



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 415 OF 2011**

**HON. PETER GATIRAU MUNYA.....PLAINTIFF**

**-VERSUS-**

**NATION MEDIA GROUP LIMITED.....1<sup>ST</sup> DEFENDANT**

**MAINA MUIRURI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This court issued the notice to show cause on 1<sup>st</sup> October, 2019 requiring the parties to show cause as to why the suit should not be dismissed for want of prosecution.
2. *Jackline Kendi* advocate for the plaintiff swore a replying affidavit in response thereto, stating that the last time the parties were scheduled to attend court was on 24<sup>th</sup> September, 2018 and that the plaintiff through his firm of advocates sought for and was granted an adjournment on the said date.
3. The deponent went on to assert that sometime thereafter on 16<sup>th</sup> March, 2019 the plaintiff's firm of advocates invited the defendants' representatives to take a fresh hearing date in the suit and that subsequently, the clerk frequented the registry only to be told that there were no available dates, which explains the delay in prosecuting the suit.
4. On behalf of her client, the deponent urged this court to extend to the plaintiff an opportunity to prosecute his suit, adding that he stands to be gravely prejudiced if the same is dismissed.
5. The advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants, *Zehrabanu Janmohamed*, similarly swore a replying affidavit basically supporting the dismissal of the suit on the ground that it would not be the first time for the suit to be dismissed and further contending that in any event, the plaintiff has not shown any active steps taken in prosecuting his suit or brought forth any evidence to show that the clerk followed up available dates as asserted by the plaintiff's counsel.
6. It was also the deponent's assertion that in the meantime, her clients continue to suffer prejudice since the suit has been in subsistence for over 9 years now.
7. I have carefully considered the facts deponed in the contending affidavits. It is clear from the record that the suit was last scheduled for hearing on 24<sup>th</sup> September, 2018 but did not proceed for the reasons laid out hereinabove. I have also seen a copy of the letter dated 16<sup>th</sup> March, 2019 which confirms that the advocates for the defendants were truly served with an invitation to fix fresh hearing dates.
8. Nevertheless, there is nothing on the record to indicate that either of the parties' representatives actually attended the registry on the scheduled day to fix a hearing date in the suit, neither is there any evidence to support the position that there were no available hearing dates in the court diary.
9. More importantly, the record establishes that the suit had previously been dismissed by the court *suo moto* on 9<sup>th</sup> June, 2016 under the provisions of Order 17, Rule 2(1) of the Civil Procedure Rules; only to be reinstated on 28<sup>th</sup> September, 2017 at the plaintiff's application.
10. Going by the record, it is apparent that the matter was listed for hearing on only two (2) occasions subsequently, both of which times the hearing did not proceed.
11. While I note that this is quite an old matter, I have also taken into account the fact that it is a claim in the nature of defamation which to my mind constitutes triable issues. In the interest of justice, I will exercise my discretion in granting the plaintiff a final opportunity to be heard on his claim.

12. Consequently, the plaintiff shall have 120 days from today to prosecute his suit, failing which it shall stand dismissed.

Dated, signed and delivered at **NAIROBI** this 19<sup>th</sup> day of December, 2019

**L. NJUGUNA**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendants