

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISC. CIVIL CASE NO. 185 OF 2009

ELIJAH MIRA WAINAINA PLAINTIFF

VERSUS

INTERACTIVE MEDIA SERVICES LIMITED DEFENDANT

R U L I N G

1. By a Chamber Summons dated 1 February 2012 filed herein on 3 February 2012, the Defendant herein applied for enlargement of time within which it had to apply for leave to issue a Third Party Notice to the Music Copyright Society of Kenya. The application came by way of Certificate of Urgency. The second head of the said Chamber Summons dated 1st February 2010 was that this Court be pleased to grant leave to the Defendant to take out Third Party proceedings against the said Music Copyright Society of Kenya.
2. As it would cause no prejudice to the Plaintiff herein, I granted enlargement of time within which the Defendant had to apply for leave to issue a Third Party Notice, on 3rd February 2012. Time was extended until 10 February 2012. At the same time, I granted the 2nd head of the Defendants' Application being leave for it to take out 3rd party proceedings against the Music Copyright Society of Kenya. In so granting the above orders, I had not lost sight of the mandatory requirements of **Order 1 Rule 15** of the *Civil Procedure Rules 2010* which requires that any defendant who claims, *inter alia*, that he is entitled to a contribution or indemnity from any other person, not already a party to the suit, shall apply to Court for such leave within 14 days after the close of pleadings.
3. From an Affidavit of Service sworn by **ARTHUR IMBUGA** on 28 February 2012, I note that he served the Third Party Notice thereto attached on the Secretary at the reception of the officers of the Music Copyright Society of Kenya at Westlands, Nairobi. Although there is stamped on the return of the Third Party Notice, the rubber stamp of the Music Copyright Society of Kenya, the Affidavit of Service itself does not name the person upon whom the Third Party Notice was served. Such is contrary to **Order 5 Rule 15** of the *Civil Procedure Rules 2010* as read with Form No. 4 of Appendix A thereto.
4. Accordingly, I am not satisfied that proper service of the Third Party Notice has been made upon the Music Copyright Society of Kenya and would direct that the Society be re-served with the Third Party Notice within 7 days from the date hereof. Time for service of the Third Party Notice will be extended until then. Orders accordingly.

DATED at NAIROBI this 28th day of February 2013.

J. B. HAVELOCK

JUDGE