



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 212 OF 2009**

ZEDEKIA KIPROP BUNDOTICH & TWO OTHERS .....PLAINTIFFS

VERSUS

NATION MEDIA GROUP LIMITED & ANOTHER .....DEFENDANTS

**RULING**

This suit was filed on 17<sup>th</sup> April, 2009. Upon service, the defendants entered appearance on 4<sup>th</sup> June, 2009 followed by a defence filed on 19<sup>th</sup> June, 2009. The plaintiffs filed a reply to the said defence on 14<sup>th</sup> July, 2009. The record before me shows that no other step has been taken to facilitate the determination of this suit.

On 29<sup>th</sup> May, 2014 the defendants filed an application under Order 17 Rule 2(3), Order 51 Rule 1 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act for orders that the plaintiffs' suit against the defendants be dismissed for want of prosecution and the costs of the application and the suit be awarded to the defendants.

The grounds upon which the said application was made are that the plaintiffs' advocate has never and or failed to set down the suit for hearing since the close of the pleadings; the plaintiffs have lost interest in prosecuting the suit, and that in the interest of justice this application should be allowed. The application is supported by an affidavit sworn by the advocate for the defendants.

Order 17 Rule 2 (1) of the Rules provides that, in any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed. If cause is not shown to its satisfaction the court may dismiss the suit. Order 17 Rule 2(3) provides that any party to the suit may apply for its dismissal as provided in sub- rule 1.

The defendants herein gave notice and served the plaintiffs' counsel with the application herein. An affidavit of service sworn on 28<sup>th</sup> October, 2014 has been filed. I am satisfied that the plaintiffs have not taken any step from the time they filed a reply to the defence on 14<sup>th</sup> July, 2009. It is over 5 years now since the last step was taken and there is no reason why this suit should be sustained.

It is clear the plaintiffs have lost interest in the matter. Accordingly, this application is allowed, the consequence of which is that the suit is dismissed with costs both of the application and the main suit.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 26<sup>th</sup> day of November, 2014.*

**A. MBOGHOLI MSAGHA**

**JUDGE**

