



REPUBLIC OF KENYA



**Mbarire v Nation Media Group Plc (Civil Case E093 of 2024)
[2025] KEHC 9239 (KLR) (Civ) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9239 (KLR)

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

CIVIL

CIVIL CASE E093 OF 2024

JN MULWA, J

JUNE 26, 2025

BETWEEN

HE GOVERNOR CECIL MBARIRE EGH PLAINTIFF

AND

NATION MEDIA GROUP PLC DEFENDANT

RULING

1. This ruling determines the plaintiff's Notice of Motion application dated 29/04/2024 grounded upon provisions of Orders 40 Rule 1, and 51 Rule 1 of the Civil Procedure Rules and Section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*.
2. The applicant who is the Plaintiff seeks orders that:-
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of this suit a temporary injunction be issued restraining the defendant/respondent whether by themselves, their agents, employees or any person acting Under their direction from further publishing posting reposting and/or republishing the defamatory information in any manner whatsoever about the plaintiff/applicant.
 - d. Pending hearing and determination of this suit, an order be issued directing the defendant/ Respondent to remove, pull down expunge, retract and erase from all forms of social media platforms and in any event, not more than 24 hours of service of the order, the allegations uttered.
 - e. Costs of the application be in the cause.



3. The motion is predicated on grounds stated on its face and submissions dated 27/01/2025.
4. In opposing the motion, the respondent/defendant filed grounds of opposition dated 10/06/2024 that:
 1. The plaintiff has not established sufficient cause for the grant of the prayers sought in the application
 2. The plaintiff has not met the test of the grant of an interlocutory injunction.
 3. The plaintiff is seeking an order for the defendant to remove, pull down, expunge, extract and erase from all social media platforms the defamatory articles. The plaintiff is essentially seeking the grant of amendatory order of injunction through an interlocutory application the court ought not to issue a final order in an interlocutory application.
 4. No special circumstances have been established to warrant the grant of a mandatory injunction at the interlocutory stage
 5. To issue an injunction against the publication of future matters which the court has not seen would be to deprive the defendant of the opportunity of offering any defence it may have for it cannot defendant he unknown.
 6. The orders sought are an unjustified restriction on the freedom of expression and media as provided under Article 33 and 34 of *the Constitution*.
 7. Courts ought to be cautious in granting temporary injunctions in defamation cases due to competing interest between private interest to reputation and public interest to free speech and the right to know especially in matters touching on public interest.
 8. A court ought not to issue a temporary injunction in a defamation matter without first having seen the defence raised by the defendant.
 9. Other grounds and reasons to be set out in the replying affidavit filed herein.
5. In addition, the Respondent filed a Replying Affidavit sworn on 9/10/2024 by one Brian Wasuna as well as submissions dated 15/04/2025.
6. The Applicants/Plaintiffs case is that the defendant's publication in the Sunday Nation edition dated 31/03/2024 titled "Two governors caught up in Kshs. 2B land Row" and the story appearing there below the caption and the online edition headline reading "Nairobi Governor Johnson Sakaja and Embu Governor Cecil Mbarire are tussling over prime land in Nairobi that has been the subject of 16 year old court battle"
7. Additionally, the plaintiff alleges that the reputation and by the innuendo therein, that she has a ravenous appetite for land, a meddler, wheeler-dealer, fraudulent, unprofessional, immoral, dishonest and deceptive among others and therefore, y the worldwide broadcast channels of the defendant, her family, friends, acquaintances and admirers and the public at large have abandoned her emblematic path of virtue and righteousness.
8. Upon the above, the plaintiff/applicant seeks the prayers in her application to prevent further damage to her name, status and reputation and responsibly of unmatched integrity and competence and that if the orders sought are denied, she will continue to suffer incalculable and irreparable loss.
9. The plaintiff to further buttress her case filed submissions dated 27/01/2025 citing several authorities to buttress its arguments among them *Cheserem v. Immediate Mdia Services* [2000] 2EA371,



Mumias Sugar Company Ltd & Others v. Musa Ekaya [2017]eKLR and Nguruman Limited v. Jan Bonde Nielsen & 2 Others [2014]eKLR and Jaswant Singh Rai vs. TV Kenya [2021]eKLR for the proposition that the plaintiff has met the threshold for grant of the reliefs sought in the instant application.

10. On the other hand, the Respondent/Defendants by the grounds of opposition (replicated at Paragraph 4 above) states that the applicant has not met the conditions to warrant grant of a temporary injunction nor the mandatory order of injunction in the interlocutory stage citing lack of special circumstances.
11. Further it is the defendants depositions that the orders sought are unjustified restriction on the freedom of expression and media as provided at Article 33 and 34 of *the Constitution* moreso that the public is entitled to right to know matters of public interest and so there is no justification for the grant of the orders sought.
12. The Respondent place reliance in the pronouncements rendered in the case of Mrao Limited V First American Bank of Kenya Ltd & Others [2003]eKLR; paul Ongili v. Nation Media Group Kenya Ltd & Director of Public Prosecutions (IP)[2024] eKLR; Phineas Nyaga v. Kitobu Imanyara [2013]eKLR among others adding that the respondent exercised due diligence and that none of the material facts in its replying affidavit have been rebutted by the applicant.
13. The respondent filed its submissions dated 15/04/2025 for dismissal of the motion.

Issues For Determination

1. Whether the plaintiff/applicant meets the threshold for grant of temporary and mandatory injunctions.
 2. Whether the reliefs sought are tenable in the circumstances.
 3. Who bears costs of the application.
14. Principles for the grant of injunctions in defamation case were set out by the court of appeal in the case of Cheserem v. Immediate Media services [2000] 2EA 371 as modified from the celebrated case of Giella v. Cassman Brown adding that the applicant has to satisfy the triple requirements to;-
- a. Establish his case only at a prima facie level.
 - b. Demonstrate irreparable injury if a temporary injunction is not granted and;
 - c. Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

Prima facie case

15. A prima facie case with a probability of success is one that a court would conclude upon material presented before it that there exists a right that has been violated or infringed by the opposite party that calls for explanation as held in the Mrao v. First American Bank of Kenya Ltd & 2 others [2003] eKLR.
16. The respondent by its submissions argues that the plaintiff has not established a prima facie case as the impugned article concerned a dispute over land ownership situated in Nairobi and whereas there is no dispute over its publication, submits that the said article was not false, malicious r defamatory or any of the named parties thereto, as set out in the Replying affidavit of Ibrahim Karanja sworn on 9/10/2024 and investigations carried on in a matter of public interest where several public officers were involved.



17. Being a fair and accurate report of matters investigated, it cannot be said that the defendant/respondent acted in a reckless or negligent manner in its reporting, nor was it reported maliciously to hurt the plaintiffs reputation as a public officer.

Further it has been submitted by the Respondent/Defendant that despite the very detailed replying affidavit to the application by the Respondent (by Mr. Karanja) the plaintiff opted not to file a rebuttal if indeed she found the material facts therein to have been false, reckless or malicious.

18. On the face of the publication, the court finds no established prima facie case as the right to criticize and interrogate public officers is a right granted to citizens of Kenya unless such criticism crosses laid down boundaries.

In this respect, the court in the case of Paul Ongili V. Nation Media Group Kenya Ltd & Another; Director of Public Prosecutions held:-

“in an open and democratic society, public officers must tolerate such scrutiny and criticism because citizens usually exercise the right granted to them by *the constitution* to discuss their conduct. The right to scrutinize and criticize should not be curtailed by the threat of litigation.....”

19. Granted, the plaintiff/applicant is a public figure, being the Governor of Embu County and therefore the public may not be curtailed from interrogating and criticizing her actions so long as such criticisms and scrutiny are false and actuated by malice.

20. Yet it is not open for the court at the interlocutory stage of the litigation to determine, from the material facts placed before it on whether a prima facie case with probability of success exists, courtesy to her failure to rebut the opposite party's depositions in the replying affidavit. See also the holding in the case of Daniel Musinga t/a Musinga & Co. Advocates v. Nation Newspaper [2005] eKLR wherein it was held:-

“Any evidence which shows that the defendant knew the statement was false and not care whether it was true or false will be evidence of malice”

The same proposition was held in the case of Phineas Nyagah vs. Gitobu Imanyara [2013] eKLR.

Irreparable Injury

21. On whether the applicant has demonstrated irreparable injury if a temporary injunction is not granted, it is her affidavit evidence that the impugned publication by Innuendo meant that she was fraudulent, unprofessional, immoral, and dishonest yet she states to be a paragon of integrity and not party to the land row and therefore that the publication was maliciously published to faint her reputation.
22. In rebuttal, the respondent countered the insinuations by angry the court to find no special circumstances established to warrant grant if the interlocutory and or the permanent injunctions at this stage of the proceedings wore so that no defence had been filed prior to the filing of the application.
23. Further, it is evident that the plaintiff by seeking awards of damages in their various forms in defamatory suits acknowledges that in the courts view that indeed the reliefs sought in the plaint dated 29/04/2024 and amended on 15/10/2024 should the court find in her favour, would ultimately compensate her for the damage to her reputation.



24. Temporary injunction ought to be granted solely to prevent grave and irreparable injury that is actual, substantial and demonstrable, that cannot be compensated by an award of damages. The Court of Appeal so held in the Nguruman Limited case (Supra)
25. Whereas the plaintiff also seeks an order of mandatory injunction at this interlocutory stage, no special circumstances have been demonstrated to the court for such a drastic action to be given at this level. The court has not seen any demonstration of grave and irreparable injury to be persuaded, at this interlocutory stage, to grant the reliefs sought nor has it been demonstrated how the perceived injury may not be adequately compensated upon hearing and determination of the suit on merit.
26. The court is acutely aware that a name is the only thing a person has and that once it is destroyed or lost it may never be redeemed as held in the case of Amir Grinberg & 2 Others v. Andrew Baker [2021] eKLR.
27. As ably held in the case of Cheserem v. Immediate Media Services (Supra), to grant an injunction is exercised with greatest caution and only in clearest possible cases, and that the court must be satisfied that the words complained of are libelous and so manifestly defamatory that any verdict to the contrary would be set aside and perverse.
28. In the case Runguru Nyagah v. Kariuki Chege & Another [2015]eKLR while interrogating similar issues held that:-

“The court must be satisfied that in the final determination of the suit, it would inevitably come to the conclusion that the words were defamatory”.

[
29. The defendant/Respondent has a constitutional right under Article 34 of *the Constitution* – freedom of the media – which right is not to be curtailed or interfered with the role of disseminating information to the citizens of the happenings in the Country in numerous spheres including County and National Governments by their leaders. Thus such constitutional right of self-expression ought not be interfered with and must be jealously safeguard – Andrew Oloo Otieno v. Shamala Imbigu [2008] eKLR.
30. The court is being urged to grant to the applicant mandatory orders of injunction at the interlocutory stage even before the Defendant has filed its statement of defence for the court to have a glimpse. The orders sought in the circumstances cannot be sustained. The court must be satisfied that the defendant dishonestly and maliciously published the article when it knew it to be untrue. It is only upon such disclosure in the statement of defence that the court would be suited to issue such grave injunctive orders.
31. In the case of Lilian Mwaura vs. Evelyn Mungai & Lear publishing Company [1996], the court held that:-

“It stands to reason that a court cannot make any finding that any matter is prima facie defamatory unless such matter is presented to court an affidavit for its judgment. And of course, to issue an injunction against the publication of matter which the court has not seen would be to deprive the Respondent of offering any defence they may have for they cannot defend the unknown....”
32. Likewise, in the absence of special circumstances being demonstrated by the Applicant, a mandatory injunction ought not be granted at an interlocutory stage of the proceedings. Clearly the applicant has failed to demonstrate that she is deserving of the reliefs sought hence a finding that this is not a proper



case for grant of temporary mandatory injunction as no special circumstances have been demonstrated, as to do so would be to interfere with freedom of the media which should be exercised in very extreme circumstances particularly at the interlocutory stage of proceedings.

33. The upshot is that the court finds no merit in the Applicant's application dated April 29, 2024. It is dismissed in its entirety with costs to the Defendant/Respondent.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

.....

JANET MULWA.

JUDGE

