

- *1. A temporary Injunction doth issue restraining the Respondent and her agents from continuing to write, infer, publish or circulate false, malicious and defamatory statements against the Applicant on different main stream and social Media Platforms and to Government of Uganda offices pending the hearing and determination of the main suit.*
- 2. *Costs of this application be provided for*.

The application for temporary injunction was supported by an affidavit in support sworn by *Dr. Joyce Nalunga Birimumaaso* briefly stating that;

- 1. That the Respondent on different occasions , without any lawful justification or colour of right , authored, published and/or circulated false , malicious and defamatory material against the Applicant as part of an insidious and dangerous campaign of misinformation and disinformation against the Applicant , particularly targeted at diminishing her credibility as a Member of Leadership Code Tribunal and a distinguished senior Advocate with serious prospects of even further professional growth in the Public Service and globally.
- 2. That the Respondent has continued to author, publish and /or circulate false, malicious and defamatory statements in respect of the Applicant through various Government offices and media platforms and if her ruthless campaign of blackmail, misinformation and disinformation is not checked through a Temporary Injunction, by the time the Civil Suit is disposed of, the damage done to the Applicant shall be immeasurable and no amount of damages can atone for the same.
- 3. That the Applicant is a prominent and well-regarded individual in society, known for her integrity and respected by her peers, friends and, friends, and the general public and Government and the distractions, mental anguish and character assassination of the Respondent poses a serious threat to the Applicant even in the execution of her work as a Member of the Leadership Code Tribunal as the Respondent has launched a lethal attack on her integrity and credibility.
- 4. That the Applicant 's reputation, good standing, and confidence to serve the public have been and continue to be severely damaged due to the false, malicious and defamatory statements published by the Respondent and if not contained through a Temporary Injunction, the harm done shall be incapable of atonement regardless of the quantum of damages awarded by this Honourable Court.
- 5. That the Applicant has filled High Court Civil Suit No. 506 of 2024, seeking a permanent injunction, general, punitive and exemplary damages, and the hearing and determination of the case is bound to take time as she has no control of the schedules of this Honourable Court yet her reputation is in danger of continued attack by the Respondent who continues to exhibit an insatiable appetite for spitefully destroying her good name and stirring public hatred against her.

- 6. That the Respondent's false, malicious and untruthful statements against the Applicant, continue to cause grave harm to the Applicant's reputation, as the defamatory content is publicly accessible and repeatedly circulated online and that should this pattern of publication persist given the Respondent's demonstrable belligerence, the Applicant will suffer irreparable harm that cannot be adequately remedied by monetary compensation as a good name and credibility once lost cannot be bought back by any amount of money.
- 7. That on the 15th day of June, 2024, the Respondent, motivated by a desire to harm the Applicant's reputation, caused to be published a damaging story in the Weekend Vision titled, "Leadership Code Tribunal Member in Family Feud," further tarnishing the Applicant's name as part of an on – going and highly coordinated campaign of misinformation and disinformation against the Applicant.
- 8. That the aforementioned article in the Weekend Vision contained an introduction with a defamatory statement, which read: **"The member of the Leadership Code Tribunal, who is also the President of the Women Lawyers' Association, has been dragged to court over allegedly facilitating an unlawful 120-acre land transaction."**
- 9. That the respondent, without any justifiable cause, maliciously authored and submitted a letter to the Inspector General of Government (IGG), containing false, defamatory, and malicious allegation against the Applicant, The letter was titled, "Complaint Against Joyce Nalunga Birmumaaso: Fraud by and in

the Estate of the Late James Tebandeke Kibalama Regarding 100 Acres at Lukwanga, Wakiso."

- 10. That the Respondent, in furtherance of her willful and malicious intent to defame the Applicant, ensured that the letter to the IGG was widely published and disseminated across various WhatsApp groups and on the social media platform X (formerly Twitter), as part of a deliberate and coordinated scheme to tarnish the Applicant's reputation and diminish her standing in the public domain.
- 11. That there exists a significant risk which unless the orders sought in this Application are granted by this Honourable Court, the Applicant will suffer irreparable and severe injury to her reputation, integrity, and her public Service work shall be adversely affected as parties with cases at the Leadership Code Tribunal expect Members of the Tribunal to have integrity and be above reproach yet the Respondent continues to run a campaign of misinformation and disinformation against the Applicant particularly using her Membership to the Tribunal as a soft spot and low hanging fruit target to blackmail her.
- 12. That the balance of convenience tilts in favour of the Applicant, who has filed Civil Suit No. 506 of 2024, presenting genuine and substantial triable issues with a high likelihood of success and that the Respondent loses nothing if this Court injuncts her from continuing with her campaign of misinformation, disinformation and defamation against the Applicant as her livelihood, health status and overall wellbeing is not entirely dependent on this malicious and spiteful conduct.

The respondent filed or uploaded an affidavit in reply but it was not commissioned or no oath was administered either deliberately or inadvertently and I have not found it necessary to rely on it and or reproduce it here.

Legal representation.

The applicant was represented by *Okuda Ivan and Kipchumba Mathias* while the respondent was represented by *Kituuma Magala*.

The parties filed their respective submissions which I have considered in this ruling.

DETERMINATION

Whether the Application has merits for the grant of an order of temporary injunction.

The applicant's counsel submitted that the applicant is challenging that a person's reputation is a valuable personal right, and that the respondent's statements are malicious and intended to harm their reputation and career. They emphasized that the essence of defamation is to expose someone to hatred, contempt, or ridicule.

The applicant argued that the respondent's actions are an ongoing threat. If the court does not grant a temporary injunction, the respondent will continue to publish defamatory statements, which will cause further irreparable harm to the applicant.

The applicant's counsel argued that the respondent's conduct is driven by malice, ill-will, and a desire to cause harm. The applicant also asserted that the respondent's statements are based on misinformation and an attempt to damage the applicant's credibility.

The applicant noted that the balance of convenience favors them. They have more to lose if the injunction is not granted as they are at risk of injustice and further harm. The applicant asserted that the respondent will suffer no harm by being restrained from publishing defamatory material.

The applicant submitted that because they hold a public office, their reputation is critical for the trust and confidence that the public places in that office. They claimed the respondent's actions undermine public confidence and make it difficult for the applicant to perform their duties.

The applicant highlighted that the court has a duty to protect citizens from being wronged and deprived of their rights. They submitted that the court should exercise its discretion to prevent injustice and to protect the applicant from the respondent's harmful actions.

The respondent argued that the balance of convenience favors the respondent, not the applicant. That they stand to lose nothing by publishing statements about the applicant. The respondent suggested that the applicant has not demonstrated, that the balance of convenience favors the applicant.

The respondent claimed that the statements made are true, honest, and based on justifiable opinions and beliefs. That the statements were not made with malicious intent.

The respondent argued that their statements were not intended to attack, character assassinate or injure the applicant. They maintained that their statements are opinions, beliefs, and public interest expressions.

The respondent submitted that the court should not be used to curtail their right to freedom of speech. They believe they should have a free space to express their views and that the court should support the public's right to hold public servants accountable.

The respondent suggested that the applicant's own conduct is the reason for any damage to their reputation, not the respondent's statements. That the applicant is a public figure who invites media attention, and that their conduct is what makes them newsworthy.

In one case, the respondent claimed that there is no evidence that they intend to repeat the allegedly defamatory statements.

The respondent argued that their publications were a matter of public interest and therefore should be protected. The respondent noted that the public has a right to know about matters concerning public figures and those who hold public office. In some instances, the respondent argued that there is no need to maintain the status quo by granting a temporary injunction because the status quo is already in.

Analysis.

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 respondent continues to make infer, write, publish and circulate defamatory statements against the applicant on through different letters, news media and social media.

The right to reputation is acknowledged as an inherent personal right of every person. A wo[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 11th 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

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.....

In **Gatley on Libel and Slander, 12th edition, Sweet & Maxwell at paragraph 24.2**; Learned author noted that 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 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*

The 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 respondent.

A temporary injunction doth issue restraining the respondent and her agents from continuing to write, infer, publish or circulate false, malicious and defamatory statements against the applicant on different main stream and social media platforms and to Government of Uganda offices pending the hearing and determination of the main suit.

The costs shall be in the cause.

It is so ordered.

SSEKAANA MUSA JUDGE 14th February 2025

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