



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL CASE NO. 15 OF 2001**

**STANDARD ASSURANCE (K) LTD.....PLAINTIFF**

**VERSUS**

**PIUS MULWA MAKAU.....DEFENDANT**

**R U L I N G**

The chamber summons dated 26.11.2001 is brought pursuant to order VIII Rule 1 (2) and order VI Rules 13(1) c & d. The plaintiff prays that the defendants defence filed therein on 12.3.2001 be struck out and judgement be entered for the plaintiff. The application is premised on the grounds that the defendant has failed to serve the defence on the plaintiff which offends order VIII Rule 1(2). The sub rule provides that once the defendant is served with summons, he shall file his defence within 15 days after he has entered an appearance in the suit and serve it on the plaintiff within 7 days from the date of filing the defence.

It is the applicants case that since the said defence was filed on 12.3.2001, they have never been served with the said defence. The defence counsel Mr. Mutinda was served with the present application but he did not appear. He has not filed any reply to this application. This application was on the file since 26.11.2001 and it has come up severally. Infact the counsel appeared in court on 12.11.2003 though the applicant were not present. It means that the defence has been a ware of this application all through and the defendants have failed or ignored to file their defence. I do agree with the applicants contention that the filing of the defence and failing to serve is an abuse of the court process as it is holding the plaintiff from proceeding with the case and the defence should therefore be struck off as it is not serving any purpose on the record but delaying the prosecution of this case. Judgement is entered for plaintiff against defendant as prayed in the plaint. Plaintiff to have costs and interest.

**Dated, read and delivered at Machakos this.....day of.....,2004.**

**R. WENDOH**

**JUDGE**