



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 235 OF 2015

WINNIE NAISIANOI SHENA

ALFRED OBUYA OBENGO

GEORGE ONYANGO ODHIAMBO

HALIMA ADAN YUSUF

STEPHEN K. RUTERE

FRANCIS NYABUTO

BONIFACE WACHIRA

STEPHEN NGANGA

COLLINS OTIENO

JACINTA MOKI

JAEL OCHIENG.....RESPONDENTS

VERSUS

NATION MEDIA GROUP LIMITED

JEREMIAH MAINA.....DEFENDANT

RULING

The plaintiffs sued the defendants for damages following a publication in the Daily Nation a newspaper owned by the 1st defendant. The record shows that the plaintiffs obtained judgment against the 1st defendant on 18th February, 2016 for failure to file a defence within the prescribed period.

There is now before me an application dated 16th June, 2017 by way of Notice of Motion seeking an order that the interlocutory judgment entered herein be set aside and the 1st defendant be served with summons to enter appearance.

The grounds upon which the application is based are set out on the face of the application alongside an affidavit sworn by the legal officer of the 1st defendant. The application was served but there is no reply on the court record.

Counsel for the 1st defendant has submitted that the interlocutory judgment was irregular as no summons to enter appearance was ever served upon the 1st defendant. The averments in the affidavit have not been contradicted or controverted by the respondents herein.

I have also perused the court file and there is no evidence whatsoever that summons to enter appearance was ever served upon the 1st defendant. What there is, is a Notice of Appointment of Advocate by counsel for the 1st defendant. A notice of appointment is not an appearance under the Civil Procedure Rules.

The entry of the interlocutory judgment relating to failure to file a defence cannot be sustained without evidence of service of such summons. It is the service of summons to enter appearance that triggers the filing of a defence after entering appearance. The entry of an appearance is an acknowledgement by a party that a cause of action impacting on it has been received. That is not the case in this matter.

The court is left with no alternative but to set aside the said interlocutory judgment which I hereby do. The plaintiffs/respondents shall cause summons to be served upon the 1st defendant within 14 days of today after which the 1st defendant shall enter appearance and file a defence within 14 days. This order shall be served upon the counsel for compliance. The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 22nd Day of February, 2018.

A. MBOGHOLI MSAGHA

JUDGE