



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 73 OF 2014

TED NJAU NJOGU.....PLAINTIFF

VERSUS

THE PEOPLE MEDIA GROUP LIMITED.....DEFENDANT

RULING

This matter was filed in the year 2014 and due to the slow pace at which it is being prosecuted, the court issued notices to the parties to show cause why it should not be dismissed for want of prosecution.

The matter was listed on 21/06/2019 for the said purpose when counsel for the Plaintiff prayed for time within which to file an affidavit in response to the said notice. Both counsels on record filed affidavits in support of their respective positions.

In an affidavit sworn by counsel currently on record for the Plaintiff, it is deponed that he held a meeting with the Plaintiff on the 29th August, 2017 during which, the Plaintiff expressed his intention to instruct their firm of Advocates to act for him in this matter in place of Ongoya & Wambola Advocates. That counsel had expected the Plaintiff to instruct their firm formally and therefore they took no steps in the matter under the mistaken impression that they were yet to be formally instructed, whereas, it was the Plaintiff's understanding that the said meeting constituted his instructions to the firm to act for him in the matter.

That due to that misunderstanding, no action was taken in the matter precipitating the issuance of the notice to show cause by the court. He has urged the court not to dismiss the matter.

On its part, counsel for the Defendant has supported the dismissal and has filed an affidavit sworn by its counsel, Rose Munyase demonstrating how the Defendant has been willing to have the matter disposed of but the Plaintiff has been indolent.

She avers that it's only upon receipt of the notice to show cause that the Plaintiff sprung to action adding that were it not for the same, the Plaintiff would still be in deep slumber exhibiting great indolence at the expense of the Defendant.

The court has considered the contents of the respective affidavits and the facts as captured therein. The court notes that there has been a delay in prosecuting this matter and the last time it was in court was on 25th October, 2016 when it partly proceeded for hearing.

The record shows that thereafter, the Plaintiff fixed the matter for hearing on the 15th day of August, 2017 which fell on court vacation. Thereafter no other action was taken until the 21st June, 2019 when it was listed for notice to show cause by the court.

Whereas I am in agreement with the defendant that there has been delay I prosecution of this matter, I also note that the same is part heard and it's only fair that the plaintiff be granted a chance to fully prosecute the same.

In the premises and considering that it is an old matter, I do hereby make an order that the same be prosecuted within 90 days failing which it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 25th Day of JULY, 2019.

.....

L. NJUGUNA

JUDGE

In the Presence of

.....*For the Applicant*

.....*For the Respondent*