

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

\*\*\*\*\*

|                     |   |             |
|---------------------|---|-------------|
|                     | * |             |
| SALA NAAMBWE and    | * | CIV 17-4123 |
| YVETTE NIMENYA,     | * |             |
|                     | * |             |
| Plaintiffs,         | * |             |
|                     | * |             |
| vs.                 | * | ORDER       |
|                     | * |             |
| JOHN MORRELL & CO., | * |             |
|                     | * |             |
| Defendant.          | * |             |
|                     | * |             |

\*\*\*\*\*

The Court trial in this matter commenced on October 23, 2018, with counsel and the parties present. During the opening of the trial, the Court was advised by Plaintiffs’ counsel that both Plaintiffs wished to address the Court as they wanted to have different counsel. Plaintiffs’ counsel requested a continuance, followed by a motion to withdraw as counsel. The Plaintiffs after opening statements personally addressed the Court and advised the Court they were dismissing their lawyer. The Court found that the dismissal of Plaintiffs’ counsel was without good cause but was not for the purpose of delay. Defendant’s attorney requested a dismissal of the case with prejudice. The Court denied the motion for dismissal of the case with prejudice and then denied the alternate motion to dismiss without prejudice. A dismissal without prejudice would have the effect of a dismissal with prejudice due to the jurisdictional requirement for a right to sue letter. A second right to sue letter would not satisfy that jurisdictional requirement, thus being the end of the case. *Engberg v. Atchison Railway Co.*, 820 F.Supp. 558 (D. Kansas 1993).

After further discussion with counsel, the Court ordered Plaintiffs to obtain substitute counsel on or before January 1, 2019, and advised the parties that as a sanction to the Plaintiffs the case would be administratively closed until new counsel made an appearance and cause was shown to reopen the case. The Court also advised that if no new counsel appeared of record for the Plaintiffs by January 1, 2019, the Court would then consider a motion to dismiss the case. If new counsel

timely appears of record, a new trial date will be set for later in 2019. Accordingly,

IT IS ORDERED:

1. That Defendant's motion to dismiss the action with prejudice is denied as is the motion to dismiss without prejudice.
2. That Plaintiffs' counsel is allowed to withdraw from further representation.
3. That Plaintiffs shall obtain substitute counsel on or before January 1, 2019.
4. That the case is administratively closed.
5. That substitute counsel may move for the case to be reopened from its administratively closed status. The right to sue letter and all pleadings do remain in full effect.


Dated this 23<sup>rd</sup> day of October, 2018.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:  
MATTHEW W. THELEN, CLERK

BY:   
Deputy