daily Newspaper** and **Dominic Omondi** (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants) based on the tort of defamation. They filed, alongside the Complaint, a Notice of Motion application dated 25.08.2025 (the Motion), brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act (CPA); Order 40, Rule 2(1),(2); Order 40 Rule 4 ((1); and Order 51 of the Civil Procedure Rules (CPR), in which the following prayers are sought:

**(i) Spent.**

**(ii) Spent.**

**(iii) THAT an interlocutory injunction be issued restraining the Defendants by themselves and or its servants agents and or employees or otherwise howsoever from further writing, printing, publishing, broad-casting, narrow casting, or causing to be written, printed, published, broad-casted and or narrow-casted on the internet or world wide web or in any other publication or medium of any type or description whatsoever the defamatory photograph, words and statements referred to in the Plaint and or any similar and or any defamatory and or any prejudicial photograph, words and or statement(s) of and concerning the Plaintiffs pending the hearing and determination of the suit.**

**(iv) THAT a mandatory injunction do issue compelling the Defendants by itself and or itself servants, agents and or employees to completely remove from the internet or the world wide web and in particular from the website**

***<https://www.businessdailyafrica.com> or any other website hosting the said defamatory publications including all the defamatory words and statements or any similar works and or statement of and concerning the Plaintiffs pending the hearing and determination of this suit.***

**(v) THAT an Order be issued censuring and or shutting down the said website <https://www.businessdailyafrica.com> or any other or other similar website hosting or carrying any such defamatory or similar content prejudicial to the Plaintiffs pending the hearing and determination of the suit filed herein by the Plaintiffs.**

**(vi) THAT an interlocutory Order be issued restraining the Defendants, whether by themselves, servants, agents, employees or otherwise, from operating any such website and/or internet sites and or in any other manner whatsoever or through any other medium whatsoever and howsoever from publishing or**

***repeating the said words or any words similarly defamatory of the Plaintiffs or in any other manner whatsoever from defaming the above Plaintiffs/Applicants pending the hearing and determination of the suit.***

***(vii) THAT the Communications Authority of Kenya, Media Council of Kenya and or any other Government agency to censure and or shut down the website <https://www.businessdailyafrica.com> they have complied with orders issued by this Honourable Court.***

***(viii) THAT costs of the application be paid for by the Defendants.***

2. The Motion is supported by grounds found on the face of it and in the Supporting Affidavit sworn by the 2<sup>nd</sup> Plaintiff on 25.08.2025 in which it is deposed that, sometime on or about 1.08.2025 the deponent received a telephone call from a close friend who forwarded to him a link from the website <https://www.businessdailyafrica.com>; that upon opening the said link, the 2<sup>nd</sup> Plaintiff came across a defamatory article titled: ***“US fraudster, Kibaki ally get***

***nod for sh106bn State deal'***; and that attached to the article was his photograph; that he bought and read the 2<sup>nd</sup> Defendant's Newspaper bearing the same date and discovered that the impugned defamatory article had similarly been published on the front page thereof, alongside his image;

3. It is deposed that on or about 4.08.2025 he received yet another phone call from a close friend who forwarded a link from the website <https://www.businessdailyafrica.com>. where upon opening the said link, he came across a similarly defamatory article titled: ***"A Company linked to the American Investor with a fraud record has received government approval for a Sh106bn water desalination project in Lamu"***, associating him and the 1<sup>st</sup> Defendant to one ***Verley Lee Sembritzky Jr*** (third party); that he bought a physical copy of the 2<sup>nd</sup> Defendant's Newspaper and read it and confirmed that the impugned article had been published at page 3 of that paper.

4. It is the 2<sup>nd</sup> Plaintiff's averment that by publishing the impugned article, the Defendants were essentially insinuating that he is, *inter alia*, a fraudster, a money

launderer and a corrupt individual with links to the third party, who had previously been convicted on fraud charges.

5. The 2<sup>nd</sup> Plaintiff has deposed, further, that the third party was at all material times a shareholder in the 1<sup>st</sup> Plaintiff, but that he was charged before the United States District Court in the Southern District of Texas Houston Division, resulting in issuance of an award against him; that before the award process could be concluded however, the third party passed on and that the Plaintiffs were neither parties to nor were they held liable in any manner, in the above matter.
6. The 2<sup>nd</sup> Plaintiff has deposed that the impugned defamatory material has so far been widely accessed by the public both locally and internationally, and continues to receive widespread viewership, thereby making the defamation incessant; that as a result, he has received various calls from family, friends and acquaintances regarding the alleged defamatory publications resulting in injury to his and the 1<sup>st</sup> Plaintiff's reputation, hence this application. He has urged that unless the court grants the orders sought the

Plaintiffs stand to suffer irreparable and continuous harm, which may render the suit nugatory.

7. **Joyce Kanyiri**, the Finance and Ooperation's Manager of the 1<sup>st</sup> Plaintiff, swore an affidavit in support of the Motion in which she has deposed that she, too, received separate calls from close friends, pertaining to the impugned defamatory publications and that she confirmed the existence of the said publications both through the Defendants' website and through the 2<sup>nd</sup> Defendant.
8. She has generally reiterated the averments made by the 2<sup>nd</sup> Plaintiff and urged that this application be allowed as prayed

### **Grounds of Opposition**

9. The Defendants have collectively opposed the Motion by way of Grounds of Opposition dated 16.10.2025. In sum, the Defendants are arguing that the Motion does not meet the threshold for a grant of a temporary injunction; that the court ought to approach the Motion cautiously and to be wary of granting the injunctive prayers sought at this stage and without first considering the defence on record; that issuing interlocutory injunctive orders at this stage will

likely curtail the Defendants' freedoms of expression guaranteed under Articles 33 and 34 of the Constitution; that prayers (iii) and (vi) in particular are so wide as to be incapable of being fully complied with and that no undertaking on damages has been provided by the Plaintiffs, as a pre-requisite for granting the injunctive orders sought.

10. The Defendants have similarly relied on the Replying Affidavit sworn by Dominic Omondi on 22.10.2025, in which it was deposed that this dispute is of public interest given that the gist of the impugned publications is that the 1<sup>st</sup> Plaintiff was listed as a project proponent for the Lamu Water Desalination Project in the **Kenya Public Private Partnerships (PPP) Projects Progress and Status Report dated 10.06.2025** (the Report).

11. It was further deposed that upon further investigations by the deponent, it was discovered that the 1<sup>st</sup> Plaintiff's directors and shareholders include the 2<sup>nd</sup> Plaintiff, the third party and Prime Investments Limited, and that additional investigations revealed the complaint lodged against the third party in the court in the United States, as mentioned in the Motion.

12. The deponent has stated that the impugned publications were premised on information collectively obtained from the relevant official websites and the Report and that the said publications could not have injured the Plaintiffs' reputation since they merely identified the 2<sup>nd</sup> Plaintiff as being a Director of the 1<sup>st</sup> Plaintiff alongside the Third Party.

### **Submissions**

13. The Motion was canvassed through written submissions. The Plaintiffs/Applicants have anchored their submissions on Order 40 of the CPR which provides for instances in which temporary injunctions may be granted and several authorities including **Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR) (7 March 2003) (Judgment)** where the principles for consideration in granting temporary injunctions were laid out.

14. On whether the Plaintiffs have demonstrated existence of a *prima facie* case, they relied on **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** where the court defined what constitutes a '*prima facie*' case and submitted

that they have established a *prima facie* case by showing that the Defendants' action of plastering the 2<sup>nd</sup> Plaintiff's image alongside the impugned defamatory articles was unfounded in the circumstances, given that the deponent of the Replying Affidavit to the Motion has stated that the Plaintiffs were not involved in any fraudulent allegations.

15. On whether the Plaintiffs have suffered irreparable harm/injury, the Plaintiffs relied on **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)** in which the Court of Appeal defined irreparable harm as harm or injury which cannot be adequately compensated by way of costs and submitted that they are in the process of receiving a contract of Kshs. 106 billion in relation to a water desalination project in Lamu and hence a continuation of the defamatory publication places them at risk of losing the contract and that the Defendants are unlikely to compensate them in any event.

16. It was submitted that the impugned publications are likely to negatively impact the Plaintiffs' reputation in the eyes of society, which reputation can hardly be restored through an award of costs or damages, as was rightly held in the case of

**Njage Makanga v Nation Media Group Limited & 3 others 8 [2021] KEHC 1552 (KLR).**

17. On the principle of balance of convenience, it is the Plaintiffs' submission that the balance of convenience tilts in their favour since they stand to suffer greater harm if the injunctive prayers are declined, as opposed to any inconvenience that may befall the Defendants if the Motion succeeds.

18. In their submissions in opposition to the Motion, the Defendants have cited **Giella v Cassman Brown & Co Ltd [1973] EA 358** on the applicable principles on granting interlocutory injunctions and submitted that this being a claim based on defamation, the test for granting injunctive orders is higher. To support that point, the Defendants relied on **Micah Cheserem v Immediate Media Services & 4 others [2010] KEHC 4109 (KLR)**.

19. The Defendants' argument is that no *prima facie* case has been demonstrated by the Plaintiffs, given that the elements of defamation are denied and denied that the impugned publications are defamatory of the Plaintiff or that the same were actuated by malice. They relied on **CFC Stanbic Bank**

**Limited v Consumer Federation of Kenya (COFEK)**  
**Being sued through its officials namely Stephen**  
**Mutoro & 2 others [2014] KEHC 1355 (KLR)** where the  
court set out the elements supporting a claim for  
defamation.

20. The Defendants have maintained that they exercised all due  
diligence in making the impugned publication and further  
submitted that the prayers sought are too wide and thus  
incapable of being granted. They relied on **John Ntoiti**  
**Mugambi Alias Kamukuru v Moses Kithinji Alias Hon.**  
**Musa [2016] KEHC 6787 (KLR)** where it was held that  
where prayers are sought in a broad manner, it becomes  
impossible to grant interlocutory injunctions on the basis of  
such prayers.

21. It was submitted that the Plaintiffs have not shown the  
manner in which they stand to suffer irreparable harm or  
that any harm suffered cannot be adequately compensated  
by way of damages. Reliance was made on **Andrew Oloo**  
**Otieno v Benjamin Shamala Imbogo**  
**[2008] KEHC 2447 (KLR)** in which the court reasoned  
that:

***“If the court has to weigh the Defendant’s constitutional right of self-expression against the Plaintiff’s right to protection of his good reputation, the court will favour the constitutional right because appropriate damages will be available to the Plaintiff.”***

22.The Defendants submitted that the balance of convenience tilts in their favour since no basis has been laid for granting the interlocutory injunctions sought pending determination of the suit. On this point, the Defendants relied **Hon. Sakaja Arthur Johson v Nation Media Group PLC & 2 Others [2025] KEHC 13737 (KLR)** in which the court determined that interlocutory injunctions against the formal media sector ought to be issued only in exceptional circumstances, in view of the freedom of the press, guaranteed in Article 34 of the Constitution.

23.The Defendants have contended that this is not a proper case for granting mandatory injunction since mandatory injunctions ought to be granted only in the clearest of cases. They relied on **Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR)** to emphasize that point.

24. The Defendants have further contended that the Plaintiffs herein ought to provide an undertaking, as a condition for granting the injunctive orders sought and urged that the Motion be dismissed with costs.

### **Analysis and Determination**

25. I have read and considered the Motion, the grounds in support of the Motion, the Replying Affidavit and Grounds of Opposition as well as parties' submissions and cited authorities. The instant Motion seeks both the interlocutory injunctions and mandatory injunctions as shown in the prayers sought.

26. The general principles governing the grant of injunctions are set out in **Giella v Cassman Brown & Co Ltd [1973] EA 358** (see also **Micah Cheserem v Immediate Media Services & 4 others [2000] eKLR**). An applicant seeking an injunction must demonstrate:

- a) A prima facie case with a probability of success.***
- b) That he or she stands to suffer irreparable loss that cannot be adequately compensated by way of damages, and***
- c) That the balance of convenience should tilt in favour of the applicant.***

27. Riding on the above defined principles, it is my considered view that my duty in resolving the issues raised in the Motion is to determine whether the Plaintiffs have met the established threshold as defined in the principles above to warrant a grant of the orders they are seeking.

28. The Plaintiffs have argued that they have demonstrated that they deserve the orders sought, while the Defendants have argued to the contrary.

29. The Court of Appeal, in discussing the triple requirements of *prima facie case*, irreparable injury and balance of convenience an applicant has to satisfy to warrant a grant of an injunction, whether temporary or permanent, stated in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR** thus:

***“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. 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 is 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. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."***

30. The arguments of the Plaintiffs in supporting that they have established a prima facie case is that the Defendants have plastered on the impugned article the picture of the 2<sup>nd</sup> Plaintiff and by so doing the Defendants have insinuated that the 2<sup>nd</sup> Plaintiff was a fraudster and that by adversely mentioning the Plaintiffs the impugned article and at the same time admitting that the Plaintiffs are not involved in

any fraud, then the Plaintiffs have established a *prima facie case*.

31. On the other hand, the Defendants have argued that the Plaintiffs have not demonstrated *prima facie* case and that while admitting that the articles were published on the 2<sup>nd</sup> Defendant's website and that the article referred to the Plaintiffs, have denied that the said articles were defamatory or malicious. The Defendants have further argued that the impugned articles are based on research conducted and that reference to the fraud in the published articles related solely to the Third Party and was based on United States Securities and Exchange Commission (SEC) documentation and that no allegations of fraud was made against the 2<sup>nd</sup> Plaintiff. They have maintained that there was no malice in publishing the said articles as the Defendants exercised due diligence before publishing the articles.

32. Prima facie case is defined in **Mrao Ltd v First American Bank of Kenya and 2 others [2003] eKLR**, where the Court of Appeal defined it thus:

***“A prima facie case in a civil application includes but is 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 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.”***

33. The Court of Appeal in **Nguruman case** adopted the definition of prima facie case found in **Mrao case** and stated as follows:

***“We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right***

***which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."***

34.I have considered the rival arguments on whether the Plaintiffs have established a *prima facie* case to warrant a grant of interlocutory injunction at this stage. Going by the definition given above by the Court of Appeal and the rival arguments of the Plaintiffs who have taken the position that the impugned publications are not only untrue but are malicious and defamatory in nature, and the position of the Defendants, who have denied the particulars of defamation in the Plaint and have pleaded the defence of fair comment on a matter of public interest in their statement of defence,

I am persuaded that the Plaintiffs have made out a *prima facie* case at the interlocutory stage.

35. I must now proceed to determine whether the Plaintiffs have demonstrated irreparable damage that cannot adequately be compensated by an award of damages. I am guided by the decision in **Nguruman case** in regard to the principle of irreparable harm, where the Court stated that:

***“In other words, if damages recoverable in law is 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.”***

36. The Plaintiffs’ argument is that their reputation has been injured, that they were in the verge of being granted a contract of Kshs 106 Billion for water desalination project in Lamu and that the Defendants are not able to adequately compensate them for the loss should the prayers sought are not granted and should they miss the contract.

37. I have carefully considered this issue. The Plaintiffs are yet to prove their case. This court has no evidence to demonstrate that the Plaintiffs have missed out on the

contract for Kshs 106 Billion and that the loss is attributed to the alleged defamatory article. At this stage of the proceedings, the court has not considered the pleadings and/or heard the evidence of the parties nor has it subjected such evidence to the law in order to make its own determination on the veracity or otherwise of the claim by the Plaintiffs or the defence of the Defendants. The Plaintiffs have not demonstrated that the Defendants are unable to adequately compensate them should they succeed in the main suit.

38. My careful analysis and consideration of the rival arguments leads me to the conclusion, and I so find, that at this stage of the proceedings, the Plaintiffs have failed to establish irreparable harm. Going hand in hand with that finding, is my finding that the Plaintiffs have failed to establish that at this stage of the proceedings, the balance of convenience tilts in their favour.

39. As stated in this Ruling, all the above three conditions and stages for grant of any injunction are to be applied as separate, distinct and logical hurdles which the applicant is

expected to surmount sequentially. As stated in **Nguruman case:**

***“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.***

***It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”***

40. Having found that the Plaintiffs have failed to demonstrate irreparable injury that cannot be adequately compensated by an award of damages, I see no need to proceed to address the principle of balance of convenience.

41. I have noted from careful reading of the Motion and the Complaint that there is need for sufficient evidence that can only be presented after a full trial to demonstrate the claim by the Plaintiffs in order for this court to make a determination

based on full and sufficient evidence. It is also not lost to this court that the nature of the orders sought in the Motion, if granted, will affect the main suit. For instance, prayers 4, 5, 6 and 7 have a ring of finality in them and will have the effect of prejudicing the parties, especially the Defendants, before hearing, substantially, all the evidence and making a determination based on that evidence and the applicable law.

42. Consequently, the Motion fails for the reasons given in this ruling. Parties are directed to proceed with pre-trial directions to enable this court fix the matter for full hearing to enable a full determination of the issues raised.

43. It is so ordered.

**Dated, signed and delivered this 19<sup>th</sup> February 2026.**

**S. N. MUTUKU  
JUDGE**

**In the presence of:**

1. Mr. Odipo for the Plaintiffs
2. Ms Anya holding brief for Mr. Ochieng for the Defendants