



**REPUBLIC OF KENYA**

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

**CIVIL CASE NUMBER 561 OF 2011**

**AUGUSTINE KIMANTIRIA NTHIGA.....PLAINTIFF**

**VERSUS**

**BARAZA LIMITED T/A**

**KENYA TELEVISION NETWORK.....1<sup>ST</sup> DEFENDANT**

**MOHAMMED ALI.....2<sup>ND</sup> DEFENDANT**

**DENNIS ONSARIGO.....3<sup>RD</sup> DEFENDANT**

**RULING**

The matter herein was first listed for Notice to Show Cause why it should not be dismissed for want of prosecution on the 11<sup>th</sup> October, 2019 when both counsels sought leave to file their respective affidavits in response to the Notice to Show Cause.

It was mentioned on the 31<sup>st</sup> October, 2019 by which time counsel for the plaintiff had already filed the affidavit but counsel for the defendants informed the court that he did not wish to file any.

The court has perused the affidavit as filed and has also gone through the record of the proceedings. In the said affidavit sworn by one Josephine Kyalo, his advocate on record, the deponent avers that the plaintiff is still interested in pursuing the matter. She avers that the defendants are to blame for the delay in that they only complied with the pre-trial directions on the 19<sup>th</sup> February, 2019 when they filed a witness statement and list of documents.

Counsel for the plaintiff depones that, now that the defendants have complied, she is ready to move the case forward. He has urged the court not to dismiss the suit.

The court has considered the affidavit aforesaid and the contents thereof. I note that the suit was last in court on the 6<sup>th</sup> day of May, 2014 when none of the parties appeared in court. When the matter came up in court on the 18<sup>th</sup> February, 2014, counsel for the plaintiff asked for time to file additional witness statements but to date none has been filed.

On the part of the defendants, the list and bundle of documents were filed on the 19<sup>th</sup> February, 2019 but since then, the pre-trial directions have not been taken.

Though the plaintiff has blamed the defendants for their failure to comply with pre-trial directions, the court also notes that the plaintiff has not been active in pushing the matter forward. However, in the interest of justice, the court will spare the suit and order that it be prosecuted within six months from the date of this ruling failing which, it shall stand dismissed.

**Dated, signed and delivered at NAIROBI this 7<sup>th</sup> day of November, 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