

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(Milimani Law Courts)

Civil Case 2697 of 1998

MRS NARMADI POPATLAL

VERINDRA RAITHATHA

MEHENDRA RAITHATHA..... PLAINTIFFS

VERSUS

MINISTRY OF INFORMATION & BROADCASTING

THE ATTORNEY GENERAL.....DEFENDANTS

RULING

This ruling relates to an application filed way back in the year 2000, being a Chamber Summons dated 15th August 2000, seeking orders of this Court to enter judgment for the Plaintiffs in the sum of Kshs.6,388,613.15 the Defendant having failed to file a Defence to the amended Plaint filed herein on 24th May 1999.

It is not quite clear why the said Chamber Summons has remained pending for such a long time but the record does show that most of the times when the same came up for hearing the Defendant did not appear to defend the same. The record also shows that 26th October 2000 and 17th November 2000 the parties did attend Court and the Defendant admitted that some rent was due but not all that is claimed herein. On 26th October 2000, the parties recorded a consent to the effect that the Defendant files a defence within 15 days the date of that order and in it admit whatever they needed to admit. It is not disputed that the Defendant did not comply with the said consent order but has as recently as 21st October 2004 attempted to file a defence which this Court rejected. It is not clear also why on 2nd March 2001 previous Counsel for the applicant told the Court that this application had been dealt with. My perusal of the file has disclosed no order as would have disposed of this application. Counsel for the applicant has submitted that the applicants are requesting for judgment. As confirmed by the record previous judgment entered herein was set aside by consent when the parties agreed that a defence could be filed within 15 days.

No grounds of opposition or Replying Affidavit was filed. During the hearing inter partes, Counsel for the Respondent submitted that the issue of rent was not in dispute and only sought to object to this application on the ground that a defence had been filed on 21st October, 2004, which, in the Counsel's opinion meant that the application had been overtaken by events. The said defence having been rejected by this Court, the same having been filed long after the period allowed for the same it remains that the suit is not defended. The defendant having not filed a defence as required, I do allow the application and enter judgment for the Plaintiff as prayed in the amended Plaint dated 20th May 1999. Costs of this application shall be paid by the Defendant.

Dated and Delivered at Nairobi this 10th day of December 2004.

M.G. Mugo

Ag. Judge

In the presence of

Ms Othieno present for the Applicants

N/A for M. Kimani Chief Litigation Counsel for Attorney General

N/A for A.G.N. Kamau & Company Advocates for the Respondents