



REPUBLIC OF KENYA

IN THE MAGISTRATE COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI COMMERCIAL

CASE NUMBER: MCCC/E2967/2025

CITATION: PETER ALBERT AYIRO VS JOHN-ALLAN NAMU AND CHRISTINE MUNGAI AND 1
OTHERS

RULING

Before this court for determination, are two Notice of Motion Applications dated 05.05.2025 and 13.05.2025 (hereinafter referred respectively referred to as the 1st and 2nd applications).

The 1st application is brought pursuant to Order 40 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. The Applicant (Plaintiff) in this application, moved the court seeking the following orders;

- a. Spent
- b. Spent
- c. That this Honourable court be pleased to issue a temporary injunction restraining the Respondents, their agents, servants, or any other persons acting on their behalf from publishing, disseminating, or causing to be published, or disseminated, whether in print or social media, or through any electronic or digital platform, any material or content, containing the impugned allegations against the Plaintiff, pending the hearing and determination of the suit
- d. That the Respondents be compelled to supply the Respondent with the specifics of the allegations, including the details of the complaints and formal reports filed in the relevant authorities by the complainants or Respondents
- e. That this matter be heard in camera, and the file be held under lock and key
- f. That the costs of the application be provided for

The application is supported by the grounds on the Notice of Motion, and the Supporting Affidavit of Peter Albert Ayiro, the Plaintiff.

The Plaintiff's case is that, he is a teacher employed by the Teachers Service Commission, stationed at Alliance Girls High School. It is the Plaintiff's on 02.05.2025, the 1st Defendant called him, and informed him of his intention to publish an investigative story through the 3rd Respondent, touching on multiple allegations of sexual misconduct against him. It is the Plaintiff's further case that, the 1st Defendant questioned him for about 35 minutes, which allegations he denied, as they were strange and vague.

It is the Plaintiff's further case that, the 1st Defendant then proceeded to send him a document on WhatsApp, which he explained that he needed to answer. However, the document was later deleted,



and he has not been able to access the document. It is the Plaintiff's further case that, the 1st and 2nd Defendants have contacted various members of his family, and that he is not aware of any complaints filed against him, regarding sexual misconduct.

It is the Plaintiff's further case that, if any content is published, it will be impossible to retract, noting the speed with which content circulates online, and will suffer irreparable loss of his job, reputation, as such, the matter should be heard in camera, and the file placed under lock and key.

The 1st and 3rd Defendant's Case

The 1st application is opposed by the Replying Affidavit of the 1st Defendant, sworn on 23.06.2025.

He deposes that, the 3rd Defendant is an investigative media house, which conducts in depth research to uncover hidden and complex information, expose the truth faster, foster transparency and accountability and inform the public of issues which directly impact them. He further deposed that, the 3rd Defendant was made aware of a long serving teacher at Alliance Girls High School i.e., Mr. Peter Albert Ayiro, particularly his relationship with former students, which allegations suggested boundary violations and manipulation, which warranted deeper investigation.

He further deposes that, the accounts from the interviews describe a clear consistent pattern of what appeared to be grooming, emotional manipulation and abuse of authority, and the accounts involved physical contact while the students were still in school and one would qualify as an indecent act with a child. He further deposes that, other accounts describe emotionally inappropriate relationships or physical encounters, which begin soon after students had completed their Form Four, involving significant power imbalance and psychological grooming.

He further deposed that, multiple sources reported the teacher's close relationships with previous principals, which discouraged escalation of the complaints, and which dynamic presented a picture reporting the conduct would be futile and contributed to a broader climate of institutional silence; a pattern indicating not only individual misconduct, but systemic failure to protect students.

He further deposed that, the investigation was conducted with journalistic integrity, and not as a personal vendetta to unjustifiably tarnish a teacher's reputation, and the driving concern was the child's safety, institutional accountability and public interest, given the teacher's continued role in mentoring and influencing minors.

He further deposed that, on 02.05.2025, the Plaintiff was contacted for a formal right of reply, and engaged in a 35-minute conversation, where he denied some allegations, and declined to respond to others and offered partial clarifications and was given a fair opportunity to comment, before any attempt at publication.

He further deposes that, the Plaintiff has failed to disclose that, him and other contacted, were presented with detailed allegations, and given a fair formal right to respond to the allegations, and the responses were incorporated in the story. That the allegation that he sent a document and deleted it is a lie, and misguided and so are the allegations that the allegations in the publication are unsubstantiated. That they have multiple sources and sworn testimonies from multiple victims and other witnesses. That the application will have the effect of violating the rights enshrined under the Constitution i.e., Article 33 (1), 34 (1), 35 (1) (b) and 53.

He further deposes that, a claim founded on reputational protection, should not justify silencing credible allegations of sexual exploitation against students and former students, which is a matter of public interest. That the harm in suppressing the allegations, far exceeds the reputational damage and the application is an attempt to gag the media, under the guise of reputational protection.

Therefore, in light of the foregoing, a balance needs to be struck, between the one teacher's alleged reputational damage, and whether vulnerable children need protection, whether victims of abuse can speak out and whether there should be accountability, and there is a risk that current and former students, the Defendants and the public will be prejudiced.

The 2nd application is brought pursuant to Order 40 Rule 7 of the Civil Procedure Rules, Articles 33 (1), 34 (1) 35 (1) (b) and 53 of the Constitution of Kenya and Sections 1A, 1B and 3A of the Civil Procedure Act. The Applicants (Defendants) moved this court seeking the following orders;

a. Spent



b. That the court be pleased to set aside or discharge the exparte injunctive orders of 06.05.2025 issued against the Defendants

c. That costs of the application be provided for

The application is supported by the grounds on the Notice of Motion, and the Supporting Affidavit of the 1st Defendant, John-Allan Namu.

The Applicants' case is that, exparte orders were obtained on the basis of material non-disclosure

a. That the Plaintiff failed to disclose that, the Defendants provided him, and all other relevant parties, detailed allegations and a right of reply

b. That the Plaintiff lied the 1st Defendant sent him a document via WhatsApp, and proceeded to delete the said document

c. That the Plaintiff had an opportunity to respond to the allegations

He further deponed that, the application will have the effect of violating the rights enshrined under the Constitution i.e., Article 33 (1), 34 (1), 35 (1) (b) and 53. That a claim founded on reputational protection, should not justify silencing credible allegations of sexual exploitation against students and former students, which is a matter of public interest. That the harm in suppressing the allegations, far exceeds the reputational damage and the application is an attempt to gag the media, under the guise of reputational protection.

The Plaintiff's Case

The 2nd application is opposed by the Plaintiff's Replying Affidavit, sworn on 02.07.2025. He deponed that, the 1st and 2nd Defendants violated his privacy by contacting his family members and colleagues, on the allegations of sexual misconduct. That he has no knowledge of any entity, regarding allegations of sexual misconduct. That the threat to publish violates his right to fair hearing and have his data protected.

He further depones that, the publishing without any legal investigations will amount to defamation, which will tarnish his family and his image. That the freedom of expressions is not absolute, and there are limitations under Article 34 of the Constitution. That the interviews between the 2nd Defendant and the unverified students depicts the Defendants as biased. That according to the rules of natural justice, he has a right to a fair hearing, which includes the right to be informed of the charges or allegations, adequate notice of any hearing and to be allowed to call any witnesses and cross-examine witnesses

Determination

I have considered the applications before the court, the responses to it, and the submissions on record, and in my view, the issues before the court are;

a. Whether the Applicant has established the ingredients to warrant the grant of a temporary injunction

b. Whether the exparte orders granted should be set aside

c. Who should bear the costs of the application?

Whether the Applicant merits the grant of a temporary order of injunction as prayed for in the application

The law on granting of interlocutory injunction is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides: - Where in any suit it is proved by affidavit or otherwise—

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.

What was the intention of the above provision in relation to the grant of interlocutory injunctions?

This question was rightly answered in the decision of Robert Mugo Wa Karanja v Ecobank (Kenya)



Limited & another Civil Case No. 221 of 2018 [2019] eKLR by Justice J.A Makau where he observed as follows: -

“The circumstances for consideration before granting a temporary injunction under order 40 Rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court is in such situation enjoined to grant a temporary injunction to restrain such acts”.

The principles for determining whether to grant an interlocutory injunction are laid out in *Giella v Cassman Brown* [1973] EA 358 at 360. They are;

a. First, an applicant must show a prima facie case with a probability of success.
b. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

c. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience
The Court of Appeal in the decision of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR spoke on the meaning of a prima facie case as follows:

“.....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... a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

Article 53(2) of the Constitution of Kenya provides:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The allegations giving rise to the proposed publication involve:

a. A teacher alleged to have engaged in inappropriate emotional and physical relationships with students;
b. Incidents alleged to include grooming, abuse of power, and contact while the students were minors;
c. A broader institutional culture that allegedly silenced or discouraged complaints.

Whether the above allegations are ultimately proven is a matter for trial. However, the mere existence of multiple, consistent accounts involving students, as deposed by the 2nd Defendant and supported by interviews and sworn statements, brings the matter squarely under the purview of Article 53(2). Where a child is involved, or where allegations pertain to the failure of an institution to protect children, the threshold for injunctive relief must be evaluated in light of the child’s vulnerability, dependency, and the societal imperative to prevent cover-up.

The Plaintiff has not demonstrated that the intended publication is manifestly false, recklessly indifferent to the truth, or motivated by malice. On the contrary, the evidence shows that he was granted a right of reply, and that the publication relates to matters of serious public concern, including children’s rights and institutional accountability. The Court cannot shut its eyes to evidence on record, and the reality that cases of sexual abuse and exploitation of students by persons in authority are often underreported, difficult to prosecute, and frequently silenced by power imbalances.

An injunction in such cases would have a chilling effect on victims, discourage whistleblowing, and embolden impunity. The child’s interest in being heard, being protected, and living in a safe educational environment, therefore outweighs the temporary discomfort of adverse media coverage, especially where it has been responsibly pursued.

The Court affirms that child protection is not a secondary consideration. It is a constitutional imperative, and where there are credible indications of systemic failure to uphold this imperative, especially in educational institutions, the judicial lens must shift toward transparency, accountability, and safeguarding the vulnerable.



This court shall remain vigilant to ensure that both media freedom and individual dignity are respected, but it shall not permit the law to be used as a tool to shield potentially serious misconduct involving children from legitimate public scrutiny. The upshot is that, the prayer for injunction and ultimately the Plaintiff's application must fail. In the end, it is hereby ordered as follows;

- The Notice of Motion Application dated 05.05.2025, is hereby dismissed.
- The Respondents are awarded the costs of the 1st application.
- The Notice of Motion Application dated 13.05.2025, is hereby allowed as prayed.

Ruling read, delivered, dated and signed virtually, on 04.07.2025 at Milimani Commercial Court

In the presence of;

Applicant's Counsel: Ms. Achayo

Respondent's Counsel: Ms. Oloo

Court Assistant: Ms. Mawia

SIGNED BY: HON. BECKY CHELOTI MULEMIA



THE JUDICIARY OF KENYA.
MILIMANI COMMERCIAL MAGISTRATE COURT
MAGISTRATE COURT CIVIL
DATE: 2025-07-04 13:21:50+03

