



REPUBLIC OF KENYA

High Court at Mombasa

Civil Suit 109 of 2001

1. ALHAJI MOHAMMED OMAR MASUMBUKO

2. FREIGHT FORWARDERS LTD.....PLAINTIFFS

VERSUS

1. SAM AOLA OOKO

2. THE EDITOR AGENCE FRANCE PRESSE

3. AGENCE FRANCE PRESSE

4. KENYA BROADCASTING CORPORATION.....DEFENDANTS

Coram:

Mwera J.

Chakera for Plaintiffs

Jilani for Defendants

Court Clerk Furaha

RULING

In the notice of motion dated 25th June, 2012, the 4th defendant corporation placed before this court under section 46 Kenya Broadcasting Corporation Act (Cap. 221), the Act, section 3A of the Civil Procedure Act and Order 17 rule 2 and Order 51 rule 1 of Civil Procedure Rules the following prayers:

- (i) that the suit herein be dismissed as per Order 51 rule 1 Civil Procedure Rules;
- (ii) that the suit be struck out for want of prosecution;
- (iii) costs against the plaintiffs.

It was stated that the plaintiffs had not complied with section 46 of the Act and they had not taken any steps since 16th September, 2010 to fix the suit for hearing. All that was taken to be prejudicial to the 4th defendant.

It was averred in the supporting affidavit that the plaintiffs did not comply with section 46 aforesaid by serving a notice on the applicant's managing director and thus the applicant was non-suited.

In their replying affidavit sworn by the 1st plaintiff, the plaintiffs stated that there had been no delay in prosecuting this suit. That on 16th September, 2010 the 4th defendant's advocate did not show up before

court. Seemingly, instructions to him were withdrawn and the present one, Mr. Jilani came on board. As regards serving statutory notices the plaintiffs exhibited copies of letters dated 4th and 8th February, 2001 addressed to the 4th defendant's managing director before the suit was filed on 6th March, 2001. (annexures AMOM 2, 3).

Directed to submit, each side stuck to its position. After duly going over the plaint and the defence plus the affidavits herein, this court is disinclined to dismiss this suit for want of prosecution. It is of such a nature as to require investigation of the claim by way of evidence at a trial. Evidence will also be led as to whether the two letters of 4th and 8th February, 2001 constituted or did not constitute valid statutory notices under section 46 of the Act.

In sum, the application herein is dismissed. Each side will bear its own costs. Parties have thirty (30) days to file/serve witness statements, bundles of paginated documents and issues ready for trial.

Delivered on 30th October, 2012.

J. W. MWERA

JUDGE