



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL SUIT NO. 351 OF 2013

SAMUEL KAZUNGU KAMBI.....1ST PLAINTIFF/RESPONDENT

RIVER OILS COMPANY LIMITED.....2ND PLAINTIFF/RESPONDENT

VERSUS

NATION MEDIA GROUP LIMITED.....DEFENDANT/APPLICANT

RULING

1. The Defendant/Applicant took out the Notice of Motion dated 10th April, 2018 in which it sought for the following orders inter alia:

i. THAT the Plaintiffs suit against the Defendant be dismissed for want of prosecution.

ii. THAT the costs of this application and suit herein be awarded to the Defendant.

2. The Motion is supported by the affidavit of Zehrabanu JanMohamed, the Defendant/Applicant's advocate sworn on 10th April, 2018.

3. The learned advocate averred that the Plaintiffs filed this suit against the Defendant on 27th August, 2013 and that a default judgment was entered against the Defendant on 24th September, 2013.

4. She further averred that an application seeking for the said judgement to be set aside was filed on 21st July, 2014 which application was allowed on 6th May, 2015.

5. She further averred that on 15th September, 2015, the Plaintiffs advocates proposed an out of court settlement and annexed to her affidavit the correspondences between the Plaintiffs and Defendants advocates pertaining the settlement. The proposed amicable settlement never bore any fruit.

6. She averred that the Plaintiffs' advocate have failed to take the necessary steps in prosecuting the suit since December 2015 and she has now beseeched this court to issue an order dismissing this suit for want of prosecution.

7. The Motion is opposed by the Respondents who filed the replying affidavit of Philip Nyachoti, the Plaintiffs/Respondents advocate sworn on 24th May, 2018.

8. He averred that the Respondents had at all times been desirous in prosecuting the matter. He averred that the matter had been allocated to one of the advocates at the firm who left the firm abruptly and did not provide the firm with a status update of the matter.

9. He averred that the file was subsequently allocated to another advocate who also left abruptly before having prosecuted the matter. He submitted that his firm was left with two advocates who were engaged in various election petition proceedings in Nairobi, Lodwar and Turkana respectively.

10. He argued that failure to set a hearing date was not due to lack of interest but an honest mistake which ought not to be visited upon their clients. He beseeched this court to dismiss the application for want of prosecution and instead issue orders to have the matter proceeds to full hearing and determination.

11. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the Motion. Advocates as officers of the court have a responsibility and an obligation to their clients to ensure that they conduct due diligence in prosecuting their client(s) matters.

12. The Plaintiffs/Respondents Advocate have been candid that the cause of delay in prosecuting this suit was his fault. The learned advocate has urged this court not to punish his clients for his mistake. I find the explanation given for the delay in prosecuting this suit to be plausible. This court accepts the explanation and proceeds to excuse the delay.

13. In the interest of justice, the mistakes of an advocate in the circumstances of this case ought not to be visited upon the Plaintiffs.

14. In the end, I decline to grant the orders sought in the motion dated 10th April, 2018. The motion is dismissed with costs abiding the outcome of this suit.

Dated, Signed and Delivered in open court this 16th day of August, 2018.

J.K. SERGON

JUDGE

In the presence of:

..... ***For the Plaintiff***

..... ***For the Defendant***