

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 36 OF 2012

OCEANFREIGHT TRANSPORT CO. LTD.....1ST PLAINTIFF

LIVINSTONE NDUNGU WAITHAKA.....2ND PLAINTIFF

MAINA MURAGE.....3RD PLAINTIFF

T/A MAINA MURAGE & CO. ADVOCATES

VERSUS

ROYAL MEDIA SERVICES LIMITED.....1ST DEFENDANT

SAMUEL KAMAU MACHARIA..... 2ND DEFENDANT

RULING

1. A Notice to show cause dated 2nd February, 2018 was issued by the court under order 17 rule (2) Civil Procedure Rules for the Plaintiff to show cause why the suit should not be dismissed for failure to prosecute the same.
2. The Plaintiff's side filed an affidavit to show cause. The delay in prosecuting this suit is blamed on two appeals in the Court of Appeal that were to be heard first as they are at the core of the case herein. That one of the appeals has been determined and the other is still pending. The Plaintiffs urged the court to have their suit heard during the last quarter of this year when the pending appeal is expected to have been determined.
3. The Defendants counsel in his submissions supported the dismissal and stated that the pendency of the appeal has no import on this defamation suit.
4. Although the delay is blamed on the pending appeals in other related matters, I agree with the Defendants' counsel's submission's that the determination of the two appeals should not be a bar to the hearing of this suit. The two appeals **Nbi CA No. 62 of 2011 Samuel K Macharia and Purity Gathoni Githae v Oceanfreight Transport Co. Ltd** and **Nbi CA No. 85 of 2011 Purity Gathoni Macharia and S. K. Macharia** are said to have been pending for 7-8 years. It is not in dispute that the appeals touch on Bankruptcy proceedings. The same therefore do not directly touch on the proceedings herein.
5. To serve the wider interests of justice, this court is however inclined to allow this case to be heard on merits. Consequently, I hold that sufficient cause has been shown. Order 11 Civil Procedure Rules to be complied with and suit fixed for directions within ninety (90) days from the date hereof. In default the suit to stand dismissed. Costs in cause.

Date, signed and delivered at Nairobi this 26th day of July, 2018

B. THURANIRA JADEN

JUDGE