

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CASE NO. 30 OF 2010

JANE MUGURE MUTHEE PLAINTIFF

VERSUS

MARY WAIRIMU KIARIE1ST DEFENDANT

NATION MEDIA GROUP LIMITED 2ND DEFENDANT

RULING

The plaintiff filed this suit against the defendants for damages following a publication in a newspaper owned by the 2nd defendant. The plaint was filed on 26th January, 2010 and by a defence filed on 8th April, 2010 the 2nd defendant denied the plaintiff's claim. The 1st defendant on the other hand filed her defence on 30th April, 2010. The suit remains pending to date.

By an application dated 14th and filed on 15th June, 2017 the 2nd defendant moved the court for the dismissal of the suit for want of prosecution. The application is brought under Order 17 Rule 2 (3) and Order 51 Rule 1 of the Civil Procedure Rules 2010, Sections 1 A, 1B, and 3A of the Civil Procedure Act. Reasons thereof are set out on the face of the application alongside an affidavit sworn by the advocate for the 2nd defendant. The chronology of dates leading to the filing of the application is set out in the affidavit of the advocate.

There is a replying affidavit sworn by the plaintiff which essentially says that it was difficult to locate the 2nd defendant's advocates for service with court documents leading to delay in prosecuting the matter. The last time this case was in court was 12th February, 2015, that is over 2 years to the date of filing this application.

Counsel for the 2nd defendant has pointed out that the plaintiff was ordered to paginate the documents filed in court but to date no documents have been filed. She also has stated that since the year 2003 they have been in the same office and therefore it cannot be true that the plaintiff failed to locate them.

The provisions of Order 17 Rule 2 are clear and unambiguous. It has been over one year since any action was taken by either party. Rule 2 (3) allows the defendant to take the step taken by the 2nd defendant in the instant application.

For the last seven years this matter has remained undetermined. I agree the delay is inordinate and no excuse has been advanced to justify the same. The plaintiff's counsel was served with a notice for the hearing of the application as well as the 1st defendant who was served by registered post. On the date of the hearing however, the two did not appear. It is clear the plaintiff has lost interest in the suit and the same cannot be sustained. The 1st defendant has not filed any application but there is no reason why the entire suit can be sustained in the circumstances of this case.

Accordingly, the application by the 2nd defendant is hereby allowed and the suit against both defendants is hereby dismissed with costs to the defendants.

Orders accordingly.

Dated, signed and delivered at Nairobi this 22nd Day of February, 2018.

A. MBOGHOLI MSAGHA

JUDGE