



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 449 OF 2009

PATRICIA NJITHI WANYEKI..... PLAINTIFF

V E R S U S

**1. KENYATTA NATIONAL HOSPITAL)
2. THE HON. ATTORNEY GENERAL)DEFENDANTS**

R U L I N G

This suit was filed on 19th August, 2009. The 1st Defendant entered appearance on 22nd September, 2009 and filed statement of defence on 9th October, 2009. On 27th October, 2009, the Plaintiff filed amended plaint. On 5th November, 2009 the 1st Defendant filed amended defence. On 19th November, 2009 the Plaintiff filed and served a reply to the amended defence. No further pleadings were filed. Pleadings therefore closed on 3rd December, 2009 (See **Order 2, rule 13** of the **Civil Procedure Rules** (the **Rules**)).

The Plaintiff did not apply or take any step for over a year towards disposal of the suit. The Defendant therefore applied under **Order 17, rule 2(1)** and **(3)** of the Rules for dismissal of the suit for want of prosecution. That application is by **notice of motion dated 25th February, 2011**. It is supported by an affidavit sworn by the 1st Defendant's counsel.

Pleadings having closed on 3rd December, 2009 and the application for dismissal having been filed on 2nd March, 2011, the delay is one year and 3 months. What is the Plaintiff's explanation for this delay?

The explanation is to be found in the replying affidavit sworn by her and filed on 9th May, 2011. That explanation is as follows. The Plaintiff gave birth in September, 2009 after a difficult pregnancy and delivery. She was overwhelmed by medical bills which she could not readily meet on account of loss of her job with the 1st Defendant. For the same reason she was unable to obtain proceedings and judgment in the criminal prosecution that gave rise to the present suit for malicious prosecution. She was thus unable to properly instruct her counsel.

The Plaintiff has also deponed that she has been relying on friends for donations to pay off her hospital bills. She further deponed that she is seeking further donation from well wishers in order to pay legal fees and also court fees for the proceedings and judgment in the criminal case.

Given the personal circumstances of the Plaintiff, I am not persuaded that the delay of 1 year and 3 months in the present case is inordinate. In any event, the 1st Defendant has not demonstrated any

prejudice, for instance that it will no longer be able to secure documents or the attendance of witnesses in court during trial because of the passage of time. It is only just that the Plaintiff be given a reasonable chance to prosecute her suit.

Having considered the submissions of the learned counsels appearing (no authorities were cited), I will refuse the application with costs to the Defendant.

But I will direct that within 30 days of delivery of this ruling the parties shall file and exchange documents and witness statements. In this regard the parties shall have liberty to apply.

Those shall be the orders of the court.

DATED AT NAIROBI THIS 30TH DAY OF JULY, 2011.

H.P.G. WAWERU

JUDGE

SIGNED AND DELIVERED THIS 1ST DAY OF JULY, 2011