



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO 719 OF 2006

CHARLES KASISI & 10 OTHERS.....PLAINTIFF/RESPONDENTS

VERSUS

KENYA BROADCASTING CORPORATION.....DEFENDANT/APPLICANT

RULING

1. The application before this Court is a Notice of Motion dated 18th December, 2013 brought under Order XVI Rule 5(a) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act. The applicant seeks for the following orders:-
 - i. **THAT** the suit herein against the Defendant be dismissed for want of prosecution.
 - ii. **THAT** the Honorable Court be pleased to give such further or other orders as it may deem fit and just to grant.
 - iii. **THAT** the costs of this application be borne by the Plaintiffs/Respondents.
2. The application is grounded on the following grounds:-
 - a. That the Plaintiffs/Respondents have failed, neglected and/or otherwise failed to take any steps to prosecute the same for a period of over twelve (12) months since this matter was last in Court on 22nd March, 2012.
 - b. That there has been an inordinate delay by the Plaintiffs in fixing the matter for hearing which is likely to occasion the Defendant great inconvenience and prejudice.
 - c. That justice must not be delayed.
 - d. That litigation must come to an end.
3. The application is supported by the affidavit of Margaret Ochieng sworn on 18th December, 2013 the Senior Legal Officer of the Defendant/Applicant. She reiterates the grounds on the face of the application and further deposes that the suit was originated by way of the Plaint dated 6th July, 2006 and was last in Court on 22nd March, 2012 which is more than a year ago; that it is apparent that the Plaintiffs/Respondents are not keen on prosecuting their claim and are totally disinterested in the same and therefore dismissal of this suit will not occasion them any prejudice whatsoever; that justice must not be delayed and litigation must come to an end.
4. The application was opposed and the respondent filed their grounds of opposition dated 14th May 2014. The plaintiff/respondent argued that the application was premature as parties are yet to comply with Order 11 of the Civil Procedure Rules; that the matter has been previously taken out of the cause list by the Court on various occasions i.e. the 8th February, 2011 and on the 22nd March, 2012 and that the matter is yet to be transferred to the Industrial Court for hearing in

accordance with Article 162(2) (a) of the Constitution.

5. The application came for hearing on 20th May 2014 and counsel for the parties made oral submissions. Mr. Obondi argued that a period of over one year has lapsed since the matter was last in Court and no step has been taken to deal with the suit; He argued that the suit was filed in 2006 and it is 8 years since and the defendants are incurring unnecessary costs keeping vigil on the matter. The plaintiff has exhibited the lack of interest in prosecuting the case and is therefore just that the same be dismissed with costs to the defendant/applicant.
6. M/s Guserwa argued that the application is premature ;that they had been ready to proceed under the old regime but with the new rules both parties are yet to comply with provisions of Order 11 which are mandatory; that the record will show the matter was taken out twice; that the matter involves termination of employment and therefore it should be directed to the right Court.; that the applicant's application is laced with malice and not made in good faith and that the same should be dismissed; she argued that the matter should be placed before an Industrial Court judge for directions.
7. Mr. Obondi in response argued that the grounds of opposition are a further demonstration of the plaintiff/respondent's indolence; he argued that Order 54 rule 2 can't come to prejudice the matter and that the plaintiff s haven't served them with the documents they claim to have filed and that there is no requirement that they comply with Order 11 before such an application is filed. In regards to Article 162 2 (a) he argued that it gives Parliament power to establish the Industrial Court but his reading of that Article 22 he understanding was that the Article states that the Court handling the case will determine it. He further argued that the plaintiff has to make relevant application to have the said file transferred to the Industrial Court and that was no merit in the respondent's ground of opposition.
8. I have considered the affidavits , grounds and submissions of by both parties and find as follows. I have confirmed from the Court record that the matter was taken out of the cause list on the 8th February, 2011 and on 22nd March, 2011 due to shortage of judges in the Civil Division. Parties are yet to comply with Order 11 of the Civil Procedure Rules 2010 on pre-trial directions. This is a claim on unlawful dismissal from employment. Under Article 162 (2) (a) and (b) of the Constitution it was provided that Courts could be set-up with the status of the High Court to hear and determine disputes relating to employment and labor. The defendant/applicant raised the issue of transfer of suit to the Industrial Court. Section 18 of the Civil Procedure Act provides;

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage

- a. ***transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same;”***

It is clear from Article 162(2) (a) and (b) that the Industrial Court has the same status as the High Court and is not subordinate to it. Since the High Court, by dint of Section 18 of the Civil Procedure Act, can transfer a case to a court subordinate to it, in my view under section 1A,1B and 3A that the High Court has powers to transfer this suit to the Industrial Court, but in my view an application should be made for the transfer of the suit to the Industrial Court. It is important to note that either party can make this application before the relevant Court. Lastly this is such an old matter its 8 years yet to take off for hearing. The parties herein should comply with Order 11 of the Civil Procedure Rules within 30 days from the date of this ruling and take a date for pretrial conference, preferably at the Industrial Court . I therefore decline to grant the orders sought . Costs in the cause.

Orders accordingly.

Dated, signed and delivered this **18th** day of **July** 2014.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Plaintiff/Respondents

.....For the Defendant/Applicant

.....Court clerk