

KENYA / JUDGMENT

Gitonga v Muchiri & 2 others [2026] KEHC 10407 (KLR)

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COURT

High Court

BEFORE

KL Kandet

CASE / FILE NUMBER

Civil Case E280 of 2025

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Gitonga v Muchiri & 2 others (Civil Case E280 of 2025) [2026] KEHC 10407 (KLR) (Civ) (6 July 2026)
(Ruling)

Neutral citation:

[2026] KEHC 10407 (KLR)

Republic of Kenya

In the High Court at Nairobi (Milimani Law Courts)

Civil

Civil Case E280 of 2025

KL Kandet, J

July 6, 2026

Between

Gabriel Gitonga

Plaintiff

and

Godfrey Muhuri Muchiri

1st Defendant

Mutembei TV

2nd Defendant

Youtube Llc

3rd Defendant

Ruling

1.The application before this court for determination is a Notice of Motion dated the 3.11.2025 brought pursuant to the provisions of Section 1A, 2B, 3A, and 63(e) of the Civil Procedure Act and Order 40 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law. The Applicant seeks for orders:1.Spent....2.Spent....3.Spent....4.That a temporary injunction be and is hereby issued restraining the Defendants, their agents servants, employees, or any other persons acting under their instructions from publishing, uploading, broadcasting, sharing or in any way disseminating the defamatory video titled “Embakasi Ranch Leaders Speak on their Deadly Land Ownership and Goons Invading Lands” or any other publication containing similar or related defamatory statements concerning the plaintiff pending the hearing and determination of this suit.5.That Costs of the Application be provided.

2.The Application is premised on the grounds that:a.The 1st Defendant/Respondent published false, malicious and defamatory statements against the Plaintiff/Applicant on 19th September 2025, through a video titled “Embakasi Ranch Leaders Speak on their Deadly Land Ownership and Goons Invading Lands.”b.The 2nd Defendant/Respondent published and continues to host the said video on its YouTube channel which boasts a large following, thereby amplifying and perpetuating the defamation.c.That the 3rd Defendant/Respondent, being the platform host, YouTube LLC, has been notified of the defamatory publication but has failed, neglected or refused to remove or restrict access to the said videod.That the Plaintiff/Applicant has been portrayed as a dishonest and corrupt person who uses the Court process illegally for his own benefit.e.That the words used to describe the Plaintiff/Applicant in the said video, including thief, land grabber, trespasser, goon, and illegal director, are all false, defamatory and malicious aimed at lowering their estimation among the right thinking members of society, as well as injuring his personal, business, political, and professional reputation.f.That the said video continues to be accessible, not only in Kenya, but also globally aggravating the reputational ridicule.g.That unless restrained, the Defendants will continue to publish and circulate the video causing further irreparable harm.

3.The Application is supported by the Affidavit sworn by Gabriel Gitonga, the Applicant herein, on the 3.11.2025. and the annexures thereto.

4.The 1st Respondent opposed the Application through his Replying Affidavit sworn on 4th of May 2026. He states that he is currently serving as a Director of Embakasi Ranching Company Limited contrary to the Applicant’s assertion that he is a former Director.

5.The 1st Respondent avers that his utterances were fair comments on a matter that was within the public domain and therefore not defamatory as alleged by the Applicant.

6.He further states that land ownership disputes are undeniably matters of public interest, particularly those involving the management of Embakasi Ranching Company Limited; thus, the utterances were mere expression of opinion and fact by a Director of the company.

7.Further, the 1st Respondent states that since true statements cannot be defamatory in law, the Plaintiff/Applicant cannot purport to bring defamation allegations considering the fact that he is prohibited by law to carry out business in the name of Embakasi Ranching Company Limited.

8.He claims that he made the utterances under honest and reasonable belief the Applicant was unlawfully interfering /carrying out business in the name of Embakasi Ranching Company Limited in violation of court orders, marked GMM-2a, and GMM-2b attached to the Replying Affidavit.

9.He further states that the Plaintiff/Applicant's own Supporting Affidavit dated 3. 11.2025 indicated a disregard of the Court Orders since he still purports to act as a Director of Embakasi Ranching Company Limited, and that the Application is a means to sanitize his unlawful conduct.

10.The 2nd and 3rd Respondents did not enter appearance nor opposed this application despite service. An affidavit of service to that effect dated..... was filed to that effect.

11.On directions were taken that the Application be canvassed by way of written submissions. Consequently, learned Counsel on record for the Applicant and the 1st Respondent filed their submissions dated 6th January 2026 and 29th May 2026 respectively.

12.The Applicant argued the general principles governing injunctions as set out in *Giella v Cassman Brown & Co. Ltd* [1973] E.A 358 at p. 360, where it was stated that:“First, an applicant must show a prima facie case with a probability of success. 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. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience”

13.It was however submitted that there exists a higher threshold in defamation cases. In *Micah Cheserem v Immediate Media Services & 4 others* [2000] eKLR the court stated that:“.....both counsel did not address me fully on the relevant law because it is not appreciated that the question of an injunction in defamation cases is treated in a special way. Here injunction is not treated in the way it is treated in other cases. I looked at the relevant authorities and considered the matter in the case of *Francis P Lotodo vs Star Publishers & Magayu Magayu* in HCCC No 883 of 1998 and found that though the conditions applicable in granting an injunction as set out in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 generally apply, in defamation cases those conditions operate in special circumstances. Those conditions have to be applied together with the special law relating to the grant of injunction 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.”

14.The Applicant also cited the case of *Wealthsmith Limited v Standard Group PLC & 2 others* 2019 KEHC 9278 (KLR), where the court concurred with the holding in the *Micah Cheserem* case on the following guiding principles on injunctions in defamation cases,a.First, the Applicant must establish a prima facie case with a probability of success.b.Second, the Applicant must show that he or she stands to suffer irreparable loss that cannot be adequately compensated by way of damages.c.Third, where the court is in doubt, then the balance of convenience should tilt in favour of the Applicant.

15.On whether the Applicant has established a prima facie case with a probability of success, the Applicant at paragraph 3 of the Supporting Affidavit avers that the utterances by the 1st Respondent at timestamp 13:28 to 15:32 included the words ‘thief’ (mwizi), land grabber, trespasser, goon, mastermind of criminal activities, and illegal director of Embakasi Ranching Company Limited. He submits that these are defamatory and malicious statements, noting he is a lawful Director and Chief Executive Officer of Embakasi Ranching Company Limited.

16.It was submitted that the Respondents displayed malice in this instance by making reckless utterance of grave criminal allegations in a public broadcast without seeking the Applicant’s response or verification of the allegations. The 3rd Respondent has continued to host and monetize the video and has refused to take it down despite formal notification and multiple written demand notices. The Applicant submits that the persistence of the publication after notice is clear evidence of malice and defeats any claim of innocent dissemination.

17.On whether the Applicant stands to suffer irreparable harm incapable of compensation by damages, Counsel for the Applicant submits that the statements by the 1st Respondent have, among other things, caused:a.loss of confidence and goodwill among his business associates, donors, and partners;b.injury to his reputation and credibility as a corporate and community leader; andc.public ridicule, hostility, and humiliationHe states that due to the global reach of the defamatory content, no monetary quantification such as damages would be adequate.

18.On where the balance of convenience lies.

19.In this regard, Counsel provided two competing positions for the Court’s consideration:1.In the event the injunction is denied, the Plaintiff will continue to suffer daily reputational injury, public ridicule and erosion of dignity, loss of business confidence and goodwill, escalating harm through unlimited online sharing.2.Conversely, if the injunction is granted, the Defendant/ Respondents will not suffer any legal prejudice since they are merely restrained from publishing defamatory falsehoods, they retain the right to defend themselves at trial, as the restraint is temporary and subject to the Court’s final determination.

20.Following the above, Counsel submits that the inconvenience to the Plaintiff/Applicant is grave and irreparable, while any inconvenience to the Defendant/Respondents is negligible. Counsel cited the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others* (2016) KLR, where it was held that “if the applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction, and that the Court will seek to maintain the status quo in determining where the balance on

convenience lies."

21. In his submissions dated 29th May 2026, the 1st Respondent identifies one issue for determination: whether the Honourable Court should grant the injunctive orders sought.

22. The Respondent reiterates the guiding principles in *Giella v Cassman Brown & Co. Ltd* [1973] E.A 358 and *Micah Cheserem v Immediate Media Services & 4 others* [2000] eKLR and submitted that the statements complained of were grounded on facts, particularly that the Applicant has continued to operate and interfere with the affairs of Embakasi Ranching Company Limited.

23. He referred to Section 14 of the Defamation Act Cap. 36 which provides that: "In any action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the reputation of the plaintiff having regard to the truth of the remaining charges."

24. The 1st Respondent therefore maintained that the statements are true and within the Applicant's knowledge, and that the particulars of the said justification have been presented before the Court as annexures 'GMM-1', 'GMM-2a', and 'GMM-2b'.

25. The Respondent further referred to the case of *Machira t/a Machira & Co. Advocates v East African Standard* (2001) KLR 638, at page 644 to justify his utterances. In the said authority it was stated that: "...A Defendant is permitted to plead justification only where it is clear that the allegations he made and are complained of are true and substantially so."

26. He submitted that the Applicant failed to prove that his reputation was lowered among the right thinking members of the community and stated that grant of injunctions is applicable only in the clearest of the cases. To this end the 1st Respondent cited the case of *Uhuru Muigai Kenyatta v The Standard Limited* HCCC NO. 544 of 2009.

27. The Respondent submits that granting such orders would amount to unjustifiable restraint against his Freedom of expression contrary to Article 33 of the Constitution of Kenya, 2010, and that such limitation should only be provided in the clearest and most exceptional of circumstances.

28. The 1s Respondent further stated that his utterances did not constitute malice. To this end he cited the case of *Joseph Njogu Kamunge v Charles Muriuki Gachari* [2016] eKLR where Mativo J (as he then was) held that: "Further, the words must be malicious. Malicious here does not necessarily mean spite or ill will but there must be evidence of malice and lack of justifiable cause to utter the words complained of."

29.The 1stRespondent states that his utterances had justifiable cause since the Applicant was acting on behalf of Embakasi Ranching Company Limited despite Court Orders against such involvement as the capacity of Director. For this reason, he submits that there is no evidence of malice in the utterances. He cites the decision in *Bonnard v Perryman* [1891] 2 CH 269, where it was stated that the right to free speech was for the public interest, and which individuals should possess and exercise.

30.He finally submitted that the Applicant should instead be held in contempt of Court Orders due to his conduct and interference in the affairs of Embakasi Ranching Company Limited.

31.By way of rejoinder submissions dated 11th June 2026, the Applicant reiterates the contents of his submissions dated 6th January 2026, and opposes the assertion by the 1st Respondent that his utterances were true, constituted fair comment on a matter of public interest, and were not uttered in malice.

32.On the defence of justification, the Applicant deposes that the Respondent has failed to bring forth to this Court any conviction, finding or determination by a competent Court of Law establishing him as a thief, land grabber, trespasser, goon, mastermind of criminal activities or an illegal director as alleged in the publication. He further states that the alleged management disputes concerning Embakasi Ranching Company Limited do not constitute any proof of criminal conduct on the part of the Applicant. He therefore states that the defence of justification has not been proven.

33.On fair comment and public interest, the Applicant submits that the words directly implied criminality, dishonesty and unlawful conduct rather than a simple expression of opinion. He further states that calling a person a thief, a land grabber, trespasser, goon, and mastermind of criminal activities conveys to a reasonable viewer that the person has engaged in criminal conduct, and that such allegations cannot be protected under the defence of fair comment. He cited the case of *Phineas Nyagah G v Gitobu Imanyara* [2013] eKLR where it was observed that:“The defamatory statement is one which has tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of the right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem and typical examples are an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, cruelty and so on. Publication is the communication of the words to at least one other person other than the person defamed. Publication to the plaintiff alone is not enough because defamation is an injury to one’s reputation and reputation is what other people think of a man and not his own opinion of himself. An action for defamation is essentially an action to compensate a person for the harm done to his reputation. Defamation is not about publication of falsehoods against a person; it is necessary to show that the published falsehood disparaged the reputation of the plaintiff or tended to lower him in the estimation of right thinking members of society generally.”

34. On malice, the Applicant submits that the allegations of criminal conduct without factual basis are serious, and that the continued publication of the impugned material despite demand letters and notices to take the YouTube video down indicates that malice may be inferred.

35. On Article 33 of the Constitution, the Applicant refers to sub-Article 3 of the same provision which provides as follows: “In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.”

36. He submits that the Constitution does not protect false and defamatory statements and allegations which are unjustifiably injurious to the reputation of another person.

37. On whether this is a proper case for injunctive relief, the Applicant submits that the 1st Respondent cited authorities emphasizing that interlocutory injunctions should be granted cautiously, but deposes that in this case: a. The 1st Respondent does not deny making the impugned statements b. 1st Respondent does not deny publication c. 1st Respondent does not deny the statements referred to by Applicant d. The publication remains accessible online and continues to be disseminated to members of the public e. The truth of the allegations complained of has not been demonstrated

38. He finally submits that the above constitutes enough reason for the Court to intervene and prevent further dissemination of the impugned material pending the hearing and determination of the suit.

Issues for Determination

39. The court has carefully considered the Application, affidavit evidence, the written submissions and the authorities cited. The following issues for determination: a. Whether the Applicant's application meets the threshold required to grant a temporary injunction in defamation cases b. Whether the 1st Respondent's has demonstrated justification for his utterances sufficient enough to deny the orders sought

Analysis and Determination

40. The Court is guided by a plethora of authorities, including provisions on interim orders in defamation cases which were addressed in the case of *Ukur Yatani vs Dido Ali Raso* [2021] eKLR, and cited in the case of *Gitau v Gachagua* [2026] KEHC 2183 (KLR), which were as follows: The case of *Giella vs Cassman Brown* [1973] EA 358 sets out the conditions to be established before an order of injunction is granted, which are as follows: i. The plaintiff must establish that he has a prima facie case with high chances of success. ii. That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages. iii. If the court is in doubt, it will decide on a balance of convenience.

31. 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.

41. According to the *Black’s Law Dictionary*, 10th Edition at page 506, defamation is defined as: “Malicious or groundless harm to the reputation or good name by the making of a false statement to a third person. If the alleged defamation involves a matter of public concern, the plaintiff is constitutionally required to prove both the statement’s falsity and the defendant’s fault.”

42. The Court of Appeal in the case of *Wycliffe A. Swanya v Toyota East Africa Ltd & another* [2009] eKLR, as rightly cited in the case of *Nzibo v Nation Media Group Limited & another* [2024] KEHC 12720 (KLR), stated that in a suit founded on defamation the plaintiff must prove the following elements: -i. That the matter of which the plaintiff complains is defamatory in character. ii. That defamatory statement or utterance was published by the defendants. Publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed. iii. That it was published maliciously. iv. In slander, subject to certain exceptions, that the plaintiff has suffered special damage.

43. This Court has the responsibility to analyse the matter at hand, with reference to the aforementioned principles and authorities, to determine whether the utterances were defamatory and whether the defence of justification and fair comment are applicable. The court must balance the Applicant's right to protect his reputation against the Respondent's constitutional right to freedom of expression and therefore consider the competing rights in Article 33 of the Constitution that guarantees freedom of expression and Articles 25 and Articles 31 of the Constitution that protect the inherent dignity of every person and the right to privacy.

44. As noted in the authorities submitted by both Counsel on record, temporary injunctions to stop defamatory statements pending a suit's determination are governed by the principles established in *Giella v. Cassman Brown*. Courts will grant them if the applicant proves a *prima facie* case with a probability of success, shows irreparable injury that damages cannot compensate, and the balance of convenience tilts in their favour. These are the core legal tests

45. In the instance case, it is an undisputed fact that the 1st Respondent made statements on the publicly accessible channel Mutembei TV, identified in this matter as the 2nd Respondent, in a video titled “Embakasi Ranch Leaders Speak on their Deadly Land Ownership and Goons Invading Lands”. He did so on YouTube, a social media platform and identified herein as the 3rd Respondent.

46. The 1st Respondent did not dispute this fact. It is also uncontroverted that he mentioned the 1st Applicant by name multiple times in the said video and made reference to him with regard to the managerial dispute concerning Embakasi Ranch Company Limited.

47. The publication of the YouTube video containing the utterances complained of is also an uncontroverted fact, as well as the fact that YouTube is a platform with global reach.

48. The exact words uttered by the 1st Respondent and directed at the Applicant were to the effect that the Applicant is a ‘thief’ (mwizi), land grabber, trespasser, goon, mastermind of criminal activities, and an illegal director of Embakasi Ranching Company Limited.

49. The Applicant believes that the above words injured and continue to injure his reputation as they convey to a reasonable viewer that the Applicant is a thief and has engaged in land grabbing and criminal conduct, and that such allegations cannot be protected under the defence of fair comment.

50. The 1st Respondent has admitted uttering the words complained of. His main justification of the statements complained of were grounded on facts, particularly that the Applicant has continued to operate and interfere with the affairs of Embakasi Ranching Company Limited. This is what the 1st Respondent considered to be justifiable cause.

51. Having considered the totality of this Application, I find that the 1st Respondent made the comments and the statements subject of this application on the basis that the Applicant was carrying himself out as Director of Embakasi Ranching Company Limited and purported to make comments on behalf of the said company contrary to court orders. Indeed the 1st Respondent submitted that the Applicant should be held in contempt of the said court orders.

52. On the above, I must state that the issue before this court is neither about the management wrangles of the Embakasi Ranching company Limited nor on the compliance or otherwise of court orders referred to. Parties are at liberty to pursue their rights in the courts where the said orders were issued. This court will therefore confine itself to the alleged defamatory statements subject of this application.

53. Applying the principles and the legal test in *Giella V Cassman Brown* and the other cited authorities, it is this court's view that though the statements uttered by the 1st Respondent, may, from their ordinary meaning portray the Applicant as a thief, a land grabber and a person engaged in criminal activities, the assertions made by each party will be finally determined through evidence at the trial of the main suit. In the meantime I find that no award of damages could possibly compensate the Applicant for such loss if it were eventually found that the allegations as published by the Respondents are false and malicious. To this end, the Applicant in

my view has demonstrated a prima facie case.

54.The 2nd and 3rd Respondents, who did not enter appearance in this matter, published the words complained of and indeed the statements continue to be published in the 3rd Defendant's platform that has global reach. Clearly the continued publication of the statements will perpetuate damage to the Applicant's reputation that damages may not be fully restore were the court to find in his favour at the trial.

55.In the foregoing and if the court were to consider the Application on a balance of convenience, I find that the same will tilt in favour of stopping further publication until the truth is finally determined at the full trial of the main suit

56.The upshot is that this court finds that the Applicant has satisfied the core legal test and principles for granting a temporary injunction pending the hearing of the main suit.

Disposition

57.This application is therefore allowed as follows:That a temporary injunction be and is hereby issued restraining the Defendants/Respondents, their agents servants, employees, or any other persons acting under their instructions from publishing, uploading, broadcasting, sharing or in any way disseminating the defamatory video titled "Embakasi Ranch Leaders Speak on their Deadly Land Ownership and Goons Invading Lands" or any other publication containing similar or related defamatory statements concerning the plaintiff pending the hearing and determination of this suit.

58.Costs of the application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF JULY, 2026, VIRTUALLY THROUGH THE MICROSOFT TEAMS PLATFORM.KENNEDY KANDETJUDGEIn The Presence Of:Marangu Hb For Mereka For The ApplicantNjeri Hb For Macharia For The 1st RespondentCourt Assistant: Aggrey Ochieng

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