



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 100 OF 2013

JEREMIAH NG'AYU KIONI.....PLAINTIFF

VERSUS

THE STANDARD MEDIA GROUP LTD & 11 OTHERS.....DEFENDANTS

RULING

The plaintiff herein filed suit against the defendants in March, 2013 claiming damages and an injunction based on defamation allegedly by the defendants. All the defendants denied the plaintiff's claim. The defendants have now filed four applications for dismissal of the suit for want of prosecution.

These are Notice of Motion dated 12th May 2015, Notice of Motion dated 22nd May 2015, and Notice of Motion dated 5th March 2015 and Notice of Motion dated 23rd January 2015. They are all essentially brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act and Order 17 rule 2(3) of the Civil Procedure Rules.

Three of these applications (notices dated 23rd May 2015, 12th May 2015 and 22nd May 2015) were heard and ruling delivered by Seron J. on 2nd July 2015. He dismissed the suit citing the lack of explanation by the Plaintiff on why the suit had not been prosecuted for over 24 months. This is because the Plaintiff had 'not responded' to the said applications. In a Notice of Motion dated 21st July 2015, the Plaintiff sought reinstatement of the suit based on the fact that there was a replying affidavit on record which the Court inadvertently failed to acknowledge. After reconsidering its contents, the court was of the view that the Plaintiff had advanced valid and legitimate reasons to explain the delay in prosecuting the case. The suit was therefore reinstated.

The applications are now being heard with the benefit of a replying affidavit on record sworn on 23rd March 2016 and Grounds of objection filed on the same date. They are to the effect that –

- i. Pre-trial directions have not been complied with by the Defendants.
- ii. They have failed to demonstrate the prejudice that is likely to be occasioned to them.
- iii. The Plaintiff wrote a letter to all the Defendants enclosing a statement of agreed issues which did not elicit any response.
- iv. On 11th March 2015, he filed list of issues but the 11th Defendant failed to accept service pending hearing and determination of their application.
- v. It is in the interest of justice that this Honourable court dismisses the applications.

vi. The court should allow the suit to continue as he has demonstrated willingness to set the matter down for hearing.

Learned counsel filed written submissions to the applications the contents of which I have read.

Order 17 Rule 2 (1) aforesaid provides as follows,

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

The rule is clear that it is the court on its own motion that initiates the steps to be taken. This rule is essentially intended to ensure that where parties are not keen or interested in pursuing matters that have been lodged before the court, they should be reminded that the court is not a reserve for matters not intended for prosecution. The last time any action was taken on this matter on substantive issues was when the 3rd, 4th and 5th Defendants filed a list of issues on 13th November, 2013.

The Plaintiff’s counsel seems to blame the Defendants for failure to take out pre-trial processes but between 2013 and the date when the applications were made for dismissal, no effort had been made to have the matter set down for pre-trial directions. This should not be cited as an excuse because a party should always take the necessary steps to progress his suit to the logical conclusion.

However, considering the circumstances of the case, there seems to be no substantial prejudice occasioned to the Defendants nor is there any risk that a fair trial may still not be possible. The hearing of the suit is still possible without causing injustice or tremendous difficulty in the trial.

It is paramount that courts endeavour to sustain a suit brought by litigants rather than dismissing the same. This is in order to promote substantive justice and therefore achieve just resolution of disputes through a fair hearing. The order sought is discretionary and taking into account the obtaining circumstances in this suit, I am inclined to give the plaintiff a chance to prosecute his suit. That being the case, the notice of motion dated 12th May 2015, notice of motion dated 22nd May 2015, Notice of Motion dated 5th March 2015 and Notice of Motion dated 23rd January 2015 are dismissed.

The Plaintiff is hereby ordered to have the matter set for pre-trial directions within 30 days of this ruling failure to which the suit shall stand dismissed. Costs shall be in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 12th Day of October, 2016.

A.MBOGHOLI MSAGHA

JUDGE