

ROYAL MEDIA SERVICES LIMITED..... PETITIONER

AND

THE ATTORNEY GENERAL..... 1ST RESPONDENT

MINISTER OF INFORMATION AND BROADCASTING..... 2ND RESPONDENT

THE COMMUNICATION COMMISSION OF KENYA..... 3RD RESPONDENT

RULING

1. The issue for consideration in this decision is whether this matter; *Nairobi Petition No. 346 of 2012, Royal Media Services Ltd v Attorney General, Minister of Information and Broadcasting and the Communications Commission of Kenya* should be consolidated with *Nairobi HC Misc. Civil Appl. 284 of 2011, Magic Radio Ltd v. Communications Commission of Kenya* and *Nairobi Petition No. 244 of 2011, Media Owners Association v Attorney General, Ministry of Information and Communication and the Communication Commission of Kenya* as prayed in the petition's chamber summons dated 13th August 2012.
2. The petitioner seeks to consolidate the three suits on the basis that the overriding objective of civil procedure demands that the court should take such steps to facilitate expeditious, just, proportionate and affordable resolution of disputes.
3. I have considered the pleadings in all the matters, the written submissions filed on behalf of the 1st and 2nd respondents and 3rd respondent who oppose the application for consolidation. I agree with the counsel for the petitioner that all the cases raise important issues concerning the construction of **Article 34** of the Constitution regarding the freedom of the media within the context of the Constitution. But in my view this fact of itself is not the reason to allow an order for consolidation.
4. What is in issue in each case is the nature and extent of the application of the fundamental rights and freedoms protected by the Constitution. Each case arises from a specific set of facts in which the court will be required to consider the applicability of **Article 34** and other provisions of the Constitution. The *Petition No. 346 of 2012* is about the alleged illegal use by the petitioners of frequencies allocated to it and the attempt by the 3rd respondent to deal with the petitioner's alleged infractions. *HC Misc. Application No. 244 of 2011* and *HC Misc. Civil Appl. 284 of 2011* deal with broadcasters generally and the transition to a new regulatory framework triggered by a notice published by the 3rd respondent to that effect and whether such regime is consistent with the Constitution.
5. The primary responsibility of the court is to resolve the dispute based on the facts presented to it by application of the law. Application of the provisions of the Constitution to the specific facts may yield a different result because of the peculiarities of each case. In the circumstances, I take the position that given the specific facts applicable in each case, an order for consolidation may lead to a situation where the facts may be confused, proceedings convoluted and ultimately the issues for determination obscured. This will in turn lead to delay of the proceedings with the result that the overriding objective, which the petitioner has alluded to, is undermined.
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