

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**MISCELLANEOUS APPLICATION NO.789 OF 2020**  
**(ARISING FROM H.C.C.S NO.483 OF 2019)**

**GODFREY KIRUMIRA KALULE----- APPLICANT**

**VERSUS**

- 1. THE NEW VISION PRINTING AND PUBLISHING COMPANY LTD**
- 2. DEOX TIBEINGANA**
- 3. THE EDITOR IN CHIEF OF THE NEW VISION  
PRINTING & PUBLISHING COMPANY LIMITED**
- 4. RED PEPPER PUBLICATIONS LIMITED**
- 5. THE EDITOR IN CHIEF OF RED PEPPER----- RESPONDENTS**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**RULING**

The Applicant brought this application by way of Chambers summons against the respondents under Section 38 of the Judicature Act cap 13 and Section 98 of the Civil Procedure Act, and Order 41 r 2, & 9 of the Civil Procedure Rules, for orders that;

- a) A temporary injunction doth issue restraining the respondent and their agents from continuing to write, infer, publish or circulate defamatory statements the subject of HCCS No. 483 of 2019 against the Applicant on their websites and social media accounts pending the hearing and determination of the main suit.
  
- b) Costs of the application be provided for.

The grounds in support of this application are set out in the affidavit of Godfrey Kirumira Kalule dated 7<sup>th</sup> February 2020 which briefly states;

1. That the respondent's without any colour of right and without lawful justification wrote, inferred, published and circulated defamatory material they knew not to be true against the respondents.
2. The respondents continue to make, infer, write, publish and circulate defamatory statements against the applicant on websites and social media accounts.
3. That the applicant is a well known figure and is well regarded in society by his friends, peers and others.
4. That the reputation, good standing and businesses of the applicant continue to suffer as the defamatory statements published by the respondents continue to circulate on their websites and social media accounts.
5. That the applicant has filed HCCS No. 483 of 2019 seeking a permanent Injunction, damages and determination of his civil rights as relates the defamatory statements published by the respondents.
6. The 2<sup>nd</sup> respondent continues to publish, infer and make malicious untrue statements on social media about the applicant and continues to damage his reputation since its available on social media and is constantly viewed by the public and if these defamatory articles and statements continue to be published and circulated the applicant will suffer irreparable harm that cannot be compensated by way of damages.
7. The 3<sup>rd</sup> respondent driven by the need to increase readership and financial benefits that such salacious statements and title would bring, allowed such untrue statements to be printed and published in the 1<sup>st</sup> defendant newspaper and website without effort to verify its truth. These defamatory statements are available online and are constantly being read and consumed by the public.

8. The 4<sup>th</sup> respondent in its newspaper on 8<sup>th</sup> November 2019 published a malicious defamatory article entitled “ **KILLING FOR MONEY, KWAGALANA TYCOON NAMED IN CITY MAFIA MURDERS, WEALTH WARS**” this article is unfounded and published in a newspaper of wide circulation to the applicant’s detriment and it is available on line and continues to be in circulation.
9. The 5<sup>th</sup> respondent who is the editor in chief of the 4<sup>th</sup> respondent acted maliciously and recklessly when under his watch allowed for such defamatory untrue statements to be printed and published in the newspaper without any effort to verify its truth.

In opposition to this Application the Respondents filed different affidavits in reply through Alex Balimwikungu for 1<sup>st</sup> and 3<sup>rd</sup> respondents and the 2<sup>nd</sup> respondent filed on his behalf wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The 1<sup>st</sup> respondent made a publication on the 20<sup>th</sup> day of October about a land dispute involving the plaintiff and 2<sup>nd</sup> respondent. The publication was sourced from court documents and comments by the public relating to pleadings.
2. That the applicant seeks to gag the media from making publication on matters of public interest. That freedom of the press is protected by the constitution. The applicant seeks to have civil suit No. 800 of 2019 heard in camera with the temporary injunction.
3. That no court has found the information published on 20<sup>th</sup> October 2019 by the respondents to be defamatory and an order restraining the media from making any publication about the applicant would violate press freedom which would undermine media independence.

4. That the 1<sup>st</sup> respondent dutifully published matters concerning allegations of forgery without malice against the applicant. The content published is derived from a plaint, civil suit No. 2019 at the commercial court division.

The 2<sup>nd</sup> respondent in his affidavit opposed the application and stated that;

1. That the applicant's application is devoid of merit, is illegal, is an attempt to infringe on the right to information among others and a tool for the applicant to have a leeway to enable him to commit criminal offences, infringe on citizens' rights and while at it commit a felony while being covered and protected by an order of court.
2. That the applicant is not entitled to the remedies sought since the said publication is justifiable fact which, if the court grants the said remedies, it would be depriving of the public rich information for the citizens' own protection.
3. That the applicant is a person who portrays his image for the media attention, which cannot easily be ignored. For example, on 23<sup>rd</sup> November, 2019 the applicant is reported in various media publications where he is published to have been beaten up by goons due to his involvement in land grabbing scandal, of which he orchestrated.
4. The publication on my Facebook wall/page is not malicious, but a clear reflection of what is apparently happening between me and the applicant, and it is a subject of various court cases including this one. The same is his honest reaction to a publication that was brought to my attention by concerned citizens who chanced upon it on the internet that indicated that I was an assassination target of the applicant.
5. That this suit is misconceived, frivolous and vexatious, with no merit and not sustainable in any Court of law, since the applicant has no integrity and reputation to protect at all due to his dubious business acumen which is well documented and has been published in various media reports over the

years with reported court judgements that demonstrate his modus operandi of among others, fraudulent property take overs where innocent parties borrowed money from him. A casual internet search of his name brings instant returns of a varied history of dishonest dealings dating from years ago.

6. That the applicant's antecedents and continued uncivilized behaviour are at variance with what he wants court to believe. The applicant is not worthy of the court's protection as he is unable to project imaginary image of a gentleman with a name.
7. That on the other hand the applicant's conduct is attractive to the press be it online or otherwise and it is incumbent upon the applicant to change his lifestyle than moving the press not to report on his newsworthy conduct.

In the interest of time the respective counsel were directed to file written submissions and i have considered the respective submissions. The applicant was represented by *Mr Simon Peter Kinobe* whereas the 1<sup>st</sup> & 3<sup>rd</sup> respondents were represented by *Mr. Ntende Kenneth* while the 2<sup>nd</sup> respondent was represented *Mr Ssempala David*. The 4<sup>th</sup> & 5<sup>th</sup> did not attend court and never filed any affidavit in reply.

It is deemed that the 4<sup>th</sup> and 5<sup>th</sup> respondents did not oppose the application either on points of law or facts as presented.

The applicant's counsel submitted that, the grounds for granting of a temporary injunction were laid down in the case of ***Kiyimba Kaggwa v Haji A.N Katende [1985] HCB 43*** court held that the applicant must show a prima facie case with a probability of success, he/she will suffer irreparable loss damage or injury wkich cannot be compensated by way of damages if the court is in doubt the applicant must show a balance of convenience lies favour of the applicant.

The applicant's counsel contended that there is prima facie since there is a serious question to be tried. The pleadings already reflect triable issues as to whether the

acts of the respondents were defamatory and that the same must be investigated and determined by the court.

The applicant is not seeking a gag order but rather seeks an order to restrain the respondents from continuing to write, publish and circulate on their websites and social media accounts defamatory statements that are subject to HCCS No. 483 of 2019.

The applicant's counsel also submitted that the applicant will suffer irreparable damage and injury because such loss cannot be compensated for with money. The purpose of granting a temporary injunction is for preservation of the parties, legal rights pending litigation.

The failure to grant a temporary injunction will give the respondents leeway to continue publishing and circulating defamatory statements with recklessness and his character will continue to suffer.

The balance of convenience is in favour of the applicant who will suffer more and there is higher risk of doing injustice to him than the respondents who have nothing to lose.

The 1<sup>st</sup> & 3<sup>rd</sup> respondent's counsel submitted that in the case of ***Francis Atwoli and 5 Others v Hon Kazungu Kambi and 3 others HCCS No. 60 of 2015***; Court observed that while the principles set out in *Giella v Cassman Brown [1973] EA 358* are applicable. A fourth principle is applicable in defamation cases. That is; that the injunction will be granted only in clearest of cases.

In the same suit, the court cited with approval the decision of ***Cheserem v Immediate Media Services and 4 others [2000] EA 371***, where the court noted that in defamation, the principles set out in *Kiyimba Kaggwa* apply together with the 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 only granted in the clearest of cases.....the reason for so treating grant of injunctions in defamatory cases is that the action of defamation brings out conflict between private interest and public interest.....

The respondent also relied on *Gatley on Libel and Slander*, 12<sup>th</sup> edition, Sweet & Maxwell at paragraph 24.2; The jurisdiction to grant an injunction to restrain publication of defamatory statements is of a delicate nature which ought only to be exercised in the clearest of cases.....Thus the court will only grant an injunction where (a) the statement is unarguably defamatory (b) there is no good ground for the statement to be true (c) there is no other defence which might succeed (d) there is evidence of an intention to repeat or publish the defamatory statement.

It was the respondent's argument that the present case is not one of the clearest of the cases where an injunction should be issued since it was reporting about a court case and whatever was reported was read from the plaint in HCCS No. 800 of 2019. The 1<sup>st</sup> and 3<sup>rd</sup> respondent will rely on justification and fair comment for the publication.

### ***Determination***

The grant of a temporary injunction is an exercise of judicial discretion as was discussed in the case of **Equator International Distributors Ltd vs Beiersdorf East Africa Ltd & Others Misc.Application No.1127 Of 2014.**

Discretionary powers are to be exercised judiciously as was noted in the case of **Yahaya Kariisa vs Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29.**

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded as was discussed in the case of **Titus Tayebwa vs Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009.**

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of property without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed by a person who approaches the court.

The court's power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of temporary injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the plaintiff or applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff/applicant. The court grants such relief *ex debito justitiae*, i.e to meet the ends of justice. See **Section 64 of the Civil Procedure Act**.

The applicant in the present case contends that the respondents continue to make infer, write, publish and circulate defamatory statements against the applicant on their websites and social media.

The right to reputation is acknowledged as an inherent personal right of every person. A man's reputation is his property and perhaps more valuable than any other property. Indeed, If we reflect on the degree of suffering occasioned by loss of character and compare it with that occasioned by loss of property, the amount of injury by defamation far exceeds that of loss of property.

The essence of defamation is 'publication' which excites others against the plaintiff to form adverse opinions or exposes him to hatred, contempt or ridicule, or injure him in his trade, business, profession, calling or office or to cause him to be shunned or avoided in society.

According to **Black's Law Dictionary 11<sup>th</sup> Edition 2019**, defamation means; Malicious and groundless harm to the reputation or good name of another by the making of false statement to a third party

This court agrees with the 1<sup>st</sup> and 3<sup>rd</sup> respondent's submissions and authorities cited in favour of not granting a temporary injunction.

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It can be deduced from the above authorities that the courts are generally more cautious about interlocutory injunctions, and will grant such injunctions only where it is clear that the words complained of were libelous and no defence could possibly apply.

The rationale lies in public interest in the freedom of speech. Caution should be exercised against interfering with such a right prior to the determination of the merits at trial. Without a trial, there would not be an opportunity for the falsity or truth of the statements and other defences to be tested via the disclosure of documents and cross examination. See ***Greene v Associated Newspapers Ltd [2005] QB 972***.

The Court of Appeal of Singapore reasoned that with respect to:

*"...an application for an interlocutory injunction in a defamation action, whether mandatory or prohibitory, the jurisdiction of the court was not to be simply on American Cyanamid guidelines but with great caution and should generally only be granted where it was clear that the statement*

*complained of was libelous and no defence could possibly apply. Having satisfied this test, the court must further be satisfied that this is a case where special circumstances exist which warrant the issue of an exceptional relief like an interlocutory mandatory injunction.” See **Chin Bay Ching v Merchant Ventures Pte Ltd [2005] 3 SLR(R) 142***

Therefore, an application for a prohibitory injunction should be denied as one of the essential conditions is evidence of “a threat or intention to repeat the defamatory remarks. In this case there is no evidence that 1<sup>st</sup> and 3<sup>rd</sup> respondent have threatened to repeat or intended to continue the alleged defamatory publication.

The 2<sup>nd</sup> respondent; however appears to likely repeat the same or similar statements against the applicant as the litigant in the same matter, which in the courts view would be *sub-judice*.

Each time the originator of a defamatory statement repeats it, he publishes it anew. For each publication, therefore, a fresh cause of action arises. Not only is the author of the defamatory statement liable but also those who repeat it. Tale bearers are as bad as tale makers.

An injunction would issue against the 2<sup>nd</sup> respondent and 4<sup>th</sup> & 5<sup>th</sup> respondents who never responded to the application.

In the result for the reasons stated herein above this application succeeds and is allowed against the 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents. The application fails against the 1<sup>st</sup> & 3<sup>rd</sup> respondents. The costs shall be in the cause.

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**13<sup>th</sup>/03/2020**