



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CIVIL CASE NO. 1285 OF 2002**

**BETTY ANGATIA MWENESI.....PLAINTIFF**

**VERSUS**

**MRS AZMINA MULJI.....1<sup>ST</sup> DEFENDANT**

**SOUTHERN CREDIT BANKING CORPORATION.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is the outcome of two applications. The first is the motion dated 18<sup>th</sup> November 2014 taken out by Mrs Azmina Mulji, the 1<sup>st</sup> Defendant herein and the other is the motion dated 30.04.2014 taken out by Southern Credit Banking Corporation. The same is supported by the affidavits of Buram associates. In both applications the Defendants are seeking for the plaintiff's suit to be dismissed for want of prosecution. Those motions were served upon the Plaintiff but none attracted any response. The Defendants were permitted to proceed ex parte to prosecute those motions when it became apparent that the Plaintiff had failed to respond despite having been served.

2. Mrs. Ochieng, learned advocate for the 1<sup>st</sup> Defendant urged this court to dismiss the suit against the 1<sup>st</sup> Defendant for want of Prosecution because the Plaintiff had failed for more three years to have the suit listed for hearing.

3. It is argued that the 1<sup>st</sup> Defendant will be seriously prejudiced in that she may fall into the danger of losing witnesses to support her defence. It is also alleged that the Plaintiff and her advocates appear to have lost interest in pursuing this case. The 1<sup>st</sup> Defendant pointed out that it is on her initiative that the suit was fixed for hearing on 10<sup>th</sup> November 2011 but come that day and without any explanation the suit was not listed for hearing. This suit has now been pending for over 12 years.

4. The 2<sup>nd</sup> Defendant on the other hand argued near similar grounds to those put forward by the 1<sup>st</sup> Defendant. It is the submission of Miss Kageni learned advocate for the 2<sup>nd</sup> Defendant, that the Plaintiff has lost interest to pursue this suit. It is further argued that a delay for a period of over 10 years is inordinate and inexcusable.

5. I have carefully considered the grounds stated on the face of the motions and the facts deponed in the supporting affidavits. I have also taken into account the oral arguments put forward by learned advocates. To begin with there is no dispute that the facts deponed in the supporting affidavits have not been controverted. This court has no reason to doubt those averments. Some of the averments made are

that due to the prolonged delay, the 2<sup>nd</sup> Defendant is likely to suffer substantial risk in that it is no longer possible for it to have a fair hearing of the issues at hand due to the inordinate delay and some of its crucial witnesses have left employment. This averment in my view gives a true reflection of what the 2<sup>nd</sup> Defendant is likely to face. The 1<sup>st</sup> Defendant on her part has alluded that the continued existence of this suit for over twelve years is causing her undue and indefinite anxiety and further, it is prejudicing in that there is danger on her witnesses not being available at the time when the Plaintiff finally sets down the suit for hearing due to the said witnesses seeking greener pastures. With respect, I agree with the Defendants' submission that the Plaintiff's inaction or the apparent reluctance to prosecute her case in court is inordinate and should therefore not be tolerated by this court. The record shows that the Plaintiff presented this suit in court on 30<sup>th</sup> July, 2002 seeking for inter alia judgment against the Defendants for general damages for defamatory words allegedly written by the 1<sup>st</sup> defendant while in the employment of the 2<sup>nd</sup> Defendant as the Debt Recovery Manager. With respect, I agree with the Defendants that this being a defamatory suit, there is need to expedite its determination. This in itself will promote a fair trial of the matter.

6. In the end I find the two motions to be well found. They are allowed as prayed. For the avoidance of doubt, this suit is dismissed for want of prosecution with costs to the Defendants.

Dated and delivered in open court this 19<sup>th</sup> day of June, 2015

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant