

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO.E039 OF 2025

**STEPHEN
KIMANI.....PLAINTIFF/APPLICANT**

MWANGI

-VERSUS-

**LAW SOCIETY OF KENYA.....1ST
DEFENDANT/RESPONDENT**

**JOSEPH KARANJA MUCHAI.....2ND
DEFENDANT/RESPONDENT**

RULING

The Application

1. **Stephen Mwangi Kimani** (the Applicant) moved this court by way of the Notice of Motion dated 17/02/2025 (the Application) seeking an interim order directing the **Law Society of Kenya** and **Joseph Karanja Muchai** (the 1st and 2nd Respondents) to pull down the social media posting in relation to the subject matter of the suit in their respective Facebook accounts, followed by a prayer that the status quo between the parties be maintained pending the hearing and determination of the suit.
2. The Application is brought under Sections 1A, 1B and 3A of the Civil Procedure Act (CPA); Article 159 of the Constitution of Kenya, 2010 and the Defamation Act, Cap. 36 Laws of Kenya.
3. The Application is supported by the grounds found on the face of the Application and in the Supporting Affidavit of the Applicant, who has stated that the 1st and 2nd Respondents published malicious, false and

defamatory material concerning him on 14/02/2025 via their Facebook social media platforms; that the 1st Respondent further made a report at Limuru Police Station, on allegations that the Applicant was masquerading as one of its members and that upon being summoned to the police station, his name was eventually cleared because the allegations made against him were unfounded.

4. The Applicant claims that during his time at the police station, his photograph was taken without his consent and posted on Facebook with allegations that he had been masquerading as a member of the 1st Respondent; that this content was published with the authority of the 2nd Respondent and that as a consequence, the Applicant's reputation diminished especially in the eyes of the members of a group known as **Kwambira/Kamirithu Notice Board Group**, who constitute his potential voters and whose perception of him is likely to negatively impact his political ambitions in the 2027 elections.

The Replying Affidavit

5. The Application is opposed by the 1st Respondent through a Replying Affidavit sworn by its Chief Executive Officer, **Florence Muturi**, on 6/03/2025 in which it is deposed that the Motion contains misleading facts and that the Applicant has approached this court with unclean hands and through a concealment of material facts; that contrary to the averments made in the Motion, the Applicant was not cleared of the allegations made against him as the matter is still pending under investigations; that the report lodged at Limuru Police Station was triggered by an anonymous report received by the 1st Respondent

which led to internal investigations and that following the report, a cautionary post was made in the 1st Respondent's social media platform with the purpose of inviting members of the public to come forward and report similar incidences, which action was lawfully undertaken in the ordinary course of business for the 1st Respondent.

6. The 1st Respondent has stated that no prima facie case has been established in order to warrant a grant of the prayers sought; that it has not been demonstrated that the Applicant stands to suffer any harm or prejudice if the prayers sought are denied and therefore, the Application as well as the suit, should be struck out with costs to the Respondents.
7. The 2nd Respondent, through his Replying Affidavit sworn on 6/03/2025, has opposed the Application terming it an abuse of the court process and a concealment of material facts. He has stated that while he shared the post made by the 1st Respondent, he was not the author of the same; that he is therefore not a proper party to the suit and that in any event, the post was published in the public interest, upon consideration of the 1st Respondent's societal position. He has urged that the Application and the suit be struck out with costs.
8. In a rejoinder, the Applicant, through his further affidavit sworn on 7/03/2025, stated that while the 1st Respondent has a mandate to protect the legal profession, such mandate does not justify maligning his name, and that no material has been tendered to demonstrate that the actions undertaken by the Respondents was acceptable.

9. The Applicant, further, deposed that he is a political leader with political ambitions in the parliamentary elections in 2027 and that the actions by the 1st Respondent have greatly lowered his reputation and are likely to impact his political ambitions; that the impugned publication was maliciously and falsely made; that contrary to the averments made by the 2nd Respondent, he is a proper and necessary party to the suit by virtue of the fact that he reposted the content on the Facebook pages associated with **Kwambira/Kamirithu Notice Board Group** and that he has therefore established the manner in which he stands to suffer irreparable harm, unless the impugned publication is withdrawn and an apology rendered by the Respondents.

Submissions

10. The Applications was canvassed through oral submissions. In support of the Application, the Applicant reiterated the grounds advanced in the Application and the Supporting Affidavit that his image was posted on Facebook, WhatsApp and Instagram, by the 1st Respondent; that the caption in the publication is untrue since he has never masqueraded as a member of the 1st Respondent and that the 1st Respondent did not give time for investigations to be undertaken before making the publication. He submitted that the impugned publication is accessible to the general public and that being a public figure, his reputation has been negatively impacted.

11. He submitted that unless the impugned publication is pulled down, he stands to continually suffer harm to his personal image as well as his political standing in society.
12. Ms Nderu, counsel for the 1st and 2nd Respondents, submitted that granting interim orders at this early stage of the proceedings would be both premature and unwarranted; that the Applicant has not established a prima facie case warranting the prayers sought, in line with the principles established in **Giella v Cassman Brown & Co Ltd [1973] EA 358** and **Mrao v First American Bank of Kenya Ltd & 2 others CA No 39 of 2002 [2003] eKLR**.
13. She submitted that a complaint was lodged with the police at Limuru Police Station on allegations that the Applicant was offering legal services in the absence of the requisite qualifications, following which he was summoned and investigations commenced; that no harm has been demonstrated and that any harm that may be suffered by the Applicant can be adequately compensated for by an award of damages in any event. She submitted that the balance of convenience does not tilt in favour of the Applicant herein, citing the decision in **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** where it was held that the onus is on an applicant to show that the inconvenience to be visited upon him or her surpasses that to be visited upon the opposing party.
14. Ms Nderu submitted, further, that the 1st Respondent carries a duty to prevent and protect the public from being represented by unqualified persons and that the 1st Respondent stands to be

prejudiced if an order is made, directing it to pull down the impugned publication and that the publication was made in the public interest and hence this court ought to exercise great caution in the matter.

15. She submitted that the instant Application is intended to protect the self-interest of the Applicant by virtue of his political status; that in addition, the 2nd Respondent was merely sued in this matter due to his status as a political rival of the Applicant. Counsel urged that the Application be dismissed to allow the suit to proceed on merit.

16. In his rejoinder, the Applicant stated that the matter was resolved at the police station and hence there was no need for the impugned publication to be made and that no material has been tendered to show that he was masquerading at any material time and therefore, the publication was unwarranted.

Analysis and Determination

17. I have considered the application and the grounds in support as well as the submissions of parties and authorities relied on. This court did not issue interim orders sought in this application, in the first instance

18. The Notice of Motion under consideration sought certification of the matter as urgent; an interim order directing the respondents to pull down the social media posting in relation to the subject of this suit pending the hearing and determination of this application; maintenance of status quo pending hearing and determination of the suit and costs of the application.

19. In the directions issued by this court on 19/02/2025, the court did not certify the matter as urgent. Instead, the court directed that the

application be served on the Respondents for directions on 05/03/2025. Court record shows that on 05/03/2025 and other subsequent dates, when this matter came up in court, either for mention or hearings, no interim orders have been issued in respect of the prayers contained in the instant application.

20. It is not lost to me that, if any interim orders had been made in respect of prayer 2 of the application which seeks interim order to pull down the offending posts pending the hearing and determination of this application, such an order would lapse at the delivering of this ruling. That prayer does not seek interim order pending hearing and determination of the main suit and therefore at the conclusion of this application, that prayer would have been overtaken by events.

21. Prayer 3 seeks maintenance of the status quo. The Applicant did not address this prayer to clarify whether the status quo sought to be maintained is after he obtains interim orders as sought in prayer 2 or before that order. To my understanding, prayers seems to ride on prayer 2. In the circumstances, it is my finding that the prayer for maintenance of status quo is now moot.

22. Consequently, there being no substantive prayer for determination by this court, the Notice of Motion dated 17/02/2025 is hereby dismissed with costs to the 1st and 2nd Defendants/Respondents.

23. It is so ordered.

Dated, signed and delivered this 9th February 2026.

S. N. MUTUKU

JUDGE

In the presence of:

1. Mr. Stephen Mwangi Kimani, the Plaintiff/Applicant
2. Ms Nderi for the Defendants/ Respondents

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