

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2221 OF 1997

NATION NEWSPAPER LIMITED.....PLAINTIFF
VERSUS
FINANCE INSTITUTE LIMITED.....DEFENDANT

R U L I N G

The plaintiff applied by way of Chamber Summons under Order 6 Rule 13 of the Civil Procedure Rules for an order that paragraphs 11 and 12 of the amended defence be struck out.

The reasons or grounds of this application are that, there is no public interest to publish matters not revealed on a hearing in open court and there is no privilege for such a publication.

The application was served upon the advocates for the defendants on 16th June, 1998 as confirmed by the affidavit of service filed on 2nd July, 1998. However, as at the time the matter came up for hearing on 31st July, 1998 no replying affidavit or grounds of opposition had been filed on behalf

of the defendant and there was not representation on that day. The learned counsel for the plaintiff proceeded ex-parte.

In support of the application, the learned counsel for the plaintiff cited H.C.C.C No. 2105 of 1993 George Oraro -v- Wangechi Mwangi & Nation Newspapers Limited and Daily Nation -v- Mukundi & Anor (1975) E.A. 311 I have read the two authorities and related the same to the two paragraphs in the amended defence that the plaintiff seeks to strike out. With respect I agree that there is no right to report the contents of pleadings filed in court but which have not become the subject matter of proceedings in open court. Further there is no reciprocity of interest between the newspaper and its readers and therefore no qualified privilege.

For those reasons, the application succeeds. paragraphs 11 and 12 of the amended defence are hereby struck out with costs to the plaintiff. Order accordingly.

Dated and delivered at Nairobi this 22nd day of September, 1998

A. MBOGHOLI MSAGHA

JUDGE