

Summons to Enter Appearance O.5.r.1(2)

CIVIL 1r

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
ATMILIMANI
CIVIL SUIT NO 207 OF 2015

SAFARICOM LIMITED.....
C/O OGETTO,OTACHI & COMPANY ADVOCATES..... } Plaintiff

CYPRIAN NYAKUNDI..... } Defendant
} Service of summons thro' plaintiff's Advocates Office.

TO:
CYPRIAN NYAKUNDI
P. O. BOX 295-40202, KEROKA

WHEREAS the above named Plaintiff has instituted a suit against you upon the claim, the particulars of which are set out in the copy
plaint with annexure attached hereto.
YOU ARE HEREBY REQUIRED within15..... days from the date of service hereof to enter an appearance in the said suit.
Should you fail to enter an appearance within the time mentioned above, the plaintiff may proceed with the suit and judgment may be
given in your absence.
Given under my hand and seal of the court this 15th day of June 2015.

Note.—You may appear in this suit by entering an appearance either personally or by duly appointed advocate atNAIROBI.....
Appearance can be entered by filing with the court Memo. Of Appearance (forms are obtainable from court at 15 cents each) in duplicate,
showing the defendant's address of service. A filing fee must accompany memoranda. A copy of Memo. Of Appearance should also be
sent to the plaintiff or his advocate, if any.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 207 OF 2015

SAFARICOM LIMITED..... PLAINTIFF
CYPRIAN NYAKUNDI DEFENDANT
VERSUS

NOTICE OF MOTION

(Under Order 5 Rule 17 (1), Order 40 Rule 2 and Order 51 Rule 1 of the Civil Procedure Rules 2010 & Section 3A of the Civil Procedure Act)

TAKE NOTICE THAT this Honourable Court shall be moved on the 14th day of July 2015 at 9.00am in the forenoon or soon thereafter
when Counsel for the Advocate/Applicant shall be heard for the **ORDERS:**

1. **THAT** this application be certified as urgent and heard ex-parte in the first instance.
2. **THAT** pending the hearing of this Application inter partes, a temporary injunction be and is hereby granted prohibiting the Defendant, his servants, agents or employees from further publishing or causing to be published any statements defamatory of the Plaintiff in any manner whatsoever and in particular in relation to the articles published by the Defendant on his blog.
3. **THAT** a permanent injunction be and is hereby granted prohibiting the Defendant, his servants, agents or employees from further publishing or causing to be published on their blog or any other blogs any matters defamatory of the Plaintiff in any manner whatsoever and in particular in relation to defamatory statements against the Plaintiff in the series of articles published on the Defendant's blog.
4. **THAT** a mandatory injunction be and is hereby granted ordering the Defendant to pull down from his blog any articles or statements defamatory of the Plaintiff.
5. **THAT** a permanent injunction be and is hereby granted prohibiting the Defendant, his servants, agents or employees from further publishing or causing to be published on their blog or any other blogs any ongoing litigation matters between the Plaintiff and any other party.
6. **THAT** leave be and is hereby granted to the Plaintiff to serve the Defendant by way of substituted service in a daily newspaper of national circulation such as The Standard Newspaper or The Daily Nation.
7. **THAT** the costs of this application be provided for.

WHICH APPLICATION is grounded upon the annexed affidavit of **DANIEL NDABA** and on the following **GROUND:**

1. **THAT** the Defendant is a blogger, with a substantial amount of followers and influence. The Defendant's blog domain is www.cnyakundi.com
2. **THAT** the Defendant has in a series of blog articles, published several defamatory articles about the Plaintiff, claims which are at the very least unsubstantiated and unsupported. He has began an alleged fifteen (15) part expose on the Plaintiff's operations.
3. **THAT** in an article termed "**Part 1 of 15: How Safaricom steals from Kenyans with third parties**", the Defendant has portrayed the Plaintiff as a thief and a fraud, obtaining money and profits in form of airtime from its subscribers through non-existent subscriptions.
4. **THAT** in a second article, "**Part 2 of 15: Your privacy and Safaricom are two different worlds**", the Defendant published defamatory statements about the Plaintiff, claiming that the Plaintiff is infringing on its customer's privacy and getting away with it.
5. **THAT** in a third article dubbed "**Part 3 of 15: Time to put Safaricom back in its box before it seriously hurts Kenyans**", the Defendant discusses the plight of Kenyan men and women who were allegedly laid off by Safaricom as a result of falling ill
6. **THAT** in fact, the contents of the article outlined in paragraph 5 above relate to ongoing matters in the Courts, for instance, **Civil Suit No. 241 of 2013- Josephine Wanjiru Boro v Safaricom Limited**.
7. **THAT** in a fourth article titled, "**Are Safaricom lone wolves preying on our security? What they don't want you to know (Part 4 of 15)**", the Defendant accuses the Plaintiff of breaching the security of Kenyans.
8. **THAT** the Defendant has failed to apologize and withdraw the defamatory statements and articles and the Plaintiff suffers and continues to suffer substantial damage to its reputation.
9. **THAT** there is a high likelihood that the Defendant will continue publishing defamatory articles with a view to adversely affect the Plaintiff's popularity and customer base.
10. **THAT** the Defendant's actions are contrary to the law and the Plaintiff has a prima facie case against Defendant.
11. **THAT** the allegations against the Plaintiff in the Defendant's publications are unsubstantiated and baseless.
12. **THAT** the Plaintiff does not know the whereabouts of the Defendant and that his last known address was Meru University, where he no longer studies.

DATED at **NAIROBI** this 9th day of JUNE 2015

OGETTO, OTACHI & COMPANY ADVOCATES
ADVOCATES FOR THE PLAINTIFF

DRAWN AND FILED BY:
Ogetto, Otachi & Company
Advocates
Ambassador Court Block C-6
Milimani Road
P.O. Box 79438-00200
NAIROBI

TO BE SERVED UPON:
Cyprian Nyakundi
P.O Box 295-40202
KEROKA

If any party served does not appear at the time and place above mentioned such order will be made and proceedings taken as the court may think just and expedient".

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 207 OF 2015

SAFARICOM LIMITED..... PLAINTIFF
CYPRIAN NYAKUNDI DEFENDANT
VERSUS