



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 3 OF 2014**

**DADO GADDAE GODHANA.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**PRINCIPAL SECRETARY-MINISTRY**

**OF INTERIOR AND COORDINATION OF**

**NATIONAL GOVERNMENT.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**SERGEANT ANDOLO MUNGA.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**RULING**

1. The background of this matter is that the plaintiff/respondent filed a plaint dated 14<sup>th</sup> January, 2014 seeking for judgment against the defendants in the form of both special and general damages for malicious prosecution and defamation, together with costs and interest thereon.

2. The suit proceeded for hearing ex parte when the defendants/respondents failed to turn up for the hearing of the case. Consequently, the matter is pending judgment.

3. The applicants have now filed the Notice of Motion dated 13<sup>th</sup> March, 2019 in which they sought for inter alia:

***i. Spent.***

***ii. Spent.***

***iii. THAT this Honourable Court be pleased to grant a stay of the delivery of judgment scheduled for 15<sup>th</sup> March, 2019.***

***iv. THAT this Honourable Court be pleased to recall the plaintiff/respondent for the purpose of cross-examination by the defendants/applicants.***

***v. THAT this Honourable Court be pleased to set aside and/or review the orders made on 26<sup>th</sup> February, 2019 and any previous orders against the defendants/applicants.***

***vi. THAT in the alternative, the defendants/applicants be granted leave to file written submissions.***

***vii. THAT the costs of the application be in the cause.***

4. The applicants filed the affidavit of Eve Mbeda in support of the motion. The deponent by and large stated that the applicants' counsel only became aware that the matter had proceeded ex parte when they were served with a mention notice indicating that the matter had been slated for mention on 26<sup>th</sup> February, 2019 to confirm filing of submissions.

5. It is also the deponent's averment that the mention notice was served only one (1) day before the scheduled mention, which amounted to insufficient notice, adding that the applicants' defence raises triable issues and that they stand to suffer irreparable loss if the orders sought

are not granted.

6. On his part, the respondent filed Grounds of Opposition arguing that the application is an abuse of the court process and that the applicants' advocate had ignored previous notices to attend court.
7. I have considered the grounds stated on the face of the Motion and the facts deponed in the affidavit in support plus the Grounds of Opposition and the oral arguments made by the respective counsels.
8. It is the submission of M/s Mbeda learned counsel for the applicants that the advocate who previously handled the matter left the 3<sup>rd</sup> applicant's employment, hence the failure on the part of the applicants to attend court on the material hearing date.
9. In his opposing arguments, Mr. Chenge learned advocate for the respondent submitted that a hearing notice was served upon the applicants hence no sufficient reason has been given for their failure to attend the hearing of this case.
10. The record shows that when the matter came up for pre-trial directions on 19<sup>th</sup> February, 2018, the suit was certified as ready for hearing and parties were directed to obtain a hearing date from the registry.
11. It would appear the respondent took the said date ex parte and thereafter, served the 3<sup>rd</sup> applicant with a hearing notice. There is an affidavit of service to confirm this and the hearing notice bears the stamp of the 3<sup>rd</sup> applicant.
12. From the foregoing, it is clear that the applicants were at all material times aware as to the date of the hearing but did not turn up in court. In my view, the reason offered by the said applicants for failing to attend the hearing is insufficient.
13. In any case, the 3<sup>rd</sup> applicant was yet again served with a mention notice on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> applicants, albeit on a short notice. If at all they were keen on participating in the suit, they ought to have attended court and raise their concerns at the earliest opportunity.
14. In the premises, I find no good reason to review the orders made and/or re-call the respondent for cross-examination.
15. However, in the broad interest of justice, I will grant the applicants an opportunity to put in their written submissions and therefore defer the court's scheduled delivery of judgment to a later date.
16. Consequently, prayer (vi) of the Notice of Motion is allowed. The applicants are granted three (3) days within which to file and serve their written submissions. The judgment is hereby deferred to enable the applicants comply accordingly. The respondent shall have the costs of the application.

**Dated, Signed and Delivered at Nairobi this 27<sup>th</sup> day of March, 2019.**

.....

**J.K. SERGON**

**JUDGE**

**In the presence of:**

.....**for the Plaintiff/Respondent**

.....**for the Defendants/Applicants**