



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 55 OF 2013

LUCY WAMBUI MAINA.....PLAINTIFF

-VERSUS-

THE ATTORNEY GENERAL.....1ST DEFENDANT

THE COMMISSIONER OF POLICE.....2ND DEFENDANT

THE DIVISIONAL CRIMINAL INVESTIGATION

OFFICER (CID HEADQUARTERS).....3RD DEFENDANT

P.C. FESTUS KAJOGI ALIAS KAVIVI.....4TH DEFENDANT

JAMES NYAMAI KITIVI.....5TH DEFENDANT

OFFICER IN CHARGE, MUTHAIGA POLICE STATION.....6TH DEFENDANT

R U L I N G

1. This ruling concerns the notice to show cause issued by the court on 5th February, 2019 against the parties, requiring them to show cause as to why the suit should not be dismissed for want of prosecution, since the same was last before court on 16th November, 2017.
2. The Plaintiff has filed a replying affidavit in response, asserting that the matter was certified ready for hearing on 16th March, 2015. That the matter was scheduled for hearing on 28th February, 2016 but it was taken out of the causelist on the said date and parties were directed to take fresh dates at the registry.
3. The Plaintiff also stated that fresh dates could not be obtained since the officials at the court registry indicated that the 2016 court diary was full and they would have to await the opening of the 2017 diary. It is also the plaintiff's averment that she was in and out of the country for the better part of 2017 on official duties, hence her advocate could not fix a hearing date.
4. I have taken into consideration the facts deponed to in the replying affidavit. I have also perused the court record and ascertained that the plaintiff's advocate had sent out an invitation letter for the purpose of fixing a hearing date on 24th November, 2016, though there is no record of the issued date. There is also nothing to indicate that the 2016 court diary was full as at that time.
5. Needless to say, the record reveals that the suit, which constitutes a claim for false imprisonment and malicious prosecution, was screened for mediation and the parties required to appear in court on 16th November, 2017 but that on the said date, the deputy registrar noted that none of the parties were present.
6. While there is evidence of service of the notices for mediation upon the defendants, there is nothing to show that the plaintiff's advocate was served with the said notice, which could very well explain their absence in court on the abovementioned date.
7. That being the case, it is my considered view that the reason given by the plaintiff that she was away has not been supported by any documentation, neither does this adequately explain the inaction in the matter. However, and as earlier stated, the plaintiff had made previous attempts to prosecute her case and also, it was fundamentally upon her advocate to ensure the matter was set down for hearing at the earliest opportunity. It would therefore not do justice to punish the plaintiff for her counsel's inadvertence.
8. Furthermore, given the nature of the claim and the apparent non-service of the notice for mediation upon the plaintiff's advocate, I find it

reasonable to exercise my discretion in favour of the plaintiff.

9. Consequently, the plaintiff is granted 120 days within which to prosecute her suit from today, in default of which the same shall stand dismissed.

Dated, signed and delivered at NAIROBI this 20TH day of JUNE, 2019

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st, 2nd, 3rd, 4th and 6th Defendants

..... for the 5th Defendant