

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 215 OF 2014

LINDA OKELLO.....PLIANTIFF

VERSUS

THE STANDARD MEDIA GROUP.....1ST DEFENDANT

THE NAIROBIAN NEWSPAPER2ND DEFENDANT

PKEMOI NGENOH3RD DEFENDANT

CHARLES OTIENO4TH DEFENDANT

RULING

The plaintiff brought this suit against the defendants jointly and severally, claiming damages for libel following a publication attributed to the defendants which the plaintiff pleaded was negligent and malicious ending by injuring her reputation. She also sought an order for a permanent and mandatory injunction against the said defendants to restrain them from any further publication, and an apology retracting the article complained of.

The record shows that upon service of the summons to enter appearance, the defendants filed a joint statement of defence followed by a reply to the said defence by the plaintiff. After the filing of the plaint, the record shows the plaintiff filed an application for an injunction which was heard by Seron J and a ruling delivered on 8th May, 2015 granting the plaintiff injunctive orders as prayed.

On 5th April, 2018 the defendants herein filed an application by way of Notice of Motion dated 23rd March, 2018 seeking an order that the plaintiff's suit be dismissed for want of prosecution. The said application was brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 17 Rule 2 (3) of the Civil Procedure Rules. It is supported by an affidavit sworn by the advocate for the defendants alongside the grounds set out on the face of the application. The application is opposed and there is a replying affidavit sworn by the plaintiff. Both parties have filed submissions to address the said application.

The defendants have cited Order 17 Rule 2(3) of the Civil Procedure Rules which provides that **“In any suit in which no application has been made or step taken by either party for one year the court may give notice in writing to the parties to show cause why the suit should not be dismissed and if cause is not shown to its satisfaction, may dismiss the suit.”**

Rule 2 (3) provides that **“any party to the suit may apply for its dismissal as provided in sub-rule 1.”** The last entry in the court file was made on 8th May, 2015 when Seron J delivered the ruling cited above. The defendants, it would appear, are therefore within the provisions of Order 17 aforesaid in bringing the present application.

Among the grounds listed for the bringing of this application is that the suit has been certified for hearing, and the plaintiff has failed and or neglected to prosecute the same. The delay in prosecuting the suit is said to be inordinate and inexcusable, showing the plaintiff has lost interest in prosecuting the case and therefore should be dismissed as prayed. The continued presence of the suit is prejudicial to the 2nd defendant as this is a suit for defamation which ought to be prosecuted while the facts and evidence are still fresh.

On the other hand, the plaintiff has countered the application by stating that, in fact the delay cannot be said to be inordinate or inexcusable in the circumstances of this case. I do not deem it necessary to cite the authorities relied on in that submission because in the first place, the defendants have not complied with express provisions of law as set out in Order 7 rule 5 of the Civil Procedure Rules.

Other than the statement of defence filed on behalf of all the defendants, the defendants have not provided any list of witnesses, their written statements duly signed as required, or copies of documents to be relied upon at the trial. These requirements are mandatory. Even if the defendant had complied, parties are required to comply with Order 11 of the Civil Procedure Rules in preparation for the hearing after which the suit is certified ready for hearing.

It is not true therefore that this suit has been certified ready to hearing. The defendants may not be allowed to ride on their default to seek the dismissal of the suit lodged by the plaintiff. Even if compliance had been confirmed, a dismissal of a suit has the effect of driving a party from the seat of justice before a hearing. Decided cases confirm that that is an order that should be made cautiously and only in clear cases.

Some of the submissions advanced by the parties belong to the province of the main trial and therefore need no address at this stage. Having considered the material provided, I am not satisfied that the defendants are deserving of the order sought, and therefore this application is dismissed with costs to the plaintiff. Having observed that the parties have not complied with Order 11 of the Civil Procedure Rules, I direct that this shall be done within 30 days from the date of this ruling so that this matter is certified ready to hearing.

Dated, signed and delivered at Nairobi this 23rd Day of October, 2019.

A. MBOGHOLI MSAGHA

JUDGE