

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 565 OF 2011

CHRISTOPHER NDARATHI MURUNGARU.....PLAINTIFF

VERSUS

BARAA LIMITED T/A KENYA TELEVISION NETWORK...1ST DEFENDANT

MOHAMMED ALLI.....2ND DEFENDANT

DENNIS ONSARIGO.....3RD DEFENDANT

RULING

The matter herein was on the 8th day of June, 2018 listed for Notice to show cause why it should not be dismissed for want of prosecution under the provisions of Order 17 Rule 2 of the Civil procedure Rules.

In response to the said notice, Counsel for the plaintiff filed an affidavit on 6th June 2018 sworn by Sankoh Bondi on even date. The deponent is the counsel on record for the plaintiff. He depones that the plaintiff is desirous of having the suit heard or determined on merits and the reason why the suit has not been prosecuted is because the court file was missing as a result of which he was unable to fix the matter for pre-trial directions. He has annexed several letters he wrote to the Deputy Registrar requesting for a mention date for purposes of setting down the matter for pre-trial directions. He has urged the court not to dismiss the matter.

A perusal of the record shows that the matter was last in court on the 5th day of May, 2014 when it was stood over generally. Thereafter, the plaintiff did not take any other action until the matter was listed on 23rd February 2018 for notice to show cause on which date, the plaintiff's advocate had not been served with the notice.

I have perused the letters annexed to the affidavit sworn by Sankoh Bondi and I note that the first letter requesting for a date for pre-trial is dated 4th April, 2017 which was almost two years since the matter was last in court. The letter was placed before the Deputy Registrar who advised that a date be taken at the registry. That never happened. It would appear that the plaintiff went to sleep until his counsel was served with a notice to show cause by the court. Though there is delay in prosecuting the matter, I find that the same is not prolonged and justice can still be served despite the delay.

In the circumstances, the plaintiff's suit will not be dismissed but since it's an old matter, I do order that the same be prosecuted within 6 months from today failing which it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 21st Day of **June 2018**.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... *For the Plaintiff*

..... *For the Defendant*