

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 1529 of 2005

RUTH N.M. ONYANCHA.....PLAINTIFF

VERSUS

STANDARD LTD.....DEFENDANT

RULING

The Plaintiff filed a suit against the Defendant for Defamation on 20th September 2005 alleging that the Defendant had falsely and maliciously wrote, printed and published in the Daily Nation concerning the Plaintiff in the way of her office as the head of Legal Department in the Kenya Ports Authority.

The Defendant filed a defence denying the claim. On 11th July 2006 the Plaintiff wrote the Defendant requesting the Defendant to furnish further and better particulars but the Defendant did not respond. This forced the Plaintiff to file an application in court seeking order that the Defendant do furnish further and better particulars and that the court to limit the time within which such further and better particulars should be made and to order that in default of such compliance within the time prescribed such paragraphs of the Defendants defence in respect of which the particulars have not been supplied be struck out.

The application is based on the ground that the Defendant has failed and/or refused to produce and file further and better particulars on several paragraphs of its defence despite being served with a written and filed request for the same and that the delay is causing the Plaintiff great prejudice and injustice.

On 5th February 2007 the parties appeared before the court and recorded a consent order in the following terms:

“By consent the Plaintiff’s application be allowed in terms of Prayers 1, 2 and 3 of the Chamber Summons dated 19th September 2006 saving all just exceptions. Costs to the Plaintiff in any event. The matter be mentioned on 13th March 2007 to confirm compliance”.

But when the matter came up for mention on that date the defendant did not attend.

On 10th July 2007 when the Chamber Summons dated 19th September 2006 came up for hearing AB Shah counsel for the Plaintiff submitted that Mr. Kibet counsel for the Defendant had no right of audience since the Defendant had not filed a Replying Affidavit to the application nor had he filed Grounds of Opposition and the objection was upheld by the court. Mr. Shah submitted that the paragraphs of the defence for which the Plaintiff had sought particulars, that is Paragraphs 2, 5, 6, 7, 8, 9, 10 and 17 be struck out.

He submitted that it is settled law that when you agree by consent to supply particulars and the court so orders, you must serve the particulars within that time. The Defendant consented to file particulars by 5th March 2007 and the court directed that the matter be mentioned on 13th March 2007. On that day to confirm compliance he appeared but there was no appearance for the Defendant and they are nearly 5 months out of time. Counsel referred the court to Mulla on Civil procedure Paragraphs 7 at page ago

which states:

“If the Defendant fails to comply with an order for further and better particulars, he is liable to have his defence struck out”.

He urged the court to grant the application as prayed.

After considering the submission by counsel and the application being not opposed. I am persuaded that it is proper and just that the order sought be granted.

Accordingly I allow the Plaintiff’s application as prayed and strike out par 2, 5, 6, 7, 8, 9, 10 and 17 of the Defendant’s defence.

The Plaintiff is also entitled to costs of this application and it is so ordered.

Dated and delivered at Nairobi this 23rd day of July 2007.

J.L.A. OSIEMO

JUDGE