



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 552 OF 2016**  
**BETWEEN**  
**JULIET NDINDA KITAVI..... CLAIMANT**  
**VERSUS**  
**NATION MEDIA GROUP LTD ....RESPONDENT**  
**RULING**

1. The Claimant initiated the Claim herein, through a Statement of Claim filed on 19<sup>th</sup> July 2016.
2. The Respondent was served through its Legal department at Nairobi, with the Notice of Summons and Memorandum of Claim on 21<sup>st</sup> July 2016. This is not denied by the Respondent.
3. The Summons required the Respondent to file its Response, within 14 days. There was no Response filed by the end of these days.
4. The Claimant fixed the matter for directions on 31<sup>st</sup> October 2016. The Respondent was notified about the mention, and again stayed away from the Court and filed nothing.
5. The Claimant asked the Court to be allowed to proceed by way of Submissions. She filed her Submissions on 14<sup>th</sup> November 2016, and was ready to take a Judgment date when the matter came up for mention on the same date.
6. The Respondent's Counsel appeared in Court on 14<sup>th</sup> November 2016, and was allowed time to file a formal Application for leave to respond to the Claim.
7. That Application was filed on 30<sup>th</sup> November 2016, and is supported by the Affidavit of Sekou Otiemo, Respondent's Head of Legal Department, sworn on 28<sup>th</sup> November 2016.
8. The Respondent filed a Replying Affidavit sworn on 13<sup>th</sup> February 2017.
9. The Application was heard on 14<sup>th</sup> February 2017.

***Respondent's Explanation of Default***

10. The Respondent as stated above, does not dispute service. Upon receipt of the Summons, the Respondent forwarded the same to its Insurers, believing the Claim was a Libel Claim, rather than an Employment Claim.

11. The Respondent therefore believed its Insurers had engaged an Advocate in Mombasa to respond to the Claim.

12. It was only after the Insurer informed the Respondent that the Summons had nothing to do with the existing Libel Professional Indemnity Cover, that the Respondent realized no Response had been filed.

13. The Respondent urges the Court to allow the Application, arguing it would stand to suffer irreparable loss if *ex parte* proceedings are allowed to stand. Its intended Response raises triable issues, as shown in the Draft Response. It is ready to meet Claimant's costs.

### ***Claimant's Objection***

14. The Claimant emphasizes Respondent was served with the Court Processes at every turn, and failed to act as directed by the Court. The Application is meant to delay finalization of the dispute. Claimant has already closed her case and, filed Submissions as directed by the Court. The Respondent has recourse against their Advocates or Insurance, for their failure to respond to the Summons.

15. There must be an end to litigation. The Claimant submits the Respondent has prayed in its Application, that costs be in the cause. The offer for costs in the submissions made in Court is not a firm offer.

### ***The Court Finds:-***

16. Mr. Sekou Owino has not stated in his Affidavit why an Employment Claim, in which the issues in dispute are clearly indicated in the Statement of Claim, was mistaken for a Libel Claim.

17. One would expect Respondent's Legal Department to have a clear appreciation of the nature of Claims filed against the Respondent.

18. Even assuming there was an honest mistake, and the Summons forwarded to Respondent's Insurers, paragraph 8 of the Supporting Affidavit suggests the Insurance returned the Summons to Respondent's Office in August 2016.

19. The Matter was mentioned in Court on 31<sup>st</sup> October 2016. There was Notice served. The Respondent had not acted between August 2016 and October 2016. The Claimant filed her Submissions on 14<sup>th</sup> November 2016. It was only upon service with the Submissions, that the Respondent woke up and filed a Notice of Appointment of Advocates.

20. The explanation that delay was caused by Respondent's misapprehension about the nature of the Claim does not resonate with the Court and is rejected.

21. Draft Statement of Response however shows there are triable issues. The Claimant prays for a colossal sum of Kshs. 49,218,440, as indicated in her Submissions dated 10<sup>th</sup> November 2016. She claims, among other things service pay at Kshs. 6.4 million. The Respondent states the Claimant was registered under the NSSF, and under Respondent's Social Security Plan. She submits she is entitled to 12 months' salary in compensation for unfair termination quoted at Kshs. 32.1 million. The annual leave pay is claimed at Kshs. 10.3 million. Respondent denies that termination was unfair, and compensation awardable. The Court notes the amounts claimed are inexplicably high, viewed against a gross monthly salary of Kshs. 86,500. There are triable issues. A hearing involving both Parties would assist the Court in making sense of these huge sums of money claimed.

22. Lastly, the Respondent has offered to meet Claimant's costs. Paragraph 14 of the Supporting

Affidavit specifically states that the Respondent is ready to pay costs to the Claimant for 'any inconveniences caused.' The offer was reaffirmed in Respondent's Counsel Submissions before the Court. The Claimant should not therefore be concerned about the Respondent's equivocation about the offer to pay costs, shown in the face of the Notice of Motion.

**IT IS ORDERED:-**

- a. The Respondent is granted 14 days to file and serve its Statement of Response, Documents, and Witness Statements.*
- b. The Order made ex parte on 31<sup>st</sup> October 2016 is hereby set aside, and the Respondent granted leave to respond to the Claim.*
- c. Costs of Kshs. 25,000 to be paid by the Respondent to the Claimant, before the Statement of Response is received by the Court.*
- d. Parties shall move the Court for pre-trial directions once this Ruling has been fully complied with.*

**Dated and delivered at Mombasa this 24<sup>th</sup> day of March 2017.**

**James Rika**

**Judge**