

KENYA / JUDGMENT

Barasa v Okumu [2026] KEMC 867 (KLR)

[2026] KEMC 867 (KLR)**COURT**

Magistrate's Court

CASE / FILE NUMBER

Civil Suit E229 of 2026

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REPUBLIC OF KENYA IN THE CHIEF MAGISTRATE'S COURT AT BUNGOMA CIVIL SUIT NO. E229
OF 2026 DIDMUS BARASA.....PLAINTIFF VERSUS
MAJIMBO OKUMU.....DEFENDANT

RULING

1. The Plaintiff/Applicant approached this Court's seat of justice through a Notice of Motion dated 05th July 2026, under Certificate of Urgency, expressed to be brought under Articles 28 and 33 of the Constitution of Kenya, 2010, Sections 1A,1B,3A and 63 (c) and (e) of the Civil Procedure Act, Order 40 Rules 2,3 and 4 (1) as well as Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;
 - (a) Spent
 - (b) Spent
 - (c) That pending the hearing and determination of this suit, this Honourable Court be and is hereby pleased to issue a temporary injunction restraining the Defendant/Respondent whether by himself, his agents, servants, from publishing, uttering, circulating, disseminating, broadcasting or causing to be published or disseminated, whether directly or indirectly any defamatory statements against the Plaintiff
 - (d) That at the hearing and determination of this suit, this Honourable Court be and is hereby pleased to issue a temporary injunction restraining the Defendant/Respondent whether by himself, his agents, servants, from publishing, uttering, circulating, disseminating, broadcasting or causing to be published or disseminated, whether directly or indirectly any defamatory statements against the Plaintiff
 - (e) Spent

- (f) That pending the hearing and determination of this suit, this Honourable Court be and is hereby pleased to issue an interim order compelling the Defendant/Respondent to forthwith remove, delete and or cause to be removed and deleted from all social media platforms, digital platforms, and online publications within his control or influence the defamatory statements against the Plaintiff
 - (g) That at the hearing and determination of this suit, this Honourable Court be and is hereby pleased to issue an interim order compelling the Defendant/Respondent to forthwith remove, delete and or cause to be removed and deleted from all social media platforms, digital platforms, and online publications within his control or influence the defamatory statements against the Plaintiff
 - (h) That this Honourable Court be pleased to grant any other or further orders it may deem fit and necessary in the circumstances
 - (i) That costs be in the cause
2. The Plaintiff/Applicant's principal ground in support of the instant Application as can be gleaned from the face of the said Application is that the Defendant/Respondent addressed a church congregation on 24th June 2026 where he reportedly falsely, maliciously, and without any lawful justification alleged that the Plaintiff/Applicant stole a degree certificate from Paul Asango.
 3. Further, the Plaintiff/Applicant that the alleged defamatory statements made by the Defendant/Respondent were subsequently recorded and disseminated to a wider audience including being uploaded on a Youtube channel known as Mumbo Online TV where the alleged defamatory statements continue to be hosted, thereby causing him public ridicule, contempt, hatred, embarrassment, and disrepute.
 4. He continued to aver that, being the duly elected Member of Parliament for Kimilili Constituency, he derived his public standing, credibility and effectiveness from the confidence reposed in him by the electorate. Therefore, the Plaintiff/Applicant added that if the orders sought are not granted, he was bound to suffer irreparable harm to his reputation, integrity, public standing, and leadership credentials, which harm cannot be adequately compensated by damages.
 5. He also averred that the balance of convenience tilted towards preservation of his reputation and constitutional rights pending the hearing and determination of this suit.
 6. The Plaintiff/Applicant reiterated the grounds above in support of the instant Application through his Supporting Affidavit sworn on 05th July 2026. He added that the ordinary and natural meaning of the impugned publication was that he was dishonest, fraudulent/ lacking in integrity, and unfit to hold public office, thereby lowering his reputation in the eyes of right-thinking people in the society. He also provided a YouTube link to the video of the alleged defamatory statements.

7. In opposition to the instant Application, the Defendant/Respondent filed a Replying Affidavit sworn on 13th July 2026, where he denied publishing the impugned publication. He also denied controlling, owning, or managing the Mumbo Online TV YouTube channel, or any other platform where the alleged defamatory statements were published.
 8. He further averred that, in any event, the allegations that the Plaintiff/Applicant does not possess a Bachelor of Science degree in Electrical and Electronic Engineering (2nd Class Honours Upper Division) from Jomo Kenyatta University of Science and Technology were justified. He supported this position by relying on an article from Citizen Digital accessible at <https://citizen.digital/article/eacc-says-it-forwarded-20-files-to-dpp-for-prosecution-but-10-were-retained-n314613> in which it was reported that the Ethics and Anti-Corruption Commission (EACC) had recommended the Plaintiff/Applicant's prosecution for forgery of the degree herein.
 9. The Defendant/Respondent added that given that one is required to hold a degree certificate before vying for a governor's seat, discussions around academic qualifications of aspirants of various elective positions were necessary and that such discourse was not meant to ridicule, defame or belittle any leader.
 10. He added that the Plaintiff/Applicant, having offered himself for public service, should be prepared to subject himself to public scrutiny; thus, the Plaintiff/Applicant cannot complain of defamation when the public seeks answers about his academic qualifications.
 11. He also averred that the Plaintiff/Applicant has not moved court or any other forum to have his name expunged from the EACC report recommending his prosecution for forging the degree herein and that he had not sued Citizen Digital or Royal Media Services to pull down the article on his proposed prosecution by the EACC.
 12. In addition to the above, the Defendant/Respondent averred that this court ought to dismiss the instant Application with costs since granting the orders sought by the Plaintiff/Respondent would infringe on his constitutional rights of free speech and expression.
- Parties' Written Submissions
13. The parties herein took directions on 04th August 2026 on filing of written submissions. Whereas the Plaintiff/Applicant filed their written submissions, the Defendant/Respondent did not.
 14. However, the written submissions filed by the Plaintiff/Applicant's counsel failed to address the question of whether this court should allow the instant Application. The Plaintiff/Applicant's counsel went on a tangent by submitting on whether the Plaintiff/Applicant had proved a defamation case against the Defendant/Respondent on a balance of probabilities and quantum. Clearly, this Court cannot consider the said written submissions at this interlocutory stage.
- ANALYSIS & DETERMINATION

15. This Court has given due regard to the parties' pleadings in their entirety. It is this Court's humble view that the only issue for determination is whether the instant Application and the orders sought are merited. Whether the Application and the Orders sought are merited
16. The Plaintiff/Applicant seeks interim injunctive orders. Before proceeding to determine whether the instant Application is merited, this court warns itself of the dangers of making definitive findings of fact or law at this interlocutory stage. This is in line with the Court of Appeal's guidance in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, where the Court stated: ".....It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard..."
17. The principles guiding the grant of an interlocutory injunction in this jurisdiction were set out in *East African Industries vs. Trufoods* [1972] EA 420 and *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. Those principles were restated in *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, where the court rendered itself thus: "In an interlocutory injunction application, 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. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially..."
18. This court's reading of the authority above is that an Applicant must surmount the pillars for the grant of the injunctive orders sequentially. Simply put, an Applicant's failure to surmount the first hurdle for the grant of injunctive orders renders the consideration of the other hurdles moot.
19. Be that as it may, it is not lost to that this is an application for interim injunctions arising from a defamation suit. *Jaden J in Nahashon Ngige Nyagah v Abdullahi Ahmednasir Maalim & 2 others* [2017] KEHC 8732 (KLR) stated as follows regarding such an Application: "The considerations for the grant of an injunction in libel cases as set out in *Gatley on libel* 12th Edition are:
 - (a) The statement is unarguable defamatory.
 - (b) There are no grounds for concluding that the statement is true.
 - (c) There is no defence which might succeed.
 - (d) There is evidence of an intention to repeat or publish the defamatory statement.

20. An Application for interim injunctive orders in a defamation suit also requires a court to take into account the competing rights in Article 33 of the Constitution that guarantees the freedom of expression, as well as Article 25 and Article 31 of the Constitution, which protect the inherent dignity of every person and the right to privacy, by performing a delicate balancing which will ultimately ensure that the ends of justice meet.
21. The High Court in *Ukur Yatani vs Dido Ali Raso* [2021] eKLR, which was cited with approval in *Gitau v Gachagua* [2026] KEHC 2183 (KLR), summed up all the above principles to be considered before a court grants interim injunctive orders in a defamation case as follows: “It is, however, noted that besides the conditions set out in the *Giella* case (supra), the need to be more cautious in a defamatory case is high. In the case of *Cheserem v Immediate Media Services & 4 others* [2000] eKLR, Justice Khamoni (as he then was) had this to say of such cases: “Applications for interlocutory injunction in defamation cases are treated differently from ordinary cases because they bring out a conflict between private and public interest. Though the conditions applicable in granting interlocutory injunctions set out in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 258 generally apply. In defamation cases, those conditions operate in special circumstances. Over and above the test set out in *Giella’s* case, in defamation cases, 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 (emphasis mine). The court must be satisfied that the words or matter complained of are libelous and also that the words are so manifestly defamatory that any verdict to the contrary would be set aside as perverse. Normally, the court would not grant an interlocutory injunction when the defendant pleads justification or fair comment because of the public interest that the truth should be out and the court aims to protect a humane, responsible, truthful and trustworthy defendant...”
22. Having fully appreciated the principles a court ought to consider before granting interim injunctive orders in a defamation case, this court will now proceed to determine whether the Plaintiff/Applicant has satisfied the principles for the grant of injunctive orders sought sequentially.
23. On whether the Plaintiff/Applicant has established a prima facie case, the High Court in *Wamatangi v Mendenhall & Another* (Civil Case E020 of 2024) [2025] KEHC 2992 (KLR) defined a prima facie case in a defamation case as follows: “The applicant herein must demonstrate that he has an arguable case for this court to grant the orders sought. The applicant also requires to show that publishing of such defamatory matter will continue harming his reputation, It has not been denied that there was a press briefing whose details have bn attached and explained in the supporting affidavit. Photographs of the persons present have been annexed. I have examined the press statements which makes weighty allegations against the applicant pointing at him as a corrupt person having made demands through an employee of the County Government. At this interlocutory stage, this court is not required to make any findings on the material placed before it for the reason that the parties will have their day in court to prove their cases. However, in my view the said utterances in

the press briefing are prima facie defamatory by the applicant has been portrayed as a corrupt person who has demanded bribes through his officer.”

24. Guided by the authority above, the question that abounds at this stage is whether the impugned publication is prima facie defamatory. That is to mean this Court must determine whether the impugned publication, on its face, will lower the Plaintiff/Applicant's reputation in the eyes of right-thinking people.
25. The Plaintiff/Applicant's position is that the Defendant/Respondent disseminated false, malicious and injurious statements on 24th June 2026 in a church that the Plaintiff/Applicant stole a degree certificate from Paul Asango, which statements were reportedly false and malicious. He added that the statements complained of were thereafter uploaded on the YouTube channel Mumbo TV online where they are still hosted to date.
26. The Defendant/Respondent denied publishing the statements complained of by the Plaintiff/Applicant. He maintained that the said statements were in any event factual since the EACC had recommended the Plaintiff/Applicant's prosecution for forgery of the degree certificate in question. He placed reliance on an article on Citizen Digital showing that the EACC had recommended the Plaintiff/Applicant's prosecution for forgery of a degree certificate.
27. A quick search on the Mumbo TV online YouTube channel about the impugned publication leads one to a video titled 'Former MCA Majimbo Okumu has alleged that Kimilili MP Didmus Barasa, forged his academic papers' accessible from <https://www.youtube.com/watch?v=UcT-tmrqrSw>.
28. That video shows a person identified as Majimbo Okumu uttering the impugned publication. The Defendant/Respondent has not averred that there is another person or persons out there called Majimbo Okumu who possibly published the impugned publication. Therefore, the Defendant/Respondent's mere denial at this interlocutory stage cannot dislodge the Plaintiff/Applicant's case that the Defendant/Respondent published the impugned publication.
29. The plain and ordinary meaning of the impugned publication is that the Plaintiff/Applicant is a fraudster who engages in criminal activities including forgery of degree certificates. The impugned publication would no doubt lower the Plaintiff/Applicant's reputation in the eyes of any right-thinking person along the streets and the footpaths of Bungoma County.
30. In a bid to demonstrate that the impugned publication is factual, the Defendant/Applicant has relied on an article posted in Citizen Digital where the Ethics and Anti-Corruption Commission (EACC) is reported to have recommended the Plaintiff/Applicant's prosecution for forging a degree from Jomo Kenyatta University of Agriculture and Technology (JKUAT).
31. The Defendant/Respondent also suggested that the impugned publication was a matter of public interest since the electorate needed to know the character of persons who have offered themselves for public office.

32. The explanations given by the Defendant/Respondent above and the Defendant/Respondent's Statement of Defence on record show that the Defendant/Respondent seeks to rely on the defences of justification and fair comment in this case.
33. In *Philomena Mbete Mwilu v Standard Group Limited* (2018) eKLR, the court held as follows on the effect of a party pleading the defences of justification and fair comment at an interlocutory stage:- "In most cases, these defences are proved or established by evidence tendered in the course of the main trial and for this reason, I wish to respectively disassociate myself with the holding of *Khamoni J* in the *Micah Cheserem Case* (supra) to the effect that where the defences of justification and fair comment are raised, the court should automatically refuse to grant an order of temporary injunction. In my considered view, the mere pleading of the aforesaid defences does not by itself mean that they will eventually carry the day after the suit is heard since as stated earlier, they must be established by way of evidence and the court may not know at an interlocutory stage whether the evidence will be available in the course of the trial or not. My view is that where such defences are pleaded at the interlocutory stage by way of affidavit before a defence is filed, the defendant should avail to the court some material on the basis of which the court can make a *prima facie* finding that the defences are likely to succeed at the main trial. At this interlocutory stage, it is difficult for the court to make a determination as the respondents have produced correspondence backing their allegations. It will be during the trial that respondents will shed more light by way of evidence to support their defence. Accordingly, it is my considered view that the applicant has established a *prima facie* case. Therefore going by the evidence on record at this stage, this court finds that the Plaintiff/Applicant has established a *prima-facie* case that his right to dignity has been infringed by the Defendant/Applicant which needs an explanation." (Emphasis added)
34. This court gathers from the authority above that the mere fact that a party has pleaded defences of justification and fair comment does not prevent a court from issuing an interim injunction at an interlocutory stage given that it is not guaranteed that the defences pleaded will carry the day when the case is finally heard and determined.
35. In any event, a reading of the article relied upon by the Defendant/Respondent to justify the impugned publication shows that the ODPP ordered the EACC to carry out further investigations into that matter. This shows that, at least for now, based on the evidence placed before this court at this interlocutory stage, there is no conclusive evidence that the Plaintiff/Applicant forged a degree from JKUAT. The Defendant/Respondent may nevertheless, during trial, prove the defence of justification during trial.
36. The defence of fair comment, on the other hand, is not available to a party just because a party is commenting on a matter of public interest. Fair comment must be based on factual statements. This court cannot at this stage determine whether the impugned publication is factual for the Defendant/Applicant to enjoy the benefit of the defence of fair comment.

37. The upshot of the foregoing is that the Plaintiff/Applicant has established a prima facie case for the grant of an interim injunction.
38. On irreparable loss, authorities abound that an interim injunction will not issue where the Plaintiff/Applicant may suffer if the injunction is not granted is capable of being compensated by an award of damages.
39. It is given that if this court ultimately finds that the Defendant/Respondent defamed the Plaintiff/Applicant, the Plaintiff/Applicant will be entitled to damages. However, damage to reputation and a name cannot be compensated by damages regardless of the amount of damages awarded to the aggrieved party.
40. Thomas Paine defines reputation in the following words: "Reputation is what men and women think of us; character is what God and angels know of us."
41. The definition of reputation above shows that the moment a person's reputation is tarnished, men and women who know such a person will always think of that person in the negative manner they were made to know that person.
42. A name or reputation is priceless as aptly written by William Shakespeare in Othello in the following words: "Good name in man and woman, dear my lord, Is the immediate jewel of their souls: Who steals my purse steals trash; 'tis something, nothing; 'twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him, And makes me poor indeed."
43. In the Philomena Mbete case (supra) the court held:- "The defendant has advanced the view that in this case, even if the applicant was to succeed in her action, an award of damages would be an adequate remedy. However, I am alive to the fact that in some cases such as the instant one, once a person's reputation is damaged or lost, no amount of damages can be sufficient to compensate the offended party for such a loss. I wholly concur with the view expressed by Mbogholi J in Ahmed Adan vs Nation Media Group Limited & 2 Others [2016] eKLR that reputation like a name is priceless."
44. It is abundantly clear from the above that an award of damages to a successful Plaintiff in a defamation case does not necessarily change that person's already tarnished reputation in people's minds. Therefore, if the impugned publication is not stayed in the interim, the people of Kimilili constituency and Bungoma County whom he leads and seeks to lead respectively may continue believing that the Plaintiff/Applicant is a fraudster to the Plaintiff/Applicant's detriment if it ultimately turns out that the impugned publication is false.
45. Given the foregoing, this court is inclined to find that the Plaintiff/Applicant will suffer irreparable damage if the injunctive orders sought are not granted.
46. Turning to the balance of convenience, this court draws guidance from Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR, where the court in defining balance of convenience held as follows:- "The meaning of balance of convenience in favour of the plaintiff is that if

the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

47. This court has given due regard to the definition of a balance of convenience eloquently defined in the authority above.
48. The facts of this case and the analysis above show that if the interim injunction sought by the Plaintiff/Applicant is not granted, the Plaintiff's reputation will be lowered in the eyes of right-thinking Nekesa, Wekesa, Kamau, Wanjiru, Chebet and Ngeiywo within and without Bungoma County. This will definitely affect the Plaintiff/Applicant's prospects at the ballot since the Defendant/Applicant has averred that the Plaintiff/Applicant seeks to become the governor of Bungoma County.
49. The only inconvenience to be suffered by the Defendant/Respondent if the injunctive orders sought are granted is that he will only be estopped from publishing the impugned publication until this court decides whether the impugned publication is factual or not.
50. It is against this backdrop that this court holds and finds that the balance of convenience tilts in favour of the Plaintiff/Applicant because the inconvenience caused to him will be much greater than that caused to the Defendant/Respondent if the court ultimately finds that the impugned publication is defamatory.
51. The analysis above also leaves no doubt in this court's mind that the Plaintiff/Applicant has at this interlocutory stage proved on a balance of probabilities the principles for the grant of an injunction in libel cases as set out in *Gatley on libel* 12th Edition since the impugned publication is unarguable defamatory, there are no grounds for concluding that the impugned publication is true, there is no defence which might succeed, and that there is evidence of an intention to repeat or publish the impugned publication, at least for now.
52. It is also noteworthy that the Defendant/Respondent's freedom of expression under Article 33 of the Constitution is not absolute. Article 33(3) of the Constitution requires every person to respect the rights and reputation of others while exercising their freedom of expression. Therefore, until the impugned publication is determined to be factual, the Defendant/Respondent cannot at this stage continue publishing the impugned publication under the guise of exercising their freedom of expression.

53. Further, the mere fact that the Plaintiff/Applicant is a state officer who is up for public scrutiny does not deprive him of the right to have his right to dignity and privacy protected against unsubstantiated allegations. This court associates itself with the High Court's holding in the Philomena Mbete case (supra) where it was stated: "With tremendous respect, I wish to disagree with Mr. Ohaga's submission that since the applicant was by dint of Article 260 of the Constitution a state officer, her private and professional life was subject to scrutiny and information regarding her private life was a matter of public interest which could be freely published. Whereas I agree that depending on the status of a state officer there are some aspects of a state officer's private life that may be of public interest, there could be some other aspects of their private life that would be purely personal and cannot evoke any public interest. Even on matters that involve public interest, any publication regarding a state officer's professional or private life must be based on facts which are true or substantially true in order to enjoy the protection of the law. The Constitution does not give the media a right or a licence to publish false information even in matters of public interest or matters that concern a state officer. It may also be important to point out that state officers, just like other Kenyan citizens are entitled to enjoy all the rights and freedoms guaranteed in the Constitution and the law."
54. This court has now said enough on the substance of the instant Application.
55. Turning to the orders sought, the Plaintiff/Applicant seeks a nebulous order seeking to restrain the Defendant/Respondent from publishing any defamatory statements about him. A court cannot grant such a nebulous injunction. The injunction herein will be limited to the impugned publication.
56. The Plaintiff/Applicant also seeks mandatory injunctions at this interlocutory stage requiring the Defendant/Applicant to pull down the impugned publication from the Mumbo Online TV YouTube channel. There is nothing on record to suggest that the Defendant/Applicant manages or controls the said YouTube channel. Court orders cannot be issued in vain.
57. Be that as it may, such a mandatory order is never issued at an interlocutory stage in defamation cases unless under exceptional circumstances. None exist in this case. This legal position can be gleaned from *Maraga v Abdullahi* (Civil Case E047 of 2021) [2025] KEHC 16542 (KLR) (Civ) where the court stated: "On the Plaintiff's quest for a mandatory injunction compelling the Defendant herein to pull down and or delete the defamatory post up on 12/01/2021 and 23/01/2021 in his Twitter (now X) handle, the Court is not persuaded that it would be proper to grant the same at this point given that the respective parties evidence has not been tested by way of trial. As held by the Court of Appeal in *Kamau Mucuha v Ripples LTD* (1993) eKLR in reiterating the decision in *Kenya Breweries Ltd. v Washington Okeyo* [2002] eKLR: "A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then, only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple ... act which could be easily remedied, or where the defendant had

attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than required for a prohibitory injunction.”

DETERMINATION

58. In the end, the Plaintiff/Applicant’s Notice of Motion dated 05th July 2026 partially succeeds in the following terms:
- (a) The Defendant/Respondent is restrained, whether by himself, his agents, or servants, from publishing, uttering, circulating, disseminating, broadcasting or causing to be published or disseminated, whether directly or indirectly, defamatory statements or words to the effect that the Defendant/Applicant stole Paul Asango’s degree certificate pending the hearing and determination of the main suit.
 - (b) The costs of the instant Application to abide the outcome of the main suit.
59. Orders accordingly. Read, signed, and delivered in open Court at Bungoma this 03rd day of September 2026 T.O. OMONO SENIOR RESIDENT MAGISTRATE In the presence of: Ms. Mageto for the Plaintiff/Applicant Mr. Maloba for the Defendant/Respondent C/A: Mr. Rioba

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