

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 279 OF 2009

JOHN MWANGI KINGORI.....PLAINTIFF/RESPONDENT

-V E R S U S -

NATION MEDIA GROUP LIMITED DEFENDANT

RULING

1. Nation Media Group Ltd, the defendant herein, took out the motion 30th June 2015, whereof it sought to have the suit filed by John Mwangi Kingori, the plaintiff herein dismissed for want of prosecution. The motion is supported by the affidavit of Zehrabanu Jahnmoamed. When served with the motion, the defendant filed a replying affidavit he swore to resist the motion.

2. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have too considered the rival oral submissions. It is the submission of the defendant that the plaintiff and his counsel have failed to set down this suit for hearing since the 27th day of September 2012. This court was beseeched to find that the plaintiff has lost interest in pursuing this suit. It is argued that the continued pendency of this suit is prejudicial to the defendant because its witnesses may leave employment and that others may forget important piece of evidence.

3. In response to the defendant's arguments, the plaintiff urged this court to spare the suit. He stated that he has never lost interest of the case. He pointed out that he has filed all the relevant documents hence this case is not ready for hearing except that the defendant has not complied with the provisions of Order 11 of the Civil Procedure Rules.

4. It is the submission of the plaintiff that it has been difficult for the Deputy Registrar of this court to fix the suit for hearing because the defendant had failed to comply with the provisions of Order 11 of the Civil Procedure Rules. The plaintiff attached to the replying affidavit the correspondences made by the Deputy Registrar indicating that the suit was not ready for hearing. The defendant did not deem it fit to controvert the averments made on affidavit. The defendant has not denied that it has never complied with Order 11 of the Civil Procedure Rules. What emerges from the detailed replying affidavit is that this suit cannot be fixed for directions nor hearing unless parties comply with pre-trial procedures. It is apparent that the defendant has not done so. I find that the plaintiff has given plausible explanation as to why the suit has not been listed for hearing.

5. In the end the motion dated 30.6.2015 is found to be without merit. It is dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered in open court this 10th day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant