



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 341 OF 2015**

**NELSON HAVI .....PLAINTIFF**

**VERSUS**

**STEPHEN ARMSTRONG JENNINGS**

**NATION MEDIA GROUP LIMITED**

**WILFRED GITONGA**

**MEDIAMAX NETWORKS LIMITED .....}DEFENDANTS**

**RULING**

When this matter came up today for the highlighting of the submissions filed by the parties to address the plaintiff's application dated 29<sup>th</sup> September, 2015 the counsel for the 1<sup>st</sup> defendant sought an adjournment, to enable him file a further affidavit to introduce a letter dated 18<sup>th</sup> July 2016 by one Solomon Kivuva and a Statutory Declaration by the same person sworn on 21<sup>st</sup> July, 2016. The application is strenuously opposed by the plaintiff.

I have heard counsel on record on this matter. The plaintiff who is an advocate of this court, has taken the court through the record, blaming all previous adjournments on the 1<sup>st</sup> defendant. He submits that this is yet another deliberate step taken by the 1<sup>st</sup> defendant to delay the matter yet there are no interim orders to restrain the defendants from continued defamatory statements against him.

I agree that the resolution of this application has taken longer than it should have under normal circumstances. The record will show that the plaintiff has done everything possible to comply with orders made by the court, while admittedly most of the adjournments have been attributed to the 1<sup>st</sup> defendant.

That notwithstanding, the parties here and especially the plaintiff and the 1<sup>st</sup> defendant are involved in protracted litigation in this case, and from the material before me this is an extremely emotive matter. However, in the event that any material comes to light that may be useful to the court in the determination of the issues raised in the pleadings and or application, it should not be locked out.

From my observation of the plaintiff, it is not lost on me that as an advocate of this court he is concerned not only by the allegations made against him, but the adverse consequences to his person and profession. But then he is a party to these proceedings and in the instant case he is the one who initiated the case.

Both the letter and Statutory Declaration sought to be introduced refer to the plaintiff and or his firm. The letter in particular is copied to his firm and many other parties. The merits or otherwise of the contents of the two documents is not for me to address at this stage. However, I consider it necessary to have the two documents on record so as to enable the court to have a holistic consideration of the matters before it.

In that regard, I allow the application for adjournment and grant leave to the 1<sup>st</sup> defendant to file a further affidavit introducing the two documents. That affidavit shall be filed within the next 7 days and served upon the plaintiff and the other defendants.

The plaintiff (and any other defendant wishing to do so) shall reply thereto within 7 days of service. Thereafter the parties shall appear before the Duty Judge on 11<sup>th</sup> August, 2016 to take a hearing date for the highlighting of the submissions. Today's costs shall be awarded to the plaintiff in any event.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 28<sup>th</sup> day of July, 2016*

**A. MBOGHOLI MSAGHA**

**JUDGE**