



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET  
Civil Case 126 of 1998**

**DAVID MUREITHI ..... PLAINTIFF  
=VERSUS=  
NATION NEWSPAPERS LIMITED.....DEFENDANT**

**Ruling**

**Application to dismiss suit for want of prosecution dated 28<sup>th</sup> January 2010**

**I. Background**

1. The Plaintiff herein sued the Nation News Papers for Defamation on the 9<sup>th</sup> January 1998. For over three years no action by the Plaintiff had been taken. The Defendants wrote to the Court requesting that the suit be struck out. The Plaintiff changed Advocates from D.M. Amayamu and Co. Advocates to M/s Mutkaha Obwatinya & Co. Advocates.
2. Another lapse of 2 years 8 months passed. The Defendant had in the meantime applied that part of the Plaintiff be struck out as having been pleaded outside the limitation of action of 1 (one) year permitted by law to bring a claim. This Preliminary Objection was upheld and on 22<sup>nd</sup> May 2006, Ibrahim J. struck out paragraph 4,5,6,7,8 and 14. It was thereafter that the present application was filed seeking that the whole Plaintiff be struck out because the said Plaintiff had taken no action.

**II. In Reply**

3. The Plaintiff/Respondent replied through his Advocate that he was ill in the 1998/1999 and therefore couldn't instruct his advocate. He then changed advocates but unfortunately in 2007, the political temperatures arose. He prays the application be not granted.

**II. Opinion**

4. In Defamation cases, 1 year only is permitted in which to bring a claim. Ibrahim J. has expunged the claims duly given by the Plaintiffs and filed out of time.
5. The Plaintiff has taken no action in this matter. The Plaintiff was drawn by the first Advocate. The second advocate who took over required to then amend the Plaintiff to file **particulars of defamation**. This was not done according to law.
6. The issue before me is the inordinate delay in dealing with this matter since 1998. This Court would agree that after one year of no action by the Plaintiff the Respondent is permitted under order XVI Civil Procedure Rules to bring an application to have the matter dismissed.
7. I accordingly do so and order the application be allowed. This suit is dismissed with costs to the Applicant.

**DATED THIS 25<sup>TH</sup> DAY OF MAY 2010 AT ELDORET.**

**M.A. ANG'AWA,**

**JUDGE.**

**Advocates:**

- (i) J.A. Okore Advocate instructed by the firm of M/sKagucia & Co. Advocate for the Defendant/applicant - Present
- (ii) C.O. Obwatinya Advocate instructed by the firm of Mutakha Obwatinya & Co. Advocate for the Plaintiff/Respondent – Absent.