



**University of Nairobi v Standard Media Group Limited (Civil Suit
70 of 2017) [2023] KEHC 17358 (KLR) (Civ) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 70 OF 2017

DO CHEPKWONY, J

MAY 3, 2023

BETWEEN

UNIVERSITY OF NAIROBI PLAINTIFF

AND

STANDARD MEDIA GROUP LIMITED RESPONDENT

RULING

1. Before court for determination is a Notice to Show Cause why the case should not be dismissed for want of prosecution issued on 3rd August, 2022. It was issued by the Deputy Registrar of this Court pursuant to Order 17 Rule 2 of the *Civil Procedure Rules*, 2010.
2. Upon service of the Notice to Show Cause on 24th August, 2022, counsel for the Plaintiff filed an affidavit sworn on 12th October, 2022 explaining the reasons for the delay in having the suit prosecuted and why the matter should not be dismissed for want of prosecution. The Defendant and or its counsel did not file any response despite having been served with the said notice. There is a Return of Service dated 22nd September, 2022 filed on record to confirm this.
3. In summary, counsel has deponed that he is in conduct of the suit on behalf of the Plaintiff. Counsel avers that the Defendant approached the Plaintiff for an out of court settlement and although he was aggrieved by the falsehoods that the Defendant had published, the Plaintiff was minded to give the initiative a chance. That Counsel did engage the Defendant's counsel but no agreement was reached. That parties had prepared this suit for hearing but the trial was withheld to pave way for an amicable settlement. It is counsels' contention that given that the amicable settlement is now an illusion, he prays that for the suit to be listed for hearing at the earliest opportunity.
4. On 14th October, 2022, when this matter came up for hearing of the Notice to Show Cause, Counsel for the Plaintiff in her submissions reiterated the contents of the affidavit dated 12th October, 2022.



Analysis and Determination

5. In determining the Notice to Show Cause issued on 3rd August, 2022, I have taken into consideration the sentiments made by counsel for the Plaintiff both in the affidavit sworn on 12th October, 2022 and the oral submissions by M/S Kwang'o, counsel for the Plaintiff. In this Court's view, the issue for determination is whether or not the suit should be dismissed for want of prosecution.
6. The Notice to Show Cause was issued pursuant to the provisions of Order 17 Rule 2 of the Civil Procedure Rules, 2010, which provides as follows:-

“Notice to Show Cause why suit should not be dismissed;

 1. 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. (Empasis added).
 2. If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 3. Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 4. The court may dismiss the suit for non-compliance with any direction given under this Order.”
7. My understanding of the aforesaid statutory provision is that for a suit to qualify for dismissal for want of prosecution, the principles applicable are that:-
 - a. it must be demonstrated that no application has been made or step taken by either party for one year; and,\
 - b) if there is non-compliance with the directions of the court.
8. The powers of the court under Order 17 Rule 2 of the Civil Procedure Rules, 2010 are discretionary in nature but should be exercised judiciously based on the reasons advanced before court.
9. In the case of *Ivita –vs- Kyumbu* [1984] KLR 441, the Court held as follows;

“The test applied by the courts in the application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite the delay. Thus, even if the delay is prolonged, if the court is satisfied with the plaintiff's excuse for the delay, and that justice can still be done to the parties, the action will not be dismissed but it will be ordered that it be set down for hearing at the earliest time. It is a matter of and in the discretion of the court.”
10. In the instant case, the present suit was filed on 27th March, 2017 by a Plaintiff dated 24th March, 2017. The last time the matter came before court was on 16th March, 2021 when it was scheduled for mention to fix a hearing date. The court indicated that since physical hearing had not started, the same was stood over to another date to fix a hearing date. A period of 1 year and 6 months had lapsed between the last action taken and the issuance of the Notice to Show Cause.
11. Order 17 Rule 2 of the Civil Procedure Rules, 2010 provides that if a matter has been pending before court for twelve months without any application or step taken to have it prosecuted, the court either



on its own motion or on the application by a party, may make an order for its dismissal for want of prosecution.

12. In this case, the Plaintiff's counsel has explained that the reason the suit has not been prosecuted is because the parties had been attempting negotiations to settle the matter out of court which did not materialize. A letter from the Plaintiff addressed to counsel for the Defendant has been filed as evidence of the negotiations on settlement.
13. It has been held severally that dismissal of suits is a draconian measure which should be exercised sparingly and in very clear cases. In view of the provisions of Articles 50 and 159, both of *the Constitution*, this Court finds that the Plaintiff, through his counsel has advanced to its satisfaction good reason why the suit should not be dismissed as it is still desirous of having the same prosecuted to its end. Thus, the court's discretion is exercised in favour of the Plaintiff, who is then granted an opportunity to prosecute this matter.
14. In the upshot of the foregoing, the following orders issue:-
 - a. The Notice to Show Cause issued on 3rd August, 2022 be and is hereby set aside.
 - b. The Plaintiff to set down the suit for hearing within 60 days from the date hereof.
 - c. Mention on 3rd July, 2023 for parties to confirm compliance and further directions before the Deputy Registrar.
 - d. Failure to comply with order (b) and (c) above shall render the suit as abated and dismissed accordingly.
- 15 It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF MAY 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Murigu holding brief for Mr. Ngatia (SC) for the Plaintiffs

M/S Githae counsel for the Defendants

Court Assistant – Mwenda/Simon

