

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 540 OF 2012

MEDIA COUNCIL OF KENYA.....PLAINTIFF/RESPONDENT

VERSUS

ERIC ORINA.....DEFENDANT/APPLICANT

RULING

1. The application dated 31st January, 2017 seeks the following of orders:

1. That this suit be dismissed with costs for want of prosecution.

2. That this suit has abated.

3. That costs of this application be provided for.

2. It is stated in the supporting affidavit that the suit herein was filed on 1st November, 2012, yet to date the Applicant has not been served with Summons to Enter Appearance. That simultaneously with the filing of the suit, the Respondent filed an application seeking orders of temporary injunction but the application was dismissed with costs. That the Respondent has not bothered to prosecute the matter, which is prejudicial to the Applicant. The Applicant's contention is that the suit has abated for failure to serve summons for over four years.

3. The application is opposed. It is stated in the replying affidavit that the delay was caused by an internal crisis as the Respondent had no sitting Board of Directors for about two years. It is stated that the Respondent therefore had no capacity to issue instructions to its advocates. It is the Respondent's position that it's still interested in this suit but no defence has yet been served but will press on with the suit. The Respondent further blames the delay on the unavailability of the court file.

4. The Applicant filed a supplementary affidavit and decried the lack of documents in support of any crisis at the Respondent's Board. It is averred that no summons were taken out and a request for interlocutory judgment was made. It is further contended that the letter requesting for the file have been backdated and that, in any event, there is a procedure for reconstruction of court files.

5. The application was canvassed by way of written submissions which I have duly considered.

6. While perusing the proceedings herein to draft the ruling, I have noted that following the ruling by Hon. D. A. Onyancha J, on 8th June, 2016 the suit was dismissed by Hon Mbogholi, J (See page 9 of the proceedings). Consequently, there is no suit to be dismissed herein. I therefore strike out the application dated 31st January, 2017 with costs.

Date, signed and delivered at Nairobi this 16th day of May, 2018

B. THURANIRA JADEN

JUDGE