

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.430 OF 2012

JOHN KARIUKI KIRUI.....PLAINTIFF

VERSUS

STANLEY GITHU KIBICHO.....DEFENDANT

RULING

The matter herein was on the 11th day of October, 2018 listed for Notice to Show Cause, why it should not be dismissed for want of prosecution.

In response to the Notice, both in this matter and Civil Suit No. 429/2012, Counsel for the plaintiff filed an affidavit sworn on 12th April 2018, by one Kibe Mungai Advocate.

In the said affidavit, he avers that parties to the two suits were negotiating an out of court settlement, as recently as January, 2018. That, at the time of filing the suits, the plaintiffs had been excommunicated as elders of Presbyterian Church of East Africa (hereinafter referred to as P.C.E.A) but as a result of negotiations between the parties in both matters, the plaintiffs were admitted back into the church as elders.

It is averred that, this notwithstanding, they are still eager to prosecute the suit as the said actions by the defendant defamed their character and reputation and neither the defendants nor the church has apologized nor compensated them for the libelous nature of their actions, in not only ex-communicating them but also advertising it in the public notice in the Daily Nation edition of the 21st June, 2012.

That, the actions of the defendant besmirched the reputation of the plaintiffs and they are still aggrieved by these actions and are desirous of seeking the prosecution of the suits. It was deponed that the defendant will not suffer any prejudice if the matters are heard to their conclusion.

The court has considered the affidavit filed herein, Sin response to the notice to show cause. The plaints in 430/12 and 429/2012 were filed on 19th October 2012. Since then, no action has been taken in any of the two matters until they were listed for Notice to show cause. The parties have not even complied with Order II. It is more than six years since the matters were filed and nothing much has been done.

Having read the affidavit in response to the Notice to Show cause, I do not see any good reason why the matters have not been prosecuted. In the premises, they are both dismissed for want of prosecution.

Dated, Signed and Delivered at Nairobi this 22nd day of November, 2018

.....

L. NJUGUNA

JUDGE

In the presence of:-

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

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