

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HCCC NO. 460 OF 2010

SBA TECHNOLOGIES INC.....PLAINTIFF

VERSUS

NATION MEDIA GROUP LTD.....DEFENDANT

AND

HCCC NO. 461 OF 2010

JULIUS MWALE.....PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED.....DEFENDANT

RULING

The Defendant in both suits is the same and has pleaded that both suits are based on defamation and on the same publication. In fact Counsel for the Defendant intimated that the Plaintiff in HCCC NO. 461 OF 2010 is the Director of the Plaintiff Company in HCCC NO. 460 OF 2010. In both suits the Defendant has filed an application by **Notice of Motion dated 26th March 2015** (filed on **30th March 2015**) for an order to dismiss the Plaintiff's suit with costs for want of prosecution brought under **Order 17 Rule 2(3)** of the **Civil Procedure Rules** (the **Rules**). For purposes of this ruling, the two applications are consolidated and the outcome shall apply to both suits. Under that rule, if within one year in any suit, no application has been made or step taken by either party, any party to the suit may apply for its dismissal and if cause is not shown to the Court's satisfaction, it may dismiss it.

The applications are supported by the affidavit of one **SEKOU OWINO**, the Defendant's head of legal and training.

The applications have not been opposed by the Plaintiffs despite service upon them. The Plaintiffs' suit being in defamation must have been filed with the intention of having their good names and reputation vindicated as soon as possible. That was on 11th October 2010. By 30th March 2015 when the present applications were filed it was exactly 5 years later. Surely they ought to have been keener to prosecute their suits.

It has been asserted in both applications that the Defendant has never been served with summons to enter appearance. The delay in prosecuting is 3-4 years in both cases.

There is no explanation offered as no papers were filed in response to the applications to explain the inordinate delay. It appears to me that the Plaintiffs simply lost interest in the suits.

I am satisfied that the long delay in prosecuting these defamation suits will render a fair trial of the actions impossible. The Defendant will be prejudiced, and the suits should not be allowed to continue hanging over its head.

In the circumstances I will allow the application. The Plaintiffs' suits are dismissed with costs for want of prosecution. It is so ordered.

Dated and delivered at Nairobi this 8th day of December, 2015.

A.MBOGHOLI MSAGHA

JUDGE