

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE 348 OF 2012

BENJAMIN KITUKU.....PLAINTIFF

VERSUS

ABDI ADAN SULEIMAN.....1ST DEFENDANT

THE KENYA MEAT COMMISSION.....2ND DEFENDANT

BARAZA LTD T/A KENYA TELEVISION NETWORK.....3RD DEFENDANT

THE STANDARD LIMITED.....4TH DEFENDANT

RULING

This case is among 19 others filed against several defendants, including the defendants herein, claiming damages for libel. From the material presented the 3rd and 4th defendants raised a preliminary objection contesting the jurisdiction of the High Court to hear and determine the dispute.

The High Court having held that it has jurisdiction to hear the cases, the 3rd and 4th defendants moved to the Court of Appeal which confirmed that, indeed the High Court has jurisdiction. That ruling is contained in Civil Appeal No. 187 of 2013.

There is now before me an application by way of Notice of Motion dated 22nd January, 2018 filed by the 1st defendant seeking the dismissal of the plaintiff's suit for want of prosecution. The application is supported by an affidavit sworn by the advocate for the 1st defendant alongside the grounds set out on the face of the application.

The main ground is that the plaintiff has not taken any steps to prosecute the suit for a period of over 12 months. The application is brought under Section 3A of the Civil Procedure Act and Order 17 Rule 2 (3) of the Civil Procedure Rules. The application is opposed and there is a replying affidavit sworn by the advocate for the plaintiff. Both parties have filed submissions herein which I have noted.

The defendant in an application such as the one before the court, must demonstrate that there has been inordinate delay which is inexcusable. The defendant also has to show that serious prejudice may be visited upon such a defendant by the alleged delay. Each case however must depend on its own peculiar facts.

Dismissal of any suit is a drastic measure which decided cases have repeatedly stated should be invoked cautiously and in very clear and exceptional cases. The reasons are clear. No party who seeks the intervention of a court should be driven from the seat of justice without a hearing. The courts have taken a position of maintaining suits rather than dismissing them except in deserving cases.

It has not been demonstrated by the defendant what prejudice he is likely to suffer if this suit is sustained. At the same time, whereas it is true that for over a year no steps have been taken in the prosecution of this case, the plaintiff has shown through the replying affidavit that after the 3rd and 4th defendants moved to the Court of Appeal on the subject of jurisdiction, and the Court of Appeal made a decision, no information was relayed to him so as to move forward with the prosecution of this case. It would appear therefore the delay has been explained which explanation is plausible and therefore excusable. That being the case, I am inclined to dismiss this application, which I hereby do.

I note that pleadings in this matter have been closed and that the case is due for pre-trial directions. I direct that the parties shall comply with pre-trial directions under Order 11 of the Civil Procedure Rules within 30 days from today to facilitate the hearing of this case. The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 27th Day of September, 2018.

A. MBOGHOLI MSAGHA

JUDGE