



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CIVIL SUIT NO. 67 OF 2013**

**NELIUS WANJIRU WANJIKU.....PLAINTIFF**

**VERSUS**

**KENYA BROADCASTING CORPORATION.....1<sup>ST</sup> DEFENDANT**

**MUTHONI GITAU.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff prays that the *statement of defence* be struck out.
2. The reasons are two-pronged: Firstly, that the pleading was filed *out of time* without leave; and, secondly, that it is a *mere denial* that does not adequately traverse the plaintiff's claim.
3. The *notice of motion* is dated 4<sup>th</sup> June 2014.
4. The motion is contested by a *replying affidavit* sworn on 19<sup>th</sup> June 2017 by Paul Jilani, the Corporation Secretary of the 1<sup>st</sup> defendant.
5. The defendants filed written submissions way back on 19<sup>th</sup> June 2017. On 23<sup>rd</sup> May 2018, the court directed the applicant to file her submissions within *seven days*. In default, she would be deemed "*not to wish to make any submissions*". The applicant's submissions were filed *out of time* on 6<sup>th</sup> June 2018.
6. Striking out a pleading is a *draconian* measure to be employed sparingly. *Wambua v Wathome* [1968] E.A 40, *Coast Projects Ltd v M.R. Shah Construction* [2004] KLR 119.
7. The court must also pay heed to the *overriding objective* to do justice to the parties. See **Article 159** of the **Constitution** and sections 1A and 1B of the **Civil Procedure Act**. See also *Harit Sheth v Shamas Charania*, Court of Appeal at Nairobi, Civil Application No 68 of 2008 [2010] eKLR.
8. The High Court is a court of record. The defendant was served with the *summons to enter appearance*; and, the *plaint* on 28<sup>th</sup> January 2014. This is evident from the *affidavit of service* by Patrick Kinyua sworn on 11<sup>th</sup> February 2014.
9. The defendants entered *appearance* on 13<sup>th</sup> February 2014. The *statement of defence* was however *not* filed until 6<sup>th</sup> March 2014. That fact is conceded at paragraph 4 of the *replying affidavit*.
10. Order 7 Rule 1 of the **Civil Procedure Rules** is mandatory: *the defendant shall, unless some other or further order be made by the court, file his defence within fourteen days after he has entered an appearance in the suit.*
11. The statement of defence was filed *out of time* and without *leave*. To date, there is *no* application to *enlarge* the time within which to file and serve the defence. I readily find that the statement of defence is a *nullity*. That finding is *sufficient* to dispose of the application.
12. I accordingly order that the *statement of defence* dated 4<sup>th</sup> March 2014 and filed on 6<sup>th</sup> March 2014 be and is hereby *struck out*. The plaintiff shall now set down the suit for *formal proof*.
13. I grant the plaintiff costs of the application.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **MURANG'A** this 5<sup>th</sup> day of March 2019.

**KANYI KIMONDO**

**JUDGE**

***Ruling read in open court in the presence of:***

No appearance by counsel for the plaintiff.

No appearance by counsel for the defendants.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.