



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 391 OF 2012

HON. POLLYNS OCHIENG ANYANGO

ALIAS DAIMA PLAINTIFF

VERSUS

MIGUNA MIGUNA 1ST DEFENDANT

NATION MEDIA GROUP2ND DEFENDANT

GILGAMESH PUBLISHERS AFRICA

T/A GILGAMESH IN 2012..... 3RD DEFENDANT

RULING

1. Nation Media Group, the 2nd defendant herein took out the motion dated 16.12.2015 in it sought for the suit filed against dismissed for want of prosecution. The motion is supported by the affidavit of Zehrabanu Janmohamed. The motion was served upon the advocates for Hon. Pollyns Ochieng Anyango alias Daima the plaintiff herein but the same did not elicit any response. Upon being satisfied that the motion had served upon the plaintiff's advocate, this court granted leave to the plaintiff to prosecute the motion.
2. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. Before considering the substance of the motion it is important to at this stage give a brief background of this dispute. On 14th July 2012, one Miguna Miguna the 1st defendant herein alleged to have launched the publication and sale of his book titled "Peeling Back The Mask: A quest for justice in Kenya" at the intercontinental hotel. The 2nd is said to have in a serialization that begun on 15.07.2012 carried in its banner headline a title reading "Raila's fight back plan, in reference to the published remarks or extracts contained in the book published by the 1st defendant to the effect that:

"WHAT MIGUNA THINKS OF THE TOP LEADERSHIP OF THE GRAND COALITION"(At page 4 of the Sunday Nation)

"FRED OUTA ADN OCHIENG DAIMA"ODMS MPS

"This is not to say that I found Outa or Daima good or better parliamentarians than Nyamunga and Peter Odoyo; on the contrary they were four, lack lustre and clueless; their contributions in parliament could fill a two lined paragraph.

3. The plaintiff stated that aforesaid words were defamatory and he consequently sued the 2nd defendant amongst others seeking damages.
4. The 2nd defendant filed a defence denying the plaintiff's claim. The 2nd defendant averred inter alia that it published the aforesaid information in and in the honest belief that they were true in fact and substance upon the representation of the 1st defendant hence the publication was not malicious.
5. Having set out in brief the history of this dispute, let me now revisit the 2nd defendant's motion. It is the submission of the 2nd defendant that the plaintiff has failed to take any steps to set down the suit for either the taking of pre-trial directions or hearing since 18th April of April 2013. The 2nd defendant further argued that the delay to prosecute the suit was inordinate. I have already stated that the motion was served upon the plaintiff's advocate who did not deem it fit to respond to the motion. The affidavit of service of Josphine Kwamboka Obiri sworn on 3rd February 2016, shows that the plaintiff's advocate was served with the motion on 2nd February 2016. A close scrutiny of the 2nd defendant's defence will show that there is a stamp affixed on the face of the defence showing that the plaintiff was served with the defence on 14th March 2013. Close of pleadings took place seven (7) days from the date of service of the defence.
6. The 2nd defendant has accused the plaintiff of failing to list the case for hearing or at least for pre-trial conference. It is now over three years since pleadings closed and yet the plaintiff has not taken the relevant steps to have the suit ready for hearing. I agree with the submissions made by the plaintiffs that it has turnover of staff and human resource measures tend to fade. In other words the 2nd defendant is likely to suffer prejudice.
7. In the end, I find the motion dated 16th December 2015 to be well founded. It is allowed as prayed. Consequently, the suit as against the 2nd defendant is hereby dismissed with costs to the 2nd defendant.

Dated, Signed and Delivered in open court this 18th day of March, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent