



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 100 OF 2013**

**JEREMIAH NG'AYU KIONI.....PLAINTIFF**

**VERSUS**

**THE STANDARD MEDIA GROUP LTD.....1<sup>ST</sup> DEFENDANT**

**JUMA KWAYERA..... 2<sup>ND</sup> DEFENDANT**

**RADIO AFRICA GROUP..... 3<sup>RD</sup> DEFENDANT**

**MAINA KAGENI..... 4<sup>TH</sup> DEFENDANT**

**DANIEL NDAMBUKI ..... 5<sup>TH</sup> DEFENDANT**

**ROYAL MEDIA SERVICES LIMITED.....6<sup>TH</sup> DEFENDANT**

**SWALE MDOE..... 7<sup>TH</sup> DEFENDANT**

**MEDIA MAX LIMITED ..... 8<sup>TH</sup> DEFENDANT**

**ALPHONCE OLADIPO ..... 9<sup>TH</sup> DEFENDANT**

**BUNI LIMITED ..... 10<sup>TH</sup> DEFENDANT**

**NATION MEDIA GROUP ..... 11<sup>TH</sup> DEFENDANT**

**MOSES NGURE .....12<sup>TH</sup> DEFENDANT**

**RULING**

1. On 2<sup>nd</sup> July 2015, this court dismissed the Plaintiff's suit for want of prosecution on the application of the Defendants. The Plaintiff has now taken out the motion dated 21.07.2015 pursuant to the provision of order 12 rule 7 of the Civil Procedure Rules seeking to have the aforesaid order set aside. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions.
2. I have considered the rival written submissions. I have further considered the grounds set out on

the face of the motion and the facts deponed in the affidavits filed in support and against the motion.

3. The Plaintiff put forward two main grounds in support of the motion. First, it is the submission of the Plaintiff that this court fell into error when it failed to take into account the fact that in this suit the pre-trial directions and conferences under order 11 of the civil Procedure Rules had not been complied with by either party hence the suit was not ripe for dismissal. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants hereinafter, referred to as the Defendants did not address this court over this submission. I have on my part perused the court record and it is apparent that what the Plaintiff has pointed out is correct. In other words, none of the parties has complied with the provisions of Order 11 of the Civil Procedure rules. In my humble view, the fact that none of the parties has not complied with the aforementioned provision is not a bar to the Defendants taking the necessary steps to have the suit dismissed for want of prosecution. Under Order 27 of the Civil Procedure Rules. I therefore find the reason advanced by the Plaintiff not plausible.
4. The second ground put forward by the Plaintiff is that this court inadvertently failed to take into account the fact that the fact that Plaintiff had filed a replying affidavit sworn on 22<sup>nd</sup> May 2005. The Defendants did not specifically acknowledge nor deny the allegation that the Plaintiff filed a replying affidavit but they merely stated in their response that the averment is wrong and misconceived. I have re-examined this court's ruling and also perused the record and it is clear to me that, indeed, there was on record a replying affidavit which this court inadvertently did not acknowledge its filing. I have now reconsidered its contents.
5. The replying affidavit explains in detail the reasons or grounds for the delay in bringing the suit to hearing. It is trite law that where a response to an application has been filed, the court is enjoined to consider the same despite the Respondent's absence from court. With respect, I agree with the Respondents' argument that the inadvertent error prejudiced this court's mind in deciding the application against the Plaintiff. Had the court been informed of the existence of the Plaintiff's replying affidavit the court's decision would have been different. For this reason alone, I am convinced that the motion has merit. I am satisfied that the Plaintiff had advanced valid and legitimate reasons to explain the delay in prosecuting this case.
6. On the basis of the above ground, I find the Plaintiff's motion to be well grounded. It is allowed as prayed with costs abiding the outcome of the suit. In other words the order dismissing the suit is set aside. The suit is ordered reinstated but the same should be expeditiously prosecuted.

**Dated, Signed and Delivered in open court this 17<sup>th</sup> day of November, 2015.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant