



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAIROBI**

**CIVIL CASE NO. 451 OF 2015**

**RILEY SERVICES LIMITED.....PLAINTIFF**

**VERSUS**

**THE PEOPLE MEDIA GROUP LIMITED.....DEFENDANT**

**RULING**

The plaintiff sued the defendant claiming damages for defamation following an article published by the defendant in its newspaper known as the People Daily. Upon service of summons to enter appearance the defendant did not comply and upon application by the plaintiff, an interlocutory judgment was recorded in favour of the plaintiff.

This is now an application by way of Notice of Motion dated 11<sup>th</sup> March, 2017 seeking an order that the interlocutory judgment entered on 17<sup>th</sup> February, 2017 against the defendant be set aside together with all consequential orders thereunder, and that there be a stay of further proceedings herein and the defendant be allowed to file its defence out of time. It is further prayed that the draft defence be deemed as duly filed upon payment of the filing fees.

The application is brought under Sections 1A, 1B,3A and 95 of the Civil Procedure Act and Order 6 Rule 1, Order 10 Rule 11, Order 50 Rule 6 and Order 51 Rule 1, 7 and 15 of the Civil Procedure Rules. The grounds upon which the application is based appear on the face of the application alongside an affidavit sworn by counsel for the defendant/ applicant.

The application is opposed and there is a replying affidavit sworn by a director of the plaintiff. Both counsel have filed submissions and cited some authorities which I have noted. The order sought is discretionary and guided by the cited authorities, I must decide whether or not the application was filed timeously and if any injustice may be visited upon the defendant if the order is not granted.

Cited authorities include **Patel Vs. East African Cargo Handling Services Limited (1974) EA 75, Shah vs. Mbogo (1967) EA 116 and Prime Bank Limited Vs. Paul Otieno Nyamodi (2014) e KLR.**

The counsel for the applicant has given reasons for the default in failing to file the defence in good time, and these include the giving of instructions to the original counsel appearing for the defendant. It is clear from the averment in the affidavit that the delay was not deliberate in any way and that the reasons advanced are plausible.

The grounds of opposition filed by the counsel for the plaintiff dwell on some matters that belong to the province of a full trial and in fact the draft defence alluded to some of the issues that have been raised by the plaintiff. It is clear to me that triable issues stand out in the draft defence and the defendant should not be driven from the seat of judgment notwithstanding the delay in filing the defence. I am persuaded that the discretion of the court should be exercised in favour of the defendant on payment of costs.

Accordingly, the interlocutory judgment entered against the defendant is hereby set aside and the defendant allowed to file its defence to the plaintiff's claim within 14 days from the date of this ruling. The plaintiff however shall have the costs occasioned by this application.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 23<sup>rd</sup> day of May, 2018.***

**A. MBOGHOLI MSAGHA**

**JUDGE**