



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 742 OF 2005

RAPHAEL WANJALA.....PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED..... DEFENDANT

RULING

In a ruling dated and delivered on 27th June 2008 this court (Waweru, J) refused the Defendant's application for dismissal of the Plaintiff's suit for want of prosecution (notice of motion dated 18th July 2006). The court found that there was delay of about eight (8) months in prosecuting the suit but was satisfied that there was no prejudice suffered, or that might be suffered, by the Defendant on account of the delay that could not be compensated by an award of costs. The court awarded the Defendant costs of KShs 15,000/00.

It will be noted that the suit had originally been dismissed for want of prosecution on 1st November 2006 upon failure of the Plaintiff or his advocates to attend court for hearing of the first application for dismissal for want of prosecution. Subsequently, the court reviewed and set aside the order of dismissal to enable the application to be canvassed *inter partes*.

More than three (3) years down the line the Plaintiff still had not taken any step to prosecute the suit. So the Defendant applied the second time round for an order to dismiss the suit for want of prosecution vide **notice of motion dated 28th September 2011** brought under **Order 17, rule 2(1) and (3)** of the **Civil Procedure Rules** (the **Rules**). The Plaintiff has opposed the application.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing.

The delay is freely admitted by the Plaintiff's advocates. The explanation offered is to blame an advocate who is no longer in their firm. There is no affidavit by the Plaintiff himself to demonstrate any interest in prosecuting the suit. For instance, during the three-year delay, did he once visit his advocates' offices to check progress of his suit? Did he write one single letter to his advocates to complain about the

apparent delay in preparing and fixing his suit for trial?

Quite clearly, apart from any delay that may be attributable to his advocates, the Plaintiff himself has not demonstrated any commitment towards prosecution of his suit.

The suit is an action in defamation. Presumably the Plaintiff came to court so that his good name and reputation could be vindicated as soon as possible. Surely he ought to have been keen to prosecute the suit!

I find no reason at all why the suit should continue to hang over the Defendant's head. With the passage of time I am not satisfied that a fair trial of the action will be possible any longer. The Defendant is prejudiced, and will be prejudiced.

Consequently, I will allow the application. The Plaintiff's suit is dismissed with costs for want of prosecution. It is so ordered.

DATED AT NAIROBI THIS 7th DAY OF FEBRUARY 2012

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 10TH DAY OF FEBRUARY 2012