

KENYA / JUDGMENT

Ciuri v Gitau & 3 others [2026] KEHC 9727 (KLR)

[2026] KEHC 9727 (KLR)

COURT

High Court

BEFORE

Sifuna Nixon

CASE / FILE NUMBER

Civil Case E109 of 2025

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Ciuri v Gitau & 3 others (Civil Case E109 of 2025) [2026] KEHC 9727 (KLR) (Civ) (2 July 2026)
(Ruling)

Neutral citation:

[2026] KEHC 9727 (KLR)

Republic of Kenya

In the High Court at Nairobi (Milimani Law Courts)

Civil

Civil Case E109 of 2025

Sifuna Nixon, J

July 2, 2026

Between

Simon Ciuri

Plaintiff

and

Ejidio Kinyanjui Gitau

1st Defendant

Victor Muusya Gitau

2nd Defendant

Patrick Thuo Marigi

3rd Defendant

Jeremy Damaris

4th Defendant

Ruling

1.The plaintiff Simon Ciuri has in this suit described himself as a highly distinguished and experienced journalist. He has stated that in August 2024, he published in the Nation newspaper an article that he contends was true and derived from documents and affidavits contained in court documents. The same related Willstone Homes, a company associated with the 1st, 2nd and 3rd defendants.

2.That later, the 4th defendant while conducting an interview with the 1st, 2nd and 3rd defendants, maliciously and without any justifiable cause, published and disseminated on his YouTube channel, a defamatory and malicious video defamatory of the plaintiff. That the said video has not only assailed his personal reputation and character, but also his professional standing. He has therefore filed this defamation suit against the defendants.

3.Filed together with the Plaint, and the subject of this ruling, is his motion dated 16th April 2025. By which he is seeking:a.A temporary injunction restraining the defendants from writing, printing, publishing or broadcasting in any media whatsoever, any statements that are defamatory of him, pending the hearing and determination of this suit;b.A mandatory injunction, requiring the defendants to expunge from the YouTube channels, Facebook page and WhatsApp platform, all the defamatory contents posted thereon concerning the plaintiff, and that in default of which he be at liberty to serve the service provider of YouTube, Facebook and WhatsApp with the court order to enforce; andc.The costs of this Application.

4.The defendants have through their Replying Affidavits, opposed the Application and the grant of those orders. In which they have principally contended that this Application has not met the legal threshold set in *Giella v. Casman Brown* [1973] 358; for the grant of an interlocutory injunction. Further that as for the plaintiff's prayer for a mandatory injunction, the same should not issue, as that the injunction will usually not issue at the interlocutory stage.

5.They have also in their filed defences averred that the impugned utterances were fair comment and made in good faith. Thereby pleading the defence of justification, and that of fair comment, respectively.

Analysis and Determination

6.The Application proceeded by way of written submissions. I have perused the Application (together with the Supporting Affidavit) as well as the defendants' response. The plaintiff's grievance is that the impugned material is defamatory and tending to damage personal reputation as well as his professional reputation.

7.This Application is brought pursuant to Order 40 of the Civil Procedure Rules. It was supported by a Supporting Affidavit sworn by the plaintiff. The impugned utterances have been quoted verbatim in this suit, and the plaintiff's interpretation of them has also been stated.

8.In defamation suits, the court has to balance between the freedom of expression (especially media freedom), and the right to reputation. Both of which are constitutional imperatives under the Kenya Constitution. Thus, while the defendants have the constitutional freedom to express themselves, the plaintiff has a right to his reputation. This is a delicate balance that the court should strike in any defamation suit.

9.Without any explanation or substantiation, the impugned material as presented and held out by the plaintiff and as quoted in the pleadings, would ex facie appear defamatory. Especially the part that states: "...from what I have heard, I think he [the writer] was paid Ksh 500,000= to tarnish our investment worth billions of money."

10.On the basis of this, I find that the plaintiff has a good arguable case. In *The Niedersachsen* [1983] 2 Lloyd's Reports 600, at 605, and which case was quoted with approval by Sewe J in *Utility Capital Management Ltd v. Ekaa East Africa Ltd* [2017] KEHC 9850 (KLR, Mustill, J defined "a good and arguable case" as follows: "A good and arguable case is one which is more than barely capable of serious argument, but not necessarily one which the judge considers would HAVE a better than 50 per cent chance of success."

11.The impugned utterances and which are quoted in this suit, if at all they were uttered, as alleged by the plaintiff, have the potential of being perceived as lowering his estimation in the eyes of right-thinking members of society. Even though this is the furthest my analysis can go; as this is the pre-trial stage and the suit has not gone to trial yet. For his part, he has interpreted them to mean that "he has engaged in professional misconduct; that he lacks professional integrity; that he is corrupt; and that he takes bribes."

12.On the law and facts on record, I find that this Application has met the legal threshold stated in *Giella*. In that the case as presented by the Plaintiff poses a prima facie case, that will require a rebuttal from the defendants. One that would persuade the court if the defendants were to remain silent.

13. In *Micah Cheserem v. Immediate Media Services & 4 Others* [2010] eKLR; (2002)1 EA 371 (CCK), the court (Khamoni, J) observed as follows: “Though the conditions applicable in granting interlocutory injunctions set out in *Giella v. Casman Brown Co. Ltd* [1973] EA 358 generally apply in defamation cases, these conditions operate in special circumstances. Over and above the test set out in *Giella’s* case, in defamation, the court’s jurisdiction to grant an injunction is exercised with greatest caution so that an injunction is granted only in the clearest possible cases....”

14. This was also the holding in the recent case of *Hon Sakaja Arthur Johnson v. Nation Media Group PLC & 2 Others* [2025] KEHC 13737 (KLR), where it was similarly observed that in defamation suits, the legal threshold for interlocutory injunctions, is essentially higher than the one set out in *Giella v. Casman Brown*. Therefore, the legal threshold for grant of a pre-trial injunction in a defamation suit in Kenyan courts, has been settled in judicial decisions (case law). In those decisions, it is agreed that the threshold goes beyond the threshold restated in *Giella*.

15. On whether reputational harm can be compensated by an award of damages, the answer is that yes courts have been quantifying and awarding damages for defamation. But the quantum of such damages, and their sufficiency in compensating the reputational harm that has occurred, will depend on the circumstances, and has to be determined on a case to case basis. Some reputational harm can be of so great a magnitude, as to be practically uncompensable by way of damages.

16. Further, in social media defamation, it can be difficult to estimate the actual extent of damage, because on social media, the defamatory material will in a matter of seconds have travelled thousands of miles; will have been read by millions of people even concurrently; and will have been posted and reposted multiple times, as well as been shared and reshared multiple times. This makes computation somewhat elusive. Such may exponentially increase the injury.

17. Generally, the gravity and magnitude of reputational harm, will also depend on the subject’s social status, his professional stature, or his career. Some reputational harm can destroy and even end one’s career. The plaintiff has in this Application stated that he is a highly distinguished and experienced journalist whose articles are regarded highly.

18. Social media platforms, unlike the mainstream media are less regulated and lack a readily identifiable Code of Ethics. They therefore lend themselves to a heightened judicial regulation. Hence also the imperative for pre-trial injunctions, as well as mandatory pull-down orders in appropriate cases.

19. *Gatley on Libel and Slander* 12th Edition, states that the jurisdiction to grant interim injunctions to restrain publication of defamatory statement, is of a delicate nature and ought to be exercised in the clearest of cases. It further discourages courts from issuing interlocutory injunctions in defamation suits where the defences of truth (or justification) and fair comment (or honest opinion) have been pleaded.

20.While this treatise restates a practice of courts rarely [rather than not at all] issuing interlocutory injunction where such defence has been pleaded, it has added the rider that unless the claimant can show that the defence is highly likely to fail at trial. The use of the word rarely has the connotation of “not always or hardly,” rather than “never” or “not at all.” Besides, that principle is stated as a general rule; which like any other general rule, is subject to such exceptions as the circumstances of the case and the ends of justice, may dictate.

21.While this court cannot at this interlocutory pre-trial stage make a determination on whether the plaintiff has been defamed, I am however persuaded that on the basis of the material presented in this Application, this is a proper case for the grant of a pre-trial prohibitive injunction. The aspect of professional reputational harm, makes the injunction even more necessary. This is because injury to professional reputation may in appropriate cases be more damaging than injury to personal reputation; as it can at times be irreparable and may even, as already stated in this ruling, exterminate one's career.

22.As for the prayer for a mandatory injunction, I have not found to exist in this Application, any exceptional circumstances that would warrant the grant of the injunction. Notably, this injunction is a notch higher than the interlocutory prohibitory injunction. It may issue only in circumstances of exceptional hardship and in the most obvious cases.

23.The principles for grant of a mandatory injunctions were stated in *Locabail International Finance Ltd v. Agro-Export and Another* [1986] 1 ALL ER 901 as follows:“...before granting a mandatory injunction, the court had to fee a high sense of assurance that at the trial, it would appear that the injunction had been rightly granted...”

24.Advancing a similar position, Kenya's Court of Appeal in *Kenya Breweries Limited vs Washington Okeyo* [2002] eKLR observed as follows:“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury's Laws of England, 4th Edition paragraph 948 which reads: ' A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff ... a mandatory injunction will be granted on an interlocutory application.'”

25.A mandatory injunction can also issue in very clear and obvious cases. Such as where a defendant has no defence, or where he has elected not to file a defence. In this particular case the defendants have raised the defence of truth (or justification) and fair comment (or honest opinion). Which are an absolute defence to a defamation suit, if successfully established at the trial. The stage is now set for the trial.

26.Where a defence of truth (justification) and fair comment, is raised, a court should at the interlocutory stage be hesitant to grant a mandatory injunction for the pulling down, deletion, removal, or destruction, of the offending matter from the media.

27. Such a drastic action, may result in prejudice to the defendants. For instance if the court later in its judgment after the trial, finds that there was no defamation, or if the said defence of truth (or justification) and fair comment (or honest opinion) finally succeeds at the trial. For that reason, the plaintiff's plea for a mandatory injunction, is hereby politely declined.

Final Disposition

28. This Application is hereby allowed only partially. In terms only, that pending the hearing and final determination of this suit, a temporary injunction is hereby issued, restraining the defendants, whether by themselves, their servants, their agents, anyone acting on their behalf, and/or any of them, either individually or jointly, from making the same statements and utterances against the plaintiff, in any media and in any manner whatsoever and howsoever.

29. The plaintiff shall have the costs of this Application.

DATED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF JULY 2026. PROF (DR) NIXON SIFUNA JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/9727/eng@2026-07-02>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/simon-ciuri-v-gitau-3-others-Interlocutoryinjunctions-high-court-2026--941a3ead393c7f8e1648e7e2>

Prepared on 26 October 2026 · Esheria