

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**MISCELLANEOUS APPLICATION NO.640 OF 2019**  
**(ARISING FROM CIVIL SUIT NO. 501 OF 2018)**

**DFCU BANK LIMITED----- APPLICANT**

**VERSUS**

- 1. [MTN] Uganda Limited**
- 2. Africell Uganda Limited**
- 3. Airtel Uganda Limited**
- 4. Giles Muhame t/a Chimp Reports**
- 5. Raymond Wamala t/a Spy Reports**  
**<http://www.spyuganda.com>**
- 6. Assistant Inspector General of Police,**  
**Grace Akullo, Director of Criminal Investigations**  
**& Intelligence Department, Uganda Police Force----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant brought this application by way of Notice of motion (Ex parte) against the respondents under Articles 28, 41,126 & 139 of the Constitution, and Sections 14, 33 & 39 of the Judicature Act cap 13 & Section 4 of the Judicature ( Amendment) Act, 2002 and Order 52 r 1, 2 & 3 of the Civil Procedure Rules, for orders that;

1. This application proceeds ex parte.

2. This Honourable Court ORDERS the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents to preserve all electronic, computerized, and computer produced data, or telecommunications data, metadata, or data in any other form-whether printed, recorded, copied or electronic-related to the telephone numbers and bloggers below and their ISP Addresses for the period 4<sup>th</sup> July 2018 to 30<sup>th</sup> October 2018 (hereinafter referred to as “relevant Period) including without limitation:
  - (a) Logs of calls or log-ons made.
  - (b) Accounts, names, addresses, records, and date about the persons owning or registered as users of the telephone numbers listed below and for all other.
  - (c) Location records for telephone number 0782 361 437, 0752 654 236, 0782 723 307, 0772 544 870, 0759 800 326 vis-a vis telephone number 0772 777773 for the relevant period;
  - (d) Call Data records (CDR) for both Voice and Data for telephone number 0772 777773 and telephone number 0782 361 437, 0752 654 236, 0782 723 307, 0772 544 870, 0759 800 326;
  - (e) Traffic and/ traffic metadata between telephone number 0772 777773 and telephone number 0782 361 437, 0752 654 236, 0782 723 307, 0772 544 870, 0759 800 326;
  - (f) To Disclose IP Addresses that published or forwarded the stories that are listed in “Annexure B” to this application;
  - (g) Server data including access logs, emails, routing information and any other technical data of any form going through the servers during the relevant period, pertaining to the information sought in this application.

(h) Log records that show communications and connections made by the host/mobile devices using these telephone numbers. These logs may include:

- Firewall Logs
- Web Server Access Logs
- Simple Mail Transfer Protocol
- Internet Message Access Protocol Servers (email)
- FTP Servers (file Transfer protocol)
- Proxy Server Logs
- Secure Shell Servers (remote access)
- Routers and Switches
- Chat Servers
- Intrusion Detection Systems
- DNS Servers (Domain Name System)
- Victim and Attack Systems.

3. This Honourable Court fixes a date on which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents shall be summoned to Court and This Honourable court GRANTS LEAVE to the applicant to examine for discovery by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents on the said date.
4. This Honourable Court ORDERS the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to bring and furnish to court authenticated versions, copies or forms of records, data and information set forth in paragraph 2 herein above.
5. This Honourable Court ORDERS the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents together with their employees and agents not to publish, speak about, or distribute the Order resulting from this application and any documents provided with the said Order until such time as the examination of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents has been completed and any questions ordered to be answered herein have been answered or until further order of this Honourable Court.

6. This Honourable Court authorizes the applicant to bring a Cyber/Forensic Analyst to assist the Honourable Court in the analysis and examination of the records, data and information set forth in Paragraph 2 herein above and with power and authority under the order of the honourable court, to further examine the sources of the records, data and information set out in paragraph 2.
7. This Honourable court fixes a date on which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent shall be summoned Court and GRANTS LEAVE to the Applicant to examine for discovery the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the said date.
8. This Honourable Court fixes a date on which the 4<sup>th</sup> and 5<sup>th</sup> Respondents shall be summoned to Court and grants leave to the applicant to examine for discovery the 4<sup>th</sup> and 5<sup>th</sup> respondents on the said date.
9. This Honourable Court Seals this Application and all documents in it until such a time as the examination of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents has been completed and the questions ordered and questions ordered to be answered or until further order of this Honourable court.

The grounds in support of this application are set out in the affidavit in support of Muhammad K. Ssenoga and in the notice of motion which briefly states;

1. Proceeding in the normal way would defeat the purpose of the application because the information sought to be preserved and could or may be deleted from the System as soon as the Application is brought to light.
2. That on the 20<sup>th</sup> October 2016, Bank of Uganda (Central bank) as a regulator took over the management of Crane bank Limited and placed it under Statutory Management pursuant to the central Bank's powers under the Financial Institutions Act and after the bidding and due diligence process Bank of Uganda entered into a purchase of Assets and Assumption of Liabilities agreement with the applicant with the applicant on the 25<sup>th</sup>

January, 2017 whereby some of the assets of Crane bank Limited were transferred to and some of the liabilities assumed by the Applicant.

3. Following the applicant's successful and lawful acquisition of some of the assets and assumption of some liabilities of Crane Bank Limited (In Receivership), the plaintiff/Counter defendant in HCCS No. 501 of 2018 one RAJIV RUPARELIA, a member of the Ruparelia Family and who is also a director and shareholder of a number of companies related to Crane Bank Limited (in Receivership) sponsored, coordinated and propagated a fake news and malicious falsehood campaign against the applicant.
4. The said RAJIV RUPARELIA, who is the Plaintiff/Counter Defendant in HCCS No. 501 of 2018 at various times between 4<sup>th</sup> July to 30<sup>th</sup> October 2018 propagated/carried out/pursued the said fake news online publications and social media campaign including defamatory and malicious/injurious falsehoods against the present applicant and its banking business.
5. The motives of the wrongdoer-Rajiv Ruparelia were inter alia to scare away the applicant's customers, disparage the applicant bank among its customers and among the business community and the banking-business circles, cause "a run" on the applicant bank, scare or cause alarm and fear among the applicant's international shareholders, and cause the applicant Bank to collapse.
6. The wrongdoer perpetrated the said campaign by originating false, defamatory, malicious and injurious stories about the Applicant bank which the wrongdoer would cause to be published by various bloggers and online news websites such as;
  - Spy Reports-spyreports.net
  - Eagle Online-eagle.co.ug
  - Kyamutetera.com
  - Cr!me24-thecrime24.com
  - The Ugandan-theugandan.com

- PML Daily- pmdaily.com
- ChimpReports

7. After the false, defamatory, malicious and or injurious stories were published online, the wrongdoer would proceed to forward the web links by social media particularly WhatsApp through the wrongdoers telephone number 0772777773 to various individuals and WhatsApp groups.
8. There is a critical need and or necessity for an order by this Honourable Court exercising its equitable jurisdiction (also known as “ Norwich Pharmacal Jurisdiction) ordering the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents to disclose to the honourable court ( for its use in HCCS 501 of 2018) the records, data and information set forth in Paragraph 2 hereinabove.
9. There is a critical need and necessity for an order by this Honourable Court exercising its equitable jurisdiction (Norwich Pharmacal Jurisdiction) ordering the 4<sup>th</sup> and 5<sup>th</sup> respondents bloggers and/ or online newspapers to disclose the origin or source and directing mind of the following stories published against the applicant by the 4<sup>th</sup> and 5<sup>th</sup> respondents which also disparaged and defamed the applicant and were injurious to its banking Business, reputation and status and financial standing.
10. There is further critical need and necessity for an order by this Honourable court exercising its equitable jurisdiction (the Norwich Pharmacal jurisdiction), ordering the Director/Directorate of Criminal Investigation and Crime Intelligence (CIID) to furnish, submit or disclose to the Honourable court Reports on and or progress or state of investigations into the publication of fake, false and defamatory stories online by, in amongst others Spy reports, Eagle online, Chimp Reports, Spy Uganda who were reported to the police for criminal defamation, computer misuse and other offences which directly related to the Norwich Pharmacal Order sought by the applicant.

11.The Director/Directorate of Criminal Investigations and Crime Intelligence (CIID) is subject to Norwich Pharmacal discovery where, as is in this case, police although not having participated in the offender's wrongdoing, had an engagement with the impugned wrongdoing such as to investigate and furnish reports and or progress or state of investigations and prosecute the perpetrators of the publication of fake, false and defamatory stories online who were reported to police for criminal defamation, computer misuse and other offences which directly relate to the Norwich Pharmacal Order sought.

12.The disclosure is necessary to enable the applicant to seek legitimate redress in respect of the deliberate and calculated wrongdoing meted out against it in the form of publication and republication of fake stories and defamatory statements and malicious/injurious falsehoods intended to tarnish its reputation, disparage its name, brand and business and cause its collapse.

In the interest of justice this application proceeded ex parte and in camera and counsel made brief oral submissions and later made submissions and i have considered the said submissions. The applicant was represented by *Mr Robert Ssawa Ssenabulya and Mrs Sarah Kisubi*.

The applicant's counsel submitted that this is a *Norwich Pharmacal* application against 3<sup>rd</sup> parties which requires the said 3<sup>rd</sup> parties to disclose certain information or documents to the applicant.

The relief and jurisdiction of such an application arises from the decision of House of Lords in the case of ***Norwich Pharmacal Co v Customs & Excise Commissioners*** [1974] AC 133 as laid out by Lord Reid as follows;

“ if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person whom has been wronged by giving full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up

by voluntary action on his part or because the person seeking the information ought to reimburse him. But justice requires that he should cooperate in righting the wrong if he unwittingly facilitated its perpetration.”

Arising from the above case came to be known as the Norwich Pharmacal Order which is an order that requires a respondent to disclose certain documents or information to the applicant. It is the power of the court to order a third party to disclose information to a claimant to enable that claimant to seek redress against a wrongdoer where without absent the information, such redress could not be achieved.

The victim can seek any information necessary that will enable them, for example, to identify the wrongdoer, ascertain the whereabouts of their monies or assets, or establish or prosecute a cause of action. The applicability of the above order has been espoused in different cases cited by the applicant’s counsel; ***Cartier International AG and others v British telecommunications PLC and another*** [2018] UKSC 28; ***Rugby Football Union v Consolidated Information Services (formerly Via go go Ltd)*** UKSC 2012 55, [2012] 1 WLR 3333; ***Fred Muwema v Facebook Ireland Ltd*** [2016] IEHC 519; ***R(Omar & Others) v Secretary of State for Foreign and Commonwealth Affairs*** [2012] EWHC 1737; ***P v T Ltd***[1997] [1997] 1 WLR 1309; ***Murphy v Murphy*** [1999] 1 WLR 282; ***Ashworth Hospital Authority v MGN Ltd*** [2002] UKHL 29 [2002] 1 WLR 2033; ***Carlton Film Distributors v VCI PLC*** [2003] EWHC 616; ***Mitsui v Nexen Petroleum UK Ltd*** [2005] EWHC 625; ***Equatorial Guinea v Royal Bank of Scotland International***[2006]UKPC 7; ***NML Capital Ltd v Chapman Freeborn Holdings Ltd & Others***[2013]1 C.L.C. 968; ***The Coca-Cola Company and Others v British Telecommunications Plc*** [1999] F.S.R.518; ***Various Claimants v News Group Newspapers Ltd (No.2)*** [2013] EWHC 2119,[2014]2 WLR 756; ***Interbrew SA v Financial Times Ltd*** [2002] E.M.L.R 24

The applicant’s counsel cited the book ***Civil Procedure and Practice in Uganda 2<sup>nd</sup> Edition*** by Ssekaana Musa & SN Ssekaana reaffirming the jurisdiction of the court in application of this nature in Uganda. The court derives its powers not from the Civil Procedure rules but rather from the courts inherent jurisdiction.



The applicant further contended in his submission that it is often necessary and prudent for a party to make an ex parte application to court and obtain an interim order without giving prior notice that such action is being taken under a known procedure for a “Gagging Order”.

A gag order provides a means of ensuring that such parties do not disclose either the fact of proceedings, or indeed the effect of them. The gagging order is an ancillary to the disclosure order and it ensures confidentiality and secrecy of the proceedings.

A gagging order is granted where there are grounds to believe that once a wrongdoer is aware he is being pursued, steps may be taken by him to frustrate any claim that may be made against him or any investigation being carried out. See ***A Co v B Co [2002] HKCFI 1080, [2002] 3 HKLRD 111.***

#### *Determination*

This court agrees with the submission of counsel for the applicant in respect of the principles surrounding the applicability of the *Norwich Pharmacal Orders* and has taken full benefit of the wealth of authorities cited and also availed to court to make their case.

It is not in dispute that this area is undergoing several developments and the different authorities/cases that have been cited have changed and refined the principle to the current position. The developments of this principle should be born in mind of our jurisdiction which has never applied the same or is joining the party a little late. The jurisdiction is a wide one. It is not restricted, as was at one time thought, to the disclosure of names of wrongdoers only.

Though founded ultimately on notions of justice, nevertheless, it is important to emphasize the extraordinary nature of this relief because it is not one that court would lightly grant in absence of powerful factors. The characteristics of such order have been set out in the case of ***A Co v B Co [2002]HKCFI 1080 by the HongKong Court of First Instance*** as follows;

1. It is made against an innocent party whose only involvement is to become mixed up in tortious or wrongful activities of others. There is at this stage no evidence of any wrongdoing on the part of the innocent party.
2. Instead, whatever wrongdoing there is, exists only on the part of a person or persons against whom no relief may be sought at that stage and indeed against whom there is probably insufficient evidence to found an action. In other words, this person or these persons will most probably not be before the court and would not be able to answer what often very serious allegations made against them.
3. Usually, there will, moreover, exist a legal relationship between the innocent person against whom a discovery order is sought and the alleged wrongdoer and this relationship may involve strict duties to be observed on the innocent party's part.
4. The court, accordingly, in applications of *Norwich Pharmacal* relief must, in its discretion, balance the competing interests of the victim of the alleged wrongdoing and an innocent party caught up in the wrongdoing.

It is essential for the court to bear the following in mind before a *Norwich Pharmacal order* is made;

1. There must be cogent and compelling evidence to demonstrate that serious tortious or wrongful activities have taken place. And where fraud or similar serious allegations are made, the degree of proof must correspondingly be high; see *In re. H(Minors)* [1996] AC 563, at 586. All the more so when the alleged wrongdoer is not and will not likely be before court.
2. It must also be clearly demonstrated that the order will or will very likely reap substantial and worthwhile benefits for the plaintiff.

3. The discovery sought must not be unduly wide. There is no entitlement to general discovery (by general discovery it means discovery in the *Peruvian Guano Sense*)

Lord Woolf CJ also cautioned the exercise of jurisdiction in *Norwich Pharmacal* application in the case of *Ashworth Hospital Authority v MGN Ltd 2002] 1 WLR 2033 at 2049;*

“The *Norwich Pharmacal* jurisdiction is an exceptional one and one which is only exercised by the courts when satisfied that it is necessary that it should be exercised. New situations are inevitably going to arise where it will be appropriate for the jurisdiction to be exercised where it has not been exercised previously. The limits which applied to its use in the infancy should not be allowed to stultify its use now it has become a valuable and mature remedy...”

The exercise of courts discretion in the applicability of the *Norwich Pharmacal* has continued to vary depending on the circumstances of each case and it is not a ‘straight jacket’ that fits all. The exercise of caution by court in the exercise of its discretion should be paramount. The courts are likely to deny the same if the grant of the order is likely to be abused or used for other reasons.

In the case of *AXA Equity & Law Life Assurance Society Plc v National Westminster Bank Plc [1998] EWCA 782* it was held that the court’s jurisdiction did not extend to the situation where the claimant knew the identity of the intended defendant, but had no adequate evidence of his liability. There was no jurisdiction to grant an order aimed at solely at enabling the claimant to discover whether he had a good cause of action and to obtain evidence to support it.

This *Norwich Pharmacal* jurisdiction has been developed by case law to become a useful mechanism to obtain information about wrongdoers and location of assets. The jurisdiction has been applied widely across the common law jurisdictions (albeit with varying scope). See page 68 of *Disclosure 5<sup>th</sup> Edition* by Paul Mathew & Hodge M. Malek Sweet & Maxwell/Thomson Reuters. This points to the caution each jurisdiction applies to the exercise of jurisdiction of *Norwich Pharmacal*.

Where the conditions for *Norwich Pharmacal Order* are met, there remains a discretion to be exercised, which involves a weighing of various factors and deciding whether disclosure should be ordered to justice.

The different authorities emphasise the need for flexibility and discretion in considering whether the remedy should be granted but the basic conditions and principles for the exercise of jurisdiction have been restated by the Supreme Court in ***Rugby Football Union v Consolidated Information Services (formerly Viagogo Ltd)* UKSC 2012 55, [2012] 1 WLR 3333**. The essential purpose of the remedy is to do justice. This involves the exercise of discretion by a careful and fair weighing of all the relevant factors. Various factors have been identified in the authorities as relevant. These include:

- (1) The strength of the possible cause of action contemplated by the applicant for the order: *Norwich Pharmacal* at p 199F-G per Lord Cross of Chelsea, *Totalise plc v The Motley Fool Ltd* [2001] EMLR 750 at first instance para 27 per Owen J, *Clift v Clarke* [2011] EWHC 1164(QB) paras 14, 38 per Sharp J;
- (2) The strong public interest in allowing an applicant to vindicate his legal rights: *British Steel* at 1175 C-D per Lord Wilberforce, *Norwich Pharmacal* at p 182-C-D per Lord Morris of Borth-y-Gest, 188E-F per Viscount Dilhorne;
- (3) Whether the making of will deter similar wrongdoing in the future: *Ashworth* at para 66 per Lord Woolf CJ;
- (4) Whether the information could be obtained from another source: *Norwich Pharmacal* at 199F-G per Lord Cross, *Totalise plc* at para 27, *President of the State of Equatorial Guinea v Royal Bank of Scotland International* [2006] UKPC 7 at para 16 Lord Bingham of Cornhill;
- (5) Whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing; *British Steel* per Lord Fraser at 1197A-B, or was himself a joint tortfeasor, *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1, per Lord Lowry;

- (6) Whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result: *Norwich Pharmacal* at 176B-C per Lord Reid; *Alfred Crompton Amusement Machines Ltd v Customs & Excise Commissioners (No.2)* [1974] AC 405, 434 per Lord Cross;
- (7) The degree of confidentiality of the information sought: *Norwich Pharmacal* at 190E-F per Viscount Dilhorne;
- (8) The privacy rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of individuals whose identity is to be disclosed: *Totalise plc* at para 28
- (9) The rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed: *Totalise plc v The Motley Fool Ltd* at paras 18-21 per Owen J;
- (10) The public interest in maintaining the confidentiality of journalistic sources, as recognised in section 10 of the Contempt of Court Act 1981 and article 10 ECHR: *Ashworth* at para 2 per Lord Slynn of Hadley.

In the present case, the applicant seeks to obtain all electronic, computerized, and computer produced data, or telecommunications data, metadata, or data in any other form-whether printed, recorded, copied or electronic-related to the telephone numbers and bloggers and their ISP Addresses for the period 4<sup>th</sup> July 2018 to 30<sup>th</sup> October 2018 {hereinafter referred to as “relevant Period”) including without limitation: Logs of calls or log-ons made; Accounts, names, addresses, records, and date about the persons owning or registered as users of the telephone numbers listed below and for all other; Location records for telephone number 0782 361 437, 0752 654 236, 0782 723 307, 0772 544 870, 0759 800 326 vis-a vis telephone number 0772 777773 for the relevant period; Call Data records (CDR) for both Voice and Data for telephone number 0772 777773 and telephone number 0782 361 437, 0752 654 236, 0782 723 307,

0772 544 870, 0759 800 326;Traffic and/ traffic metadata between telephone number 0772 777773 and telephone number 0782 361 437, 0752 654 236, 0782 723 307, 0772 544 870, 0759 800 326;To Disclose IP Addresses that published or forwarded the stories that are listed in “Annexure B” to this application; Server data including access logs, emails, routing information and any other technical data of any form going through the servers during the relevant period, pertaining to the information sought in this application; Log records that show communications and connections made by the host/mobile devices using these telephone numbers. These logs may include:

- Firewall Logs
- Web Server Access Logs
- Simple Mail Transfer Protocol
- Internet Message Access Protocol Servers (email)
- FTP Servers (file Transfer protocol)
- Proxy Server Logs
- Secure Shell Servers (remote access)
- Routers and Switches
- Chat Servers
- Intrusion Detection Systems
- DNS Servers (Domain Name System)
- Victim and Attack Systems.

The applicant has already attached information or evidence of the injurious or malicious falsehoods or defamation required for the case including spyreports, Eagle Online, Chimpreports, and The spy, CRIME 24 e.t.c They have also included evidence of the wrongdoer’s whatsapp screenshots of 0772 777773. It would appear that they already have the required evidence and this application for discovery is only intended to widen the dispute or to discover whether the applicant has a good cause of action. Discovery would not be permitted where the information merely reinforces the applicant’s position. *Dorsey James Micheal v World Sport Group Pte Ltd* [2014] 2 SLR 208

The current application is intended to avail information about third parties who are not part of the case or the dispute before the court. The dispute in the main case is between the applicant and a one Rajiv Ruparelia. The disclosure of the third parties information will infringe on their right to privacy.

The right to privacy of such persons is protected under the Constitution of the republic of Uganda under Article 41.

“Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security of the state or interfere with the right to the privacy of any other person”

Article 12 of the Universal Declaration of Human Rights of 1948 provides that no one may be subjected to arbitrary interference with his or her privacy, family life or correspondence.

The protection of the right to privacy is also limited and is not an absolute right. The scope of the right to privacy may vary, depending on whether it is truly a personal space which has been infringed, or whether it involves communal or business relations. “ [a] man without privacy is a man without dignity” See Zelman Cowan, “Private Man” (1970) 24 *Inst Pub Affairs Rev* 26

In the context of privacy this would mean that it is only the ‘inner *sanctum*’ of a person, such as his or her family life, sexual preference and home environment, which is shielded from erosion, by conflicting rights of the community.....Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly. See ***Bernstein v Bester* 1996 (4) BCLR 449 (CC)**

The disclosure of information of persons whose telephone numbers have been listed in the application may indeed expose the innocent third parties private life and yet they are not party to the suit. This court would also not wish to open up disclosure of the report of the police or investigations into the same matter or complaint that they have investigating. It may also involve the disclosure of innocent third parties and may jeopardise investigations or findings.

Indeed, it would be very different or this court would have looked at it with different eye lenses if the right to privacy belonged to a juristic person. The privacy rights of a juristic person would be less intense than those of a human being. Although juristic persons like big companies also enjoy the protection of the privacy rights, this protection would be weaker than for an ordinary human being: See ***Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) and Others In re:Hyundai Motor Distributors (Pty) and Others v Smit NO and Others*** (CCTI)/00) [2000] ZACC 12;2000 (10) BCLR 1079; 2001 (1) SA 545(CC)

The law of privacy overlaps with data protection in so far as it relates to the control (that is, collection, use and disclosure of personal data) over the individual's information as part of his right to autonomy and dignity. The law of privacy may entail the right to control the individual's personal information as an extension of the protection of human anatomy and dignity. If privacy is to be protected, competing rights and interests have to be balanced in particular cases.

People must have confidence that their personal data is not inappropriately accessed and if it is to be accessed through an order of court-*Norwich Pharmacal* Order the court ought to be quite sure, it is necessary in the interest of justice- that it will not be misused or abused. The court should be mindful of the constitutional right to privacy of such persons against whom the order may be made.

The nature of the pre-trial discovery the applicant has made is not necessary since the information attached to the application is sufficient to sustain the claim made.

The order sought was intended to reinforce the applicant's position and it would as well infringe on the innocent third parties privacy rights.

In the result for the reasons stated herein above this application fails and this declines to grant the *Norwich Pharmacal* Order as sought. It is accordingly dismissed.

### ***Alternative Orders***



In the interest of justice, this court has found it necessary to issue gag order so that this file is anonymised in order not to prejudice the hearing of the main suit which is pending trial.

The court file and proceedings as well this Ruling shall remain sealed and protected from the public until the trial Judge deems it necessary to lift the gag order.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**25<sup>th</sup>/10/2019**