



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 357 OF 2007

HELLEN WAIYIGO NJUE.....PLAINTIFF/RESPONDENT

- V E R S U S -

KENYA PIPELINE COMPANY LIMITED.....1ST DEFENDANT

THE COMMISSIONER OF POLICE.....2ND DEFENDANT

THE ATTORNEY GENERAL3RD DEFENDANT

RULING

1) Hellen Waiyigo Njue, the plaintiff herein, filed this suit against Kenya Pipeline Co. Ltd, The Commissioner of Police and the Attorney General, being the 1st, 2nd and 3rd defendants respectively. In the aforesaid plaint the plaintiff sought for judgment against the defendants in the following terms:

A. Against the 1st defendant for

i. A declaration that the 1st defendant's suspension and termination of the plaintiff's employment was reckless and unlawful;

ii. Special damages ...ksh.127,727,726.00 together with interests thereon at 14% p.a from 13th March 2003 until payment in full.

B. The 1st and 2nd defendants jointly and severally for;

i. General damages for unlawful arrest, false imprisonment, malicious prosecution, defamation and loss of reputation together with interest thereon at court rates with effect from 20th April 2006 until payment in full.

ii. Legal feesksh.1,600,000.00 together with interest thereon at 14% p.a with effect from 20th April 2006 until payment in full

C. Aggravated and exemplary damages together with interests thereon at court rates.

D. Costs of this suit together with interests thereon at court rates.

2) The summons and the plaint were served upon the defendants. The 1st defendant entered an appearance and filed a defence. The 2nd and 3rd defendants did not deem it fit to file a defence,

consequently the plaintiff was prompted to file the summons dated 16.1.2012 whereof she sought for leave to enter judgment against the 2nd and 3rd defendants in default of appearance and defence. The aforesaid summon is the subject matter of this ruling.

3) It is the submission of the plaintiff that service of summons and the plaint were effected upon the 2nd and 3rd defendants and that the duo have failed to enter appearance nor file a defence. I have considered the grounds stated on the face of the summons dated 16th January 2012 and the facts deponed in the supporting affidavit of Joseph Wagara, the plaintiff's advocate. I have also taken into account the facts deponed in the affidavits of service of Benson Mutinda. The plaintiff was permitted to prosecute ex parte the summons dated 16.1.2012 when it became apparent that the aforesaid was served together with a hearing notice but the 2nd and 3rd defendants failed to respond nor attend court for the interpartes hearing of the summons. A critical examination of the two affidavits of service of Benson Mutinda both sworn on 19.12.2011 will reveal that the 2nd and 3rd defendants were properly served with the summons to enter appearance and the plaint. The duo have failed to enter appearance nor file a defence despite being served. When the summons came up for interpartes hearing, the plaintiff was also allowed to proceed ex parte because there was evidence of service of a hearing notice upon the 2nd and 3rd defendants as evidenced by the affidavit of service by Maurice Mbengele sworn on 28th February 2017.

4) Having come to the conclusion that he 2nd and 3rd defendants were properly served with the summons to enter appearance and with the pleadings plus a hearing notice, then the application by the plaintiff is merited. Pursuant to the provisions of Order 10 rule 8 of the Civil Procedure Rules, leave is necessary before judgment can be entered against the 2nd and 3rd defendants. The plaintiff is entitled to the order sought in the summons dated 16.2.2012.

5) Consequently the aforesaid summons is allowed as prayed. The suit as against the 2nd and 3rd defendants to be fixed for hearing as a formal proof in respect of both special and general damages.

Dated, Signed and Delivered in open court this 9th day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant