



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 688 of 2004

HON. MARTHA KARUAPLAINTIFF

VERSUS

SAMUEL MBURU MUCHOKI T/A IMMEDIATE MEDIA SERVICES...1ST DEFENDANT

KIPRONO ARAP KEMEI.....2ND DEFENDANT

JUNIOR GRAPHICS LIMITED.....3RD DEFENDANT

RULING

The plaintiff filed this suit against the 3 defendants for defamation.

In her plaint the plaintiff alleged that they were responsible for the defamatory words of the plaintiff appearing in the head line of the lead story in the issue of “***The Independent Volume 2 No.44 June 28 2004.***” The applicant who was the first defendant was served with the summons but failed to enter appearance and file a defence. On application by the plaintiff the file was placed before the deputy Registrar who entered interlocutory judgment on 6th December 2004.

The suit was set down for formal proof. The matter came before me on 24th February 2005 when evidence was taken and judgment was delivered on 7th April 2005. On 23rd May 2005 the applicant/first defendant applied by way of Notice of Motion seeking orders to stay the execution and setting aside of the judgment delivered on 7th April 2005.

The plaintiff on being served with the Notice of Motion raised a Preliminary Objection to that application. The Preliminary Objection is based on the ground that the same is incompetent for offending the mandatory provisions of Order IXA Rule 11 and Order L Rule 1 of the Civil Procedure Rules.

This is based on the ground that the application is expressed to be brought by way of Notice of Motion instead of Chamber Summons. Mr. Mwanthi counsel for the defendant in opposition to the Preliminary Objection conceded that the application was brought by way of Notice of Motion instead of Chamber

Summons but submitted that procedural lapses should not be invoked to defeat applications. He referred the court to Order L Rule 12 which he submitted cures the defect which provides:

“L” R 12: every order rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.”

I am of the view that it is in the overall interest of justice that procedural lapses should not be involved to defeat applications unless the lapse goes to the jurisdiction of the court or substantial prejudice is caused to the adverse party.

I decline to strike out the application and dismiss the plaintiff’s application. I order that the defendant’s application dated 23rd May 2005 do proceed to hearing on its merits.

Costs be costs in the application.

Dated and delivered at Nairobi this 20th day of February 2006.

J.L.A. OSIEMO

JUDGE