



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 789 OF 2007**

**EMMANUEL ABUNG'ANA LUBEMBE.....PLAINTIFF**

**-VERSUS-**

**AFYA CO-OPERATIVE SOCIETY LIMITED.....1<sup>ST</sup> DEFENDANT**

**NATION MEDIA GROUP LIMITED.....2<sup>ND</sup> DEFENDANT**

**THE STANDARD GROUP.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The parties herein were issued with notices to show cause under Order 17, Rule 2 of the Civil Procedure Rules, on 11<sup>th</sup> March, 2019 requiring them to give reasons why the suit ought not to be dismissed for want of prosecution.

2. In reply, the affidavit sworn by *Judy Madhana* was filed on 31<sup>st</sup> May, 2019. Therein, the said deponent has urged this court not to dismiss the suit for the following reasons:

*a) The firm of advocates representing the plaintiff had previously filed an application to cease acting in the matter on 11<sup>th</sup> October, 2017.*

*b) The aforesaid application is yet to be heard as the court file was reported as having gone missing.*

*c) It would be in the interest of justice to have the application allowed prior to dismissing the suit.*

3. I have duly considered the averments laid out hereinabove. I have also perused the court record which shows that the suit was filed on 23<sup>rd</sup> November, 2007. It is also clear from the record that the said suit proceeded for hearing though it would appear only the plaintiff gave evidence sometime in 2015. The record indicates that the suit was last in court on 13<sup>th</sup> October, 2017 though there is no indication of what transpired on the said date.

4. It is my observation that an earlier notice to show cause was issued on 28<sup>th</sup> September, 2017 against the parties. When the same came up in court on 13<sup>th</sup> October, 2017 it was noted that the plaintiff's advocates had filed the Motion to cease acting on the basis of lack of proper instructions from the client. It is apparent that the said Motion is yet to be heard or determined.

5. The plaintiff's advocate, *Judy Madhana*, deponed that it was not possible to prosecute the application as the court file had gone missing.

6. I have gathered from the court file that the matter was last active in court on 13<sup>th</sup> October, 2017; no explanation has been given for the dormancy. Needless to say that I acknowledge the application to withdraw from acting and in the circumstances find it reasonable to grant the advocates an opportunity to prosecute the said application prior to making a determination on the notice to show cause.

7. Consequently, I make the following orders:

a) The plaintiff's advocates shall have their application dated 11<sup>th</sup> October, 2017 set down for hearing within 14 days from today after which the court shall give directions as to the hearing of the matter.

**Dated, signed and delivered at NAIROBI this 4<sup>TH</sup> day of July, 2019**

.....

**L. NJUGUNA**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the 1<sup>st</sup> Defendant

..... for the 2<sup>nd</sup> Defendant

..... for the 3<sup>rd</sup> Defendant