

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 183 OF 2010 CONSOLIDATED WITH CIVIL SUIT NO. 184 OF 2010

NEWTON OMONDI OSIEMO.....PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED.....DEFENDANT

RULING

1. On 26th March, 2018 the Court served the parties herein with a Notice in Civil Suit No. 183 of 2010 to Show Cause why the suits should not be dismissed for want of prosecution. The Notice was listed for 13th April, 2018 and pursuant to the court 'directions, the Plaintiff filed a Replying Affidavit dated 27th June, 2018 sworn by the Plaintiff's Advocate Owino Opiyo in response to the notice.

2. It is deponed that on 24th August, 2012, the parties herein recorded a consent to have the instant suit consolidated with HCCC No. 184 of 2010. That since then, there has been a confusion as to the lead file after consolidation but according to the Plaintiff's records, the Plaintiff all along dealt with HCCC No. 184 of 2010, and HCCC No. 183 of 2010 was all along brought with it. The Plaintiff has enumerated the steps taken in HCCC 184 of 2010 in an effort to have the suit heard.

3. I have considered the Affidavit of the Plaintiff and I have also perused the court record. There is a letter of consent dated 16th August, 2012 and filed on 24th August, 2012 consolidating HCCC NO. 183 of 2010 and HCCC NO. 184 of 2010. From the annexures to the Replying Affidavit, it is evident that the plaintiff has been dealing in the believe that HCCC 184 of 2010 was the lead filed. This is so because the letters annexed only refer to HCCC NO. 184 of 2010. Since the two files were consolidated, it would have been proper for the Plaintiff to refer to them as HCCC 183 of 2010 as Consolidated with HCCC 184 of 2010. The plaintiff however depones that the mistake in failing to indicate that the files are consolidated was an honest one on their part.

4. As deponed in the Replying Affidavit and after careful consideration of the events and correspondences in this matter, I find that the actions in HCCC NO. 184 of 2010 were intended to apply to HCCC 183 of 2010 pursuant to the consolidation order. Order 17 Rule 2 (2) of the Civil Procedure Rules, 2010 empowers this court to absorb a party who provides a satisfactory explanation as to why the suit should not be dismissed. It is provides that "***If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.***"

5. I have considered the Plaintiff's explanation and I find that no prejudice will be suffered by the Defendant if the suit is not dismissed. Therefore, in the interest of justice, it would be just and fair to grant the Plaintiffs a chance to prosecute their cases.

6. Since this is a long outstanding matter having been filed in the year 2010, there is need to have the same prosecuted expeditiously and I do order that the suit be prosecuted within the next 120 days from the date of this ruling failure to which it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 20th day of **September, 2018**

.....

L. NJUGUNA

JUDGE

In the presence of:

.....***For the Plaintiff***

.....***For the defendant***