



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 269 OF 2014

JIMI WANJIGI.....PLAINTIFF/RESPONDENT

VERSUS

TONY GACHOKA1ST DEFENDANT

THE STANDARD LIMITED.....2ND DEFENDANT/APPLICANT

R U L I N G

1. The 2nd Defendant/Applicant took out the Notice of Motion dated 8th September, 2017 in which they sought for the following orders *inter alia*: -

i. The Plaintiff's entire suit instituted by way of plaint dated 1st September, 2014 and filed on 9th September, 2014 be dismissed for want of prosecution.

ii. Costs of this application be borne by the Plaintiff/Respondent.

2. The Motion is supported by the affidavit of Kevin Wakwaya sworn on behalf of the 2nd Defendant/Applicant on 8th September, 2017. The 2nd Defendant/Applicant averred that the Plaintiff instituted the suit vide the plaint dated 1st September, 2014 and filed on the 9th September, 2014 seeking for *inter alia* general and punitive damages for defamation. They averred that the 2nd Defendant/Applicant entered appearance and filed the defences dated 21st November, 2014 and 2nd December, 2014, respectively.

3 They averred that the suit has never been heard and that the Plaintiff has neglected/failed to take steps to prosecute the suit. They averred that it has been about 4 years since the suit was instituted and this may affect the accuracy of the witness testimonies. Some witnesses may have left the employment of the 2nd Defendant hence it would be expensive to procure their attendance.

4. They further averred that there has been an inordinate delay occasioned by the Plaintiff thus demonstrating his lack of interest in prosecuting the suit hence it ought to be dismissed for want of prosecution.

5. The Motion was opposed by the Plaintiff who filed the Replying Affidavit he swore on 14th May, 2018. He averred that he was ready and willing to prosecute the suit and sought for leave to amend the Plaint dated 1st September, 2014.

6. He averred that at all material times, he wanted to consolidate this suit with **Chief Magistrate's Court Case Number 1436 of 2015 (Jimi Wanjigi And Others Versus Tony Gachoka and Others)** as the issues and parties were the same.

7. He also averred that he filed **Civil Appeal Number 277 Of 2015** and **Judicial Review Cause Number 151 Of 2015**: which cases affected the prosecution of this suit herein. He averred that the 2nd Defendant/Applicant will not suffer prejudice in the event the application is dismissed. He urged the court to dismiss the application.

8. The Plaintiff/Respondent in his written submissions dated 27th July, 2018, argued that he was ready and willing to prosecute his suit and sought for leave to amend the Plaint dated 1st September, 2014.

9. He argued that the delay was occasioned by the aforementioned suits which had been filed at the High Court Civil and Judicial Review Divisions. He argued that the 2nd Defendant/Applicant will not suffer any prejudice and urged this court to dismiss the application with costs to the Plaintiff.

10. I have considered the grounds stated on the face of the Motion and the facts deposed in the affidavits and written submissions filed in

support of and against the Motion. I am satisfied that the Plaintiff has explained the reasons for the delay.

11. The court finds that despite there being inordinate delay, the suit warrants merits to be heard in the interest of justice. This application is dismissed with costs abiding the outcome of this suit.

Dated, Signed and Delivered in Nairobi this 28^h day of September, 2018.

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J.K. SERGON

JUDGE

In the presence of:

.....**For the Plaintiff/Respondent**

..... **For the 1st Defendant**

.....**2nd Defendant/Applicant**