



**Ole Sophia v Kariankei (Civil Suit E003 of 2023)
[2024] KEHC 2744 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL SUIT E003 OF 2023
F GIKONYO, J
FEBRUARY 29, 2024**

BETWEEN

DANIEL OLE SOPIA APPLICANT

AND

FRED KARIANKEI RESPONDENT

RULING

Injunction in defamation cases

1. The plaintiff/applicant is seeking in the application dated 26.05.2023 for orders: -
 - i. Spent.
 - ii. Spent.
 - iii. That this honourable court be pleased to grant an order of injunction restraining the defendant whether, by himself, servants, or agents from further posting and publishing the defamatory words uttered on his Twitter account username @fskariankei as identified by uniform resource locator (URL) <https://twitter.com/fskariankei?lang=en>, on his Facebook account username Fred Kariankei as identified by uniform resource locator (URL) <https://www.facebook.com/fred.kariankei/>, on the article published in the star newspaper of 16th May 2023, on email dated 12th May 2023 or any other or further words and publications of like effect disparaging and injurious to the plaintiff pending the hearing and determination of this suit.
 - iv. That this honourable court be pleased to grant an order of mandatory injunction compelling the defendant whether by himself, servants, or agents to take down, delete, retract, or purge the defamatory words uttered on his Twitter account username @fskariankei as identified by uniform resource locator (URL) <https://twitter.com/fskariankei?lang=en> and on his Facebook account username Fred Kariankei as identified by uniform resource locator(URL)



<https://www.facebook.com/fred.kariankei/> and/or any other places the said materials are published or stored pending the hearing, and determination of this suit.

- v. That the costs of this application be provided for.
2. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by Daniel Ole Sopia on 26.05.2023.

The Plaintiff/Applicant's Case.

3. On diverse dates between 2022 and 2023 the defendant falsely and maliciously wrote, published, and/or caused to be published and disseminated online and in mainstream media outlets of and concerning the plaintiff various tweets, posts, articles, and materials in way of its business, conduct, and trade, the following:

- i. On 2nd May 2023 on Twitter using the username@fskariankei:

“Is it gender exploitation or sexual abuse at MMWCA

The CEO of MMWCA @MConservancies has just married his staff as the second wife, this happened as an earlier staff he planned to marry bolted out. Aren't there ethics governing conservation institutions? At what point is it not a gender/sex exploitation issue and who cares? What does it speak of the purported gender program supported by donors at MMWCA. What policies exists to protect young Maasai girls from sexual exploitation in the conservation landscape? Shouldn't merit and education matter at MMWCA”

- ii. On 3rd March 2022 on Twitter using the username @fskariankei:

“#Wordwildlifeday22 we celebrate our young Mara Isinya Conservancy. We purposed to benefit the community and protect endangered species like maasai giraffe. Shame @MConservancies has been a major saboteur just for the ego of its CEO.@nature_org @kwskenya @USAIDKenya”

- iii. On 16th January 2023 on Twitter using the username @fskariankei:

“After two years of denying Mara Isinya Conservancy rightful conservation money for taking land rights. MMWCA is back this time to promise donor funds if they support a clan relative of MMWCA official as leader. They have done this as a condition for supporting new conservancies.”

“nepotism at MMWCA. While MMWCA effort to control conservancies is largely to override interests of investors over landowners now a new trend is emerging where all new conservancies supported by MMWCA has a relative of senior official at MMWCA.”

“Its also locally known that the first local girl to be employed by MMWCA was on condition she marries a senior MMWCA official. But MMWCA shamelessly has a well donor funder called gender project.”

“failure by donors 2 hold MMWCA 2 account is and will course community disunity, disharmony and finally work against conservation. @USAID @UNDP @nature_org @USAmbKenya @AJEnglish @nordno @norfund



@washingtonpost @WWF @tusk_org @naturaljustice @Survival @LGT_VP @WWFUS @maliasili_org”

- iv. On 13th January 2022 on Twitter using the username @fskariankei:
- “MMWCA @MConservancies Is the Systematically Killing the Voice of Landowners in the Mara. In august last year I asked @USAIDKenya oversight MMWCA against violation of its policies and right of land owners. Of which they refused@m_ogada @USAID @nature_org @ntvkenya @citizentvkenya”
- “On 17/1/2022 Lemek Conservancy land owners are having a general meeting to validate a management/investor of their choice on the hand MMWCA is sponsoring a group to force it’s preferred management/investor of their choice. Should any chaos occur @USAIDKenya share the blame”
- v. On 31st May 2022 on Twitter using the username @fskariankei:
- “Entities led by Maasai are entrenching neo-colonial conservation in Maasai mara 4the benefit of investors and a cartel revolving around the long-term chair of KWCA & MMWCA at the expense of equitable sharing, exclusion of others and mostly 2 weaken landowners voiceincOservati”
- vi. On 6th June 2022 on Twitter using the username @fskaiankei:
- “This article underscores the conniving impunity of MMWCA and KWCA to entrench neo-colonial conservation in Maasai Mara and puts names to faces of neo-colonial conservation ‘home guards’ @NationBreaking @nauraljustice @survival @VMatiru @nodealfornature”
- vii. On 22nd June 2022 on Twitter using the username @fskariankei:
- “Ticking time bomb in Maasai Mara! As the regime in Tz uses bullets in Ngorongoro & Loliondo in the name of conservation @MConservancies and its financiers are using donor funds to hive off over 500k acres around Maasai Mara and displace 15k Maasai using power of attorney”
- viii. On 2nd July 2022 on Twitter using the username @fskariankei:
- “Ticking time bomb! In Masai Mara with funding from MMWCA, conservancies have robbed over 15000 indigenous Maasai rights to their land and conferred it to scrupulous individuals (LOC) using power of attorney for 25 years. 150000 acres are no longer in landowners’ hands unknowingly”
- ix. On 22nd September 2022 on Twitter using the username @fskariankei:
- “MMWCA @MConservancies political and narrow-minded conservation policies of exclusion in donor-funded development programs and in financial benefits is endangering wildlife @USAIDKenya @WWF @UNDP @nature_org @USAmbKenya @noradno @norfund @tusk_org @Save_Giraffe @giraffe @kwsKenya”



- x. On 9th October 2022 on Twitter the username @fskariankei:
- “This project has been used to discriminate, dominate, disempower communities by imposing a divisive policy of MMWCA that takes away their land rights and will bring conflict in future @USAID @USAIDKenya @USAmbKenya @washingtonpost @nytimes @K24Tv @Nation Africa @StandardKenya”
- xi. On 2nd February 2023 on Twitter using the username @fskariankei:
- “When @MConservancies continue to force communities leaders they don't want these donors who support them become part of it @USAID @UNDP @nature_org @USAmbKenya @noradno @norfund @tusk_org LGT_VP @WWFUS @maliasili_org @WWF @StandardKenya @NationalBreaking @m_ogada @VMatiru”
- “Despite community resolve, MConservancies is forcing new conservancies to elect or employ relatives of MMWCA senior officials as a condition for donor funds support. It's corruption! @USAID @UNDP @naure_org @USAmbKenya @norano @norfund @tusk_org @LGT_VP @WWFUS 2maliasili_org”
- xii. On 21st March 2023 on Twitter using the username @fskariankei:
- “MMWCA continues 2pursue policies that enslave the Maasai in conservation. When illiterate Maasai are encouraged 2take long-term loans instead of savings, it's designed 2 make them slaves of conservation. @USAID @Survival @UNDP @LandRightsNow @nodealfornature @WWFUS @IPRightsIntl”
- xiii. On 18th April 2023 on Twitter using the username @fskariankei:
- “I can relate with this/ @MConservancies has been advocating for conservation in the absence of justice and rights of indigenous maasai of maasai mara , Kenya, supported by @USAID @WWFUS @nature_org @bandfoundation @CJRFund they exploit high poverty and illiteracy among landowners.”
- xiv. On 24th April 2023 on Facebook using the username fred kariankei:
- “of all success conservation songs in the maasai mara lies untold truth.” Followed by a photograph with the following words:
- “The problem with neo-colonial conservation in Maasai Mara as currently led by mmwcaThe people who run and “own” MMWCA and use donor funds to dominate against communities that do not tow their political line rather than equitable sharing for prosperity of communities in conservation are same people.The people who arm-twisted communities in Mara North Conservancy, Olaremotorogi Conservancy Lemek and Naboisho Conservancy among others into 25 years representation by land brokers without option others with power of attorney are the same people.The people who key facilities in the conservancies like airstrips are the same people.The people who own greater mara management that is meant to control all development in the mara conservancies are the same people.The people who allocated



themselves community land title where a key guiding school in the mara is are the same people. The people who play favouritism with well-wishers scholarship to attend koyiaki guiding school rather than on merit are the same people. The people who are using donor funds as a condition to employ their relatives and clansmen are the same people. The people who are by design senior officers of MMWCA without any academic requirement are the same people. The people who used Covid 19 support for conservancies fund the advance interest of business in Maasai Mara are the same people. The people in the heart of the conflict in Mara north conservancy and Naboisho conservancy that turned bloody are the same people. The people who have confined donor funded projects of benefit only 2 or 3 conservancies of over 20 conservancies are the same people. The people who tell other landowners to vacate their land to create conservancies but build permanent homes in the same area are the same people. The people who sponsor conflicts in other conservancies to prevent people they fear will challenge their dominance are the same people. In summary conservation in Maaasai Mara through MMWCA has been captured by a cartel that must be freed to realize sustainable conservation.”

4. These false and malicious tweets, posts, articles, and materials were uttered, written, published, and disseminated by the defendant using his Twitter username @fskariankei as identified by uniform resource locator (URL)/ web address <https://twitter.com/fskariankei?lang=en> and on the defendant's Facebook page username Fred Kariankei identified by uniform resource locator (URL)/web address <https://www.facebook.com/fred.kariabkei/>.
5. On 8th May 2023 the plaintiff wrote to the defendant asking him to cease and desist from uttering, publishing, or disseminating further false and malicious materials against the plaintiff. The plaintiff also asked the defendant to take down the libelious and defamatory materials but the defendant has refused to comply with any of these demands and/or to make amends.
6. Instead of complying with the cease and desist, the defendant doubled down and continued to utter, publish, and disseminate further libelous and defamatory materials against the plaintiff as follows;
 - i. On 16th May 2023 in the Star newspaper, the defendant caused to be published an article in which he made, inter alia, the following false, malicious, and defamatory utterances:

“USAID drawn into Maasai Mara land lease dispute

Community says the arrangement between them and the Maasai

Mara Wildlife Conservancies Association has violated their rights to land ownership.

Kariankei said he has been challenging the conservation model ‘that is edging out maasai landowners out of their land to slums to give room for conservation investors.’

He said there is serious violation of USAID policy on the rights of the indigenous people for partnering with MMWCA

For instance, he said, on June 28, 2021 MMWCA facilitated a meeting with lemek land owners with a view to forming lemek conservancy. Kariankei said the draft



lease showed that the community was to lease their land to a company owned by a few local politicians and wealthy members of the community whose formation was facilitated by MMWCA.”

- ii. From the news of 16th May 2023 above, the plaintiff also learned that the defendant had written false and malicious emails to some of the plaintiff’s employer’s donors such as USAID with the sole intention of disparaging and hurting the plaintiff’s image and standing as the CEO of MMWCA. The article states in part:

“kariankei has since written a number of emails to USAID as they provide funds towards projects being rolled out by MMWCA.

On January 17, 2023, USAID Mission director’s office for Kenya and East Africa replied to Kariankei acknowledging receipt of one his emails. ‘ your message is well noted and we are looking into the concerns raised regarding the alleged violation of USAID policy. We apologize if you had difficulty reaching us and we will be in touch soon.”

- iii. On 12th May 2023 the defendant sent an email to one of the plaintiff’s donor partners, the Norwegian Agency for Development Cooperation (NORAD), making further libelious and defamatory statements against the plaintiff with the sole intention of getting the donor to cut funding from the plaintiff. He wrote as follows:

“From: Fred kariankeif=skariankei@gmail.com

Sent:fredag12.mai2023 13:19

To:minascurta, inaina.minascurta@norad.no

Cc:kirkvaag, ole Henrik greve ole.kirkvaag@norad.no;skjonsberg, svend thorleif <svend.thorleif

Subject: Re:case no.23007

Dear Ina and colleagues, I believe you are still considering my concerns on mmwca. I wish to bring to your attention that in the past week using the police I was detained for 7 days without trial or being charged by MMWCA through its CEO Danial Sopia over a tweet on their accountability on gender issues. Though they cited the tweet, they have been looking for an avenue to shut me off not to raise any issues against mmwca or their approaches to conservation. Indeed, when I was released on bond without being charged of any crime, MMWCA served me with a demand letter that I should delete all concerns I have raised with donors and apologize, failure to do so, they will open civil cases against me. They arrested me to harass and intimidate me and my family and tried to shut me off once and for all. Mmwca should answer these issues instead of punishing those of us who are raising them. Using the police, they have taken my phone with all my passwords for an alleged forensic investigation without a court order to do the same, obviously to snoop on what I have ben sharing with their donors. I am raising this with you so that the truth cannot be buried and if anything happens to me and my family you are aware and that you don’t stop holding them accountable.

Please find attached a newspaper reports on my arrest, demand letter from mmwca and an online report through this link



<https://www.k24tv.co.ke/news/maasai-land-activist-released-on-bail-102771/>”

kind regards,

fred kariankei.

From: Minascurta, Ina ina.minascurta@norad.no

Sent: Monday, may 15, 2023 6:13 PM

To: Svein Wilhelmsensw@basecampexplorer.com

Cc: kirkvaag, ole Henrik Greve Ole. Kirkvaag@norad.no ; skjonsberg,svend Thorleif Svend. Thorleif.skjonsberg@norad.no>

Subject :FW: case no.23007

Hei svein og takk for sist.

Haper alt er vel med deg og dine

Vi har mottatt vedlagte dokumenter of mail under fra fred kariankei, og viser til innholdet deri

Vi lurer pa om du er du kjent med de siste utviklinger I saken, og om basecamp explorer foundation er I dialog med MMWCA om denne saken?As a board of MMWCA , I was notified by the chair o fnew attacks by Mr. Kariankei on social media-this time attacking sopia after his newly marriage. Kariakai claimed gender misconduct/misuse of position, marriage a wife under lawful age etc- i.e. very serious and as far as I have seen, undocumented claims. Sopia has briefed me that is wife is 36 years, and newly finished her master degree. This is well known in the community. Kariankei lives in the same community, close by. See also my next mail, info from the chair of MMWCA to its board members. My understanding I sthat Sopia, which I understand- felt this was way beyond what is acceptable-both morally and legally, it has become personal and malicious by intent. He thus reported it to police, which is his right. He left it to police and the court to judge, following Kenya law. Re defamation and similar concerns, for a person in his key positon for the community this is serious allegations that cannot stand unanswered. His lawyer has advised that either kariankei must document in a lawful manner his claims, or withdraw them. I am not updated on status here, but will immediately inform you when & if so happens I breve fra oyomba mosota & wamwea advocates 8. Mai var kariankei blant annet bedt om a dementere alle frmsatte pastander om MMWCA 15. Mai 2023. Vi er ikke kjent med om kariankei har fulgt denne oppfordringen. See above for the reason I den grad kariankei oppretholder (noen av) de alvorlige Beskyldningene mot MMWCA onsker vi a hore hav basecamp vil gjore for a undersoke om det er hold I noen av pastandene om uregelmessigheter I MMWCA. This is also a issue for the MMWCA board, I wait any update and will brief you according and will brief you accordingly- ie following it closely as BCEF and as MMWCA board meber I denne forbindelse tor vi minne om tilskuddavtalens part I artikkel 3.3 (bedrorende muge uheldige virkninger prosjektet matte ha for menneskerettighetssituasjonen) samt part II artikkel 11.3 og 11.6 (har basecamp behorig og tilstrekkelig kontroll pa maten MMWCA forvalter sitt samfunnsoppdrag?) Again, it must be proof and documentation that drives any concern & allegations. Will revert as said as soon as



more facts become availableNorads internrevision vil sette pris pa tilbaemelding fra basecamp pa disse sposmalene innen 14 dager.

Med vennlig hilsen

ina

7. The defendant has continued to write these defamatory emails to MMWCA's partners organizations with the sole intention of further injuring the plaintiff's reputation and standing.
8. The libelous and defamatory tweets, posts, articles, and/or materials have been shared and continue to be shared online by several Twitter users with the defendant's consent and /or approval.
9. Further, the defendant tagged and included several door organizations that the plaintiff's employer works with, media/news organizations, and other entities in the libelious and defamatory materials thus ensuring maximum damage and harm to the plaintiff's reputation and standing among the tagged organizations and their audiences. The tagged organizations include:
 - i. USAID Kenya
 - ii. ISAID Embassy Kenya
 - iii. The Nature Conservancy
 - iv. Kenya Wildlife Services
 - v. Norwegian agency for development cooperation (NORAD)
 - vi. Nor Fund
 - vii. United Nations Development Program (UNDP)
 - viii. World Wildlife Fund (WWF)
 - ix. World Wildlife Fund-USA (WWF-US)
 - x. Washington Post
 - xi. New York time
 - xii. Al Jazeera news
 - xiii. Mali asili
 - xiv. LGT Venture Philathropy
 - xv. Tusk trust
10. The defendant's tweets, posts, articles, and/or materials in their ordinary and/or natural meaning or by innuendo so far as they concern the plaintiff, meant and was understood to mean that the plaintiff is:
 - i. Engaged in acts of sexual misconduct, sexual harassment, and abuse against people he works with contrary to the penal statutes and sexual offenses statutes.
 - ii. Extremely corrupt, and has no regard to the rule of law, has no moral or ethical qualms and is engaged in diabolical schemes in contravention of the law.
 - iii. Promoting unity, disharmony, and distrust to the detriment of the people he works with.



- iv. Is not competent to receive and manage donor funds for the benefit of maasai mara conservancies and members of the maasai mara communities.
 - v. Engaged in the enslaving and exploitation of these he works with the detriment of his colleagues.
 - vi. Is it not deserving to hold the position of CEO of MMWCA or any other organization of repute.
 - vii. Is not deserving of the excellent reputation and standing he currently enjoys among his colleagues, right thinking members of the community and development partners he works with.
 - viii. Lacks integrity in the discharge of his functions and mandate, is a charlatan, morally depraved, in worthy of respect and is therefore not fit to discharge his functions.
11. The defendant published the libelious and defamatory materials in bad faith, out of malevolence, ill will, and spite towards the plaintiff. The plaintiff has set out the particulars thereof.
 12. The genesis of the defendant's issues with the plaintiff and the source of his vitriols is the decision by the plaintiff to decline to channel donor funds to Mara Isinya Conservancy in which the government has no interest without proper governance structure being put in place. The defendant insisted on being a chairperson and his spouse a treasurer of the said Mara Isinya Conservancy a proposal which the plaintiff declined thus the beginning of the animosity and vitriols from the defendant.
 13. The plaintiff is an adult man married to a consenting spouse who is also an adult aged 36 years at the time of filing the suit. The allegations raised by the defendant are therefore patently false, malicious and merely meant to tarnish the plaintiff's reputation.
 14. The defendant knew or ought to have known the extensive positive change and influence the plaintiff's work has had on members of the Maasai mara communities through his efforts as CEO in the resource mobilization and deployment of the same to improve the standards of maasai mara wildlife conservancies and consequently the livelihoods of the residents of the Masai mara communities. The plaintiff has cited some of the successes, awards, and recognitions he has received.
 15. The publication of the libelous and defamatory materials was therefore calculated to disparage the plaintiff and hurt his standing and work as the CEO of MMWCA. As a result, the plaintiff has been greatly injured in his reputation, credit, character and professional standing. The plaintiff has been brought to public scandal, odium, hatred, ridicule and contempt.
 16. The publication of libelious and defamatory materials by the defendant has strained the relationship between the plaintiff and his employer, the employer's donor and partners who are questioning whether the plaintiff is fit to head the organization that receives and handles donor funds meant for the benefit of the wildlife conservation movement and the maasai mara community.
 17. The publication of libelious and defamatory materials has caused member wildlife conservancies, members of the Maasai Mara communities, donors and partners organizations to question whether the plaintiff is fit to hold the position of the CEO of MMWCA and whether his continued stay as CEO is beneficial to the wildlife conservation movement and he therefore risks losing his position as the CEO of MMWCA.
 18. The defendant has failed to respect the plaintiff's rights and reputation in the exercise of his freedom of expression as provided for under article 28, 31(C),33(3) of [the constitution](#).



19. It is therefore in the interest of justice that the orders of injunction sought herein be granted to prevent further injury to the plaintiff's reputation, credit, character, and professional standing pending the hearing of the main suit.
20. That from the foregoing factual and legal matters, the plaintiff has established a prima facie case with a high likelihood of success at the hearing of this suit and is therefore deserving of the orders sought in this application.
21. That the plaintiff stands to suffer irreparable harm and loss unless the order sought herein is granted. Once the plaintiff's reputation is lost, monetary compensation will never be adequate compensation. In the eyes of the public, once the reputation has been damaged it will remain in their memory for life.
22. That the balance of convenience lies in favour of the grant of the orders sought by the plaintiff. The defendant will not suffer any prejudice, inconvenience, or difficulties if the orders sought are granted as prayed. The plaintiff on the other hand stands to suffer grave difficulties, harm, and loss to its standing and reputation if the orders sought are not granted.
23. The defendant opposed the application by filing a replying affidavit sworn by Fred Kariankei on 11th June 2023.
24. The defendant averred that the suit herein is a defamatory claim for which any prospective damages if any are within the pecuniary jurisdiction of the chief magistrate's court. as such the suit is incurably defective having been instituted in the wrong court.
25. The defendant stated that the suit has been brought in an attempt to silence him after an unsuccessful complaint against him before the police and having been arraigned in court vide narok chief magistrate's court MCCRmisc/ E062 of 2023 hence tantamount to abuse of court process.
26. The defendant argued that his tweet posted on 2nd may 2023 is a fair comment and qualified privileged.that he is aware the plaintiff wedded his second wife at aitong within the expansive maasai mara area. This wedding ceremony was conducted in public galre and graced by the governor, narok county among other dignitaries. On 23rd April,2023 the governor Narok county posted on his social account that he indeed graced the wedding and unequivocally referred the plaintiff as the chief executive officer, Maasai Mara wildlife conservancies further on 23rdapril 2023 william ole muli posted a congratulatory message to the newly wedded couple and posted on his social media account.
27. The defendant averred that he was aware that the plaintiff had a fiancée from the Nkoitoi family and who was employed by MMWCA as an accountant and his second wife also from Nkoitoi family and works at MMWCA.
28. The defendant averred that section 6 of the *employment act* provides statutory safeguards to employees against exploitation and harassment by an employer or by someone put in authority over that employee by the employer.
29. The defendant averred that his post of 2nd May 2023 was not actuated by malice as he was inquiring at to whether there are anti sexual harassment policies and programs at the workplace that protect female employees against sexual exploitation by male predators.
30. The defendant averred that his Twitter post of 3rd March 2022 was his view as the founder of Mara Isinya Conservancy. he sourced donor funding and resource mobilization from Basecamp Explorer Foundation through its founder Svein in the year 2021. The financial and technical support towards this dream was routed through MMWCA but the funds were withheld unreasonably by MMWCA to frustrate his initiative.



31. In The tweets of 16th January 2023, the defendant grieved over interference with the leadership and management of Mara Isinya Conservancy. MMWCA withheld the funding for their new conservancy and instigated the removal of the defendant from its leadership as a condition for the release of the donor funding he had sourced from donors.
32. The defendant averred that through intrusion of MMWCA headed by the plaintiff a splinter group emerged to purposely ensure his removal from the leadership of Mara Isinya conservancies and imposed of a senior officer of MMWCA into a young conservancy and effectively jettisoned as the founder.
33. On 2nd may 2023, the plaintiff made a complaint against him at Mulot police station and the police acting of plaintiff's report arrested him in the wee hours of the night and spontaneously confiscated his telephone handset to prevent him from deleting the alleged offensive tweets. The reason given and the prayer to the criminal court is that he should not delete the tweets complained of by the plaintiff. The plaintiff is now in this suit praying for deletion of the same tweets.
34. The defendant averred that MMWCA is donor funded hence should be held accountable. The defendant was raising concerns in the public interest.
35. The defendant averred that the alleged defamatory publication made on 3rd May 2022 is statute barred the star newspaper is not a party in the suit and the defendant is not the owner/publisher of the star newspaper.
36. The defendant averred that the plaintiff's application discloses no reasonable cause of action against the defendant.
37. The defendant averred that the words complained of are incapable of a defamatory understanding. The publications complained of are in the nature of fair comment to which the complete defence of qualified privilege ousts any defamatory action. None of the matters complained of have in any way adversely affected the reputation of the plaintiff.
38. The defendant averred that he has not accused the plaintiff of sexual misconduct. Further that there is no invasion of privacy in the publications complained of.
39. The defendant averred that the plaintiff has failed to set out a prima facie case against the defendant. The plaintiff has also not demonstrated irreparable damage that he will suffer if the reliefs sought are not granted.

Supplementary affidavit

40. The plaintiff/applicant filed a supplementary affidavit sworn by Daniel Ole Sophia on 3rd October 2023.
41. The plaintiff/applicant averred that the high court has unlimited original jurisdiction to hear and determine both civil and criminal matters. Defamation cases are civil in nature and therefore the high court has jurisdiction. The plaintiff deliberately filed the suit in the high court because the damages likely to be awarded would exceed kshs. 20,000,000 given the egregious nature of the defamatory materials and the subject matter of this suit.
42. The plaintiff/applicant averred the plaintiff has brought a bona fide case to protect and preserve its rights under the law, therefore, does not amount to an abuse of the court process.
43. The plaintiff/applicant averred that the defamatory materials were continuing and were published as part of a long-term campaign to defame the plaintiff with some being published as late as 16th May 2023 only 10 days before the filing of the suit and application herein. The issue of limitation of time therefore does not arise.



44. The plaintiff denies any interference with the management of the conservancies. These allegations are a figment of the defendant's imagination which he uses to justify the defamatory materials he published to the detriment of the plaintiff.
45. The plaintiff has poured vast resources to help all its conservancies set up and sustain proper governance structure and help the conservancies develop resilient and diversified revenue models. There is no single documented complaint about the allegations made by the defendant from any of the 23 private conservancies who are members of the plaintiff.
46. The plaintiff did not refuse to fund Mara Isinya Conservancy. The plaintiff merely set out preconditions for funding the conservancy key of which was that the conservancy put in place proper governance structures that are transparent and can be held accountable should there be any discrepancies. The defendant who has a personal interest in Mara Isinya Conservancy, however, did not accept preconditions and appointed himself as the chairperson and his spouse as the treasurer.
47. The plaintiff/applicant averred that the defamatory publications were made with the sole purpose of injuring the plaintiff's reputation and blackmailing it to submit to the personal and unreasonable demands of the defendant as opposed to the greater good of Mara Isinya Conservancy.
48. The plaintiff/applicant averred that all 23 member conservancies are voluntary members of the plaintiff. Not all land owners in the member conservancies lease land to the plaintiff. Neither the plaintiff nor member conservancies can force or coerce any individual to deal with their parcels of land in a manner that they do not wish.
49. The legitimate expectation and advocating for accountability and openness of management affairs of the plaintiff and its member's conservancies does not warrant the spiteful, malicious, and disparaging publications the defendant made to defame the plaintiff. Further, *the constitution* limits the freedom of expression. The plaintiff is a private entity and not a public body as alleged by the defendant.
50. The defendant's publications were not made in good faith. The publications do not constitute fair comment because the defendant expressed facts he knew or ought to have known to be false. The publications do not qualify as privileged communication as the publications are not part of parliamentary proceedings or reports, judicial proceedings, etc which qualify as privileged communication.
51. The plaintiff has a reasonable cause of action against the defendant in tort of defamation. The elements of defamation have been sufficiently expressed and demonstrated.
52. The plaintiff/applicant denied that any of its staff have engaged in any acts of sexual harassment or exploitation. The defendant continues to make the allegations even in these proceedings demonstrating the level of contempt to the plaintiff and the court.
53. The plaintiff/applicant intends to call witnesses to prove damage the publications have caused to its reputation at the hearing of this matter.
54. The plaintiff/applicant has demonstrated sufficiently a prima facie case against the defendant with a high chance of success. Unless the orders sought are granted it will likely suffer damage, harm, and loss which cannot be adequately compensated by an award of damages. The plaintiff has also demonstrated the balance of convenience lies in its favour. The plaintiff/applicant therefore urges this court to grant the orders sought in the instant application.



The Plaintiff/applicant's submissions.

55. The plaintiff/applicant submitted that in the exercise of this right to freedom of expression, the defendant has injured the plaintiff's reputation and standing among members of the public and/or society thus causing the plaintiff reputational harm loss and damage. The defendant has also abused and infringed upon the plaintiff's rights to dignity and freedom from degrading treatment. The plaintiff/applicant has relied on the black's Law Dictionary 8th edition, Winfield & Jolowicz 15th Edition, Genley On Libel and Slander 11th Edition Page 38, Julius Vana Muthangya V Katuuni Mbila Nzai [2019] eKLR and Article 33(3) of *the Constitution*.
56. The plaintiff/applicant submitted that an applicant must demonstrate a prima facie case, an irreparable injury that cannot be remedied by an award of damages if a temporary injunction is not granted and that the balance of convenience is in its favour. The plaintiff/applicant relied on Micah Cheserem V Immediate Media Services (2000) 1 EA 371, Renton Company Limited Vs Philip Kisia & 2 Others (2012) eKLR, Giella V Cassman Brown 7 Co. Ltd [1973] EA 258, and Nguruman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR.
57. The plaintiff/applicant submitted that the material presented before the court demonstrates a prima facie case. The defendant/respondent has disputed publishing or uttering the libelious materials. The defendant's actions were at all times motivated by malice and ill will which precludes him from relying on the defences of fair comment, justification, and/or qualified privilege. The publications were aimed for the sole intention of personal benefits. the plaintiff is a private organization with no public roles. The plaintiff/applicant relied on the Mrao Limited V First American Bank of Kenya Limited [2003] eKLR.
58. The plaintiff/applicant submitted that the plaintiff's reputation and standing have suffered damage as a result of the published materials. Unless an order of injunction is granted by this court, the plaintiff will continue to suffer irreparable harm and injury. The plaintiff further stands to suffer huge economic losses due to the defamatory publications. The plaintiff/applicant has relied on Renton Company Limited V Philip Kisia & 2 Others [2012] eKLR, and West Kenya Sugar Company Limited V Moses Malulu Injendi & Another [2021] eKLR
59. The plaintiff/applicant submitted that the balance of convenience lies in favour of the plaintiff. The plaintiff stands to suffer great inconvenience and hardship trying to convince members of the public and its donor partners that the defamatory publications are not true and that they should continue to work with the plaintiff.
60. The plaintiff/applicant submitted that the materials published by the defendant are manifestly defamatory to the plaintiff. The publications are- hurtful to the plaintiff's reputation, standing, and the relationship between the plaintiff between the plaintiff and its donor and financial partners. each day that the defamatory materials are allowed to stay published and/ or online, the worse the damage, harm, and injury occasioned to the plaintiff by the said materials. The plaintiff/applicant relied on West Kenya Sugar Company Limited V Moses Malulu Injendi & Another [2021] eKLR, Megascopce Healthcare Kenya Limited V Nation Media Group Limited & 4 Others [2021] eKLR.
61. The plaintiff/applicant submitted that it has met and /or satisfied the conditions and/ or grounds for the grant of a mandatory injunction in an interlocutory application.



The Defendant/respondent's submissions

62. The defendant/respondent submitted that the application herein does not fall within the category of clearest of cases for the granted of orders of injunction. The defendant has given an explanation that justifies his posts and communication on matters within the realms of the plaintiff. The plaintiff has not refuted these facts and assertions. The plaintiff has confirmed the facts complained of truly exist, The defendant/respondent has relied on *Mrao Limited V First American Bank Of Kenya Limited & 2 Others* [2003] 1KLR 125, *Gilgil Hills Academy Ltd Vs Standard Ltd* [2009] eKLR, *Gateley On Libel And Slander 8th Edition By Philip Lewis M.A At paragraph 1574, Principles Of Injunctions At Page 102, Mumias Sugar Company Limited & 5 Others V Musa Ekaya* [2017] eKLR, *Cheserem Vs Immediate Media Services & 4 Others* [2000] Eklr., *Transcend Media Group V Standard Group Limited* [2017] eKLR, *Evans Kidero V John Kamau & Another* [2017] eKLR.
63. The defendant/respondent submitted that the publication fell within the defence of fair comment and justification. The publication in itself is incapable of tormenting any adverse perceptions by third parties against the plaintiff. The defendant /respondent relied on *Gulf Oil (G B) Ltd V Page & Others* [1987] 3 ALL ER 14, Article 33 and 34 of *the Constitution*, *Albert Cheng & Another V Tse Wai Chun Paul Paul* [2000] 3 HKCFAR 339, *Mcdonald Corp V Steel* [1995] 3 ALL ER 615, *Wilradeolia V Simpson* [2008] SCC 40, and *Peter Carter -Rucks Treatise On Libel And Slander*
64. The defendant submitted that the orders sought are too wide and oppressive to the respondent. The defendant/respondent relied on the case of *Francis Atwoli & 5 Others V Kazungu Kambi & 3 Others* [2015] eKLR, *John Ntoiti Mugambi Alias Kamukuru V Moses Kithinji Alias Hon. Musa* [2016] eKLR, and *Bestobell Paints Limited V Bigg* 9[1975] F.S.R 421
65. The defendant/respondent submitted that he will justify his alleged defamatory publications during trial hence reason enough not to grant interim injunctive reliefs sought. The defendant/respondent relied on the case of *Endmor Steel Millers Ltd V Royal Media Services Ltd & 2 Others* [2020] eKLR, and *Harakas V Baltic Merchantile and Shipping Exchange* [1982] W.L.R 958
66. The defendant/respondent submitted that the application has not met the threshold for the grant of interim injunctive orders sought.

Directions of the court

67. On 31.05.2023 granted prayer 2 of the application THAT this honourable court be pleased to grant an order of injunction restraining the defendant whether, by himself, servants, or agents from further posting and publishing the defamatory words uttered on his Twitter account username @fskariankei as identified by uniform resource locator (URL) <https://twitter.com/fskariankei?lang=en>, on his Facebook account username fred kariankei as identified by uniform resource locator (URL) <https://www.facebook.com/fred.kariankei/>, on the article published in the star newspaper of 16th May 2023, on email dated 12th May 2023 or any other or further words and publications of like effect disparaging and injurious to the plaintiff pending the hearing and determination of this application.
68. The application was canvassed by way of written submissions. Both parties have filed.

Analysis and Determination

69. The main issues for determination revolve around;
 - i. Jurisdiction of the court to hear and determine this suit.



- ii. Grant of injunction-temporary and mandatory- in a claim based on defamation.
- iii. Appropriate orders this court may make?

Jurisdiction

- 70. As the canticle goes, 'Jurisdiction is everything...', a court of law must establish jurisdiction before adjudicating over the dispute before it (The Owners of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd (1989) KLR 1).
- 71. And, jurisdiction is conferred by the Constitution or law (Samuel Kamau Macharia Vs KCB & 2 Others, Civil Application No.2 of 2011)
- 72. The defendant/applicant is understood to be saying that this suit ought to have been filed before the subordinate court which has pecuniary jurisdiction to try it. And, on that basis, they claim that this court has no jurisdiction to hear and determine the dispute.
- 73. The jurisdiction of this court is conferred by Article 165(3) in the following terms: -
 - “(3) Subject to clause (5), the High Court shall have:
 - (a) Unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to Constitutional powers of State organs in respect of county governments .and any matter relating to the Constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.



74. The plaintiff/applicant in its supplementary affidavit has stated that it anticipates an award of damages of over Kshs. 20 million.
75. Therefore, given the nature of the claims which include claim of damages for defamation, this court has jurisdiction to hear and determine this matter.

Injunction

76. The threshold for granting a temporary injunction in defamation cases was stated in the case of *Cheserem vs Immediate Media Services (2000)2 EA 371 (CCK)* thus;

‘An interlocutory injunction is temporary and only subsists until the determination of the main suit. In defamation, the question of injunction is treated in a special way although the conditions applicable in granting an injunction as set out in the *Giella v Cassman Brown & Co Ltd (1973) EA 358* generally apply...In defamation cases, those principles apply together with special law relating to the grant of injunctions in defamation cases where 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. The court must be satisfied that the words complained of are libelous and that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse.....The reason for so treating grant of injunction in defamation cases is that the action for defamation brings out conflict between private interests and public interest, more so in cases where the country’s Constitution has provisions to protect fundamental rights and freedoms of the individual, including the protection of the freedom of expression.’

77. The proper constitutional talk; an injunction in defamation cases should be issued only after careful balancing of the right to freedom of expression (article 33 of *the Constitution*), with the right to have a person’s dignity respected and protected (Art 28). And, more specifically, an injunction should speak to the limitation of the right to freedom of expression placed by *the Constitution* that; ‘In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others (see Art 33(3)). And, in granting an injunction, the court should also consider the general right to the correction or deletion of untrue or misleading or defamatory information that affects a person (Art 35(2)).
78. The novel balancing act by the court should produce an outcome that avoids issuance of orders which may be a complete gag of freedom of expression, but also providing remedy to a person whose dignity and reputation has been injured by the respondent.
79. In balancing the competing rights, the court should ask the traditional questions. Whether, within that context, the plaintiff, at this initial stage, has proved; i) a prima facie case with a probability of success; ii) that, if the injunction is not granted, it will suffer irreparable loss; and or iii) that, in case of doubt, the balance of convenience lie in favour of granting the injunction?
80. And, the wisdom on how these elements should be treated in the case of *Yellow Horse Inns Limited v Nduachi Company Limited & 2 others [2017] eKLR*, by the Court of Appeal is that;

“All the three conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. So that if the applicant establishes a prima facie case, that alone will not avail him an injunction. The court must further be satisfied that the injury the applicant will suffer if an injunction is not granted, will be irreparable. Therefore, if damages recoverable in law is an adequate remedy and



the respondent is capable of paying, no order of injunction should normally be granted, however strong the applicant's claim may appear at that stage."

Prima facies case

81. Prima facies case in civil cases was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, thus:

"...in civil cases it is a case in 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." (per Bosire. J)

82. The plaintiff/applicant has set out the publications by the defendant/respondent alleged to be defamatory in its supporting affidavit. The defendant/respondent has raised the defences of fair comment, justification, and privileged communication and has further submitted that a temporary injunction ought not to be granted.

83. According to the plaintiff, the defendant's tweets, posts, articles, and/or materials in their ordinary and/or natural meaning or by innuendo so far as they concern the plaintiff, meant and was understood to mean that the plaintiff is:

- ix. Engaged in acts of sexual misconduct, sexual harassment, and abuse against people he works with contrary to the penal statutes and sexual offenses statutes.
- x. Extremely corrupt, and has no regard to the rule of law, has no moral or ethical qualms and is engaged in diabolical schemes in contravention of the law.
- xi. Promoting disunity, disharmony, and distrust to the detriment of the people he works with.
- xii. Is not competent to receive and manage donor funds for the benefit of maasai mara conservancies and members of the maasai mara communities.
- xiii. Engaged in the enslaving and exploitation of those he works with the detriment of his colleagues.
- xiv. Is it not deserving to hold the position of CEO of MMWCA or any other organization of repute.
- xv. Is not deserving of the excellent reputation and standing he currently enjoys among his colleagues, right thinking members of the community and development partners he works with.
- xvi. Lacks integrity in the discharge of his functions and mandate, is a charlatan, morally depraved, unworthy of respect and is therefore not fit to discharge his functions.

84. This court notes that the tweets and publications relate to personal and private life of the plaintiff, especially on his marriage or estranged wives and alleged acquaintances. Other than disparaging the plaintiff, the publication infringes on his right to dignity and privacy.

85. Some remarks or publications on sexual life of the plaintiff border on sexual harassment and exploitation of employees which may open the plaintiff to criminal and penal sanction. Such are serious matters which ought to be reported to the relevant authorities for action. He has not done so. Instead, he chose the most inappropriate method of publication in his private mediums with world-wide reach and exposure.



86. On that basis, this court is persuaded that in the interim, the plaintiff/applicant has established a prima facie case with a probability of success.
87. It is not just to gloss over infringement of a right or fundamental freedom at the promise, or in the hope of the pain of damages. In a case such as this, damages may not be adequate compensation relief.
88. In the present case, the reputation of the applicant is on the line and once reputation is lost or damaged, no amount of damages can sufficiently compensate the offended party for such a loss.
89. The balance of convenience tilts in favour of stopping and preventing further injury to the reputation of the plaintiff/applicant by the appellant pending the hearing of the suit.
90. In the case of *Kenya Breweries Limited v Washington Okeyo* [2002] eKLR, the court of appeal stated that;

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff a mandatory injunction will be granted on an interlocutory application”.
91. The plaintiff/applicant is also seeking the court to compel the defendant/respondents to take down/retract/delete/purge the defamatory words uttered in his Twitter and Facebook accounts and any other places the said materials are published or stored. The effect of this order is to stop any further hosting of the alleged defamatory words on the respondent’s platform. The defendant/ respondent cannot hide behind the constitutional provisions on freedom of speech which information is likely to injure the plaintiff/applicant’s reputation.
92. What harm will the defendant/respondent suffer by pulling down the impugned material? All that the plaintiff/applicant is seeking at this interim stage is for the material to be pulled down. Whether the information is true, justified, or defensible shall be determined in the trial.
93. In this court’s view, granting the orders being sought will not interfere with or become a gag of the right to freedom of expression.
94. The defendant/respondent’s contention that he was acting in the public interest has been unraveled by the nature of the publication, content thereof and the manner published. Similarly, being a member of Lemek Conservancy, he did not present his complaints to the plaintiff/applicant or to relevant authorities for action. The manner he published the matters complained of shows he was on a personal mission for personal gain, with the aim of defaming the plaintiff. Public interest is not pursued for personal desires to make personal gain, but selfless to vindicate a public cause. This is not the case here when he published the matters complained of on private Twitter and Facebook accounts and whose content is deemed as defamatory.
95. In the end, this court is satisfied that the Notice of Motion dated 26th May 2023 is merited and it is hereby allowed in terms of prayer 3 and 4 pending the hearing and determination of the main suit. More specifically: -
 - i. That an order of injunction is hereby issued restraining the defendant whether, by himself, servants, or agents from further posting and publishing the defamatory words uttered on his Twitter account username @fskariankei as identified by uniform resource locator (URL)



<https://twitter.com/fskariankei?lang=en>, on his Facebook account username Fred Kariankei as identified by uniform resource locator (URL) <https://www.facebook.com/fred.kariankei/>, on the article published in the star newspaper of 16th May 2023, on email dated 12th May 2023 or any other or further words and publications of like effect disparaging and injurious to the plaintiff pending the hearing and determination of this suit.

- ii. That an order of mandatory injunction is hereby issued compelling the defendant whether by himself, servants, or agents to take down, delete, retract, or purge the defamatory words uttered on his Twitter account username @fskariankei as identified by uniform resource locator (URL) <https://twitter.com/fskariankei?lang=en> and on his Facebook account username Fred Kariankei as identified by uniform resource locator(URL) <https://www.facebook.com/fred.kariankei/> and/or any other places the said materials are published or stored pending the hearing, and determination of this suit.
- iii. The costs shall be in the cause.
- iv. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 29TH DAY OF FEBRUARY, 2024

.....

Hon. F. Gikonyo M.

Judge

In the presence of:

C/A – Mr. Otolu

Oyomba for the Applicant – Present

Kamwaro for the Defendant - Present

