

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 358 OF 2011

HENRY RUHIU.....PLAINTIFF/RESPONDENT

VERSUS

MEDIAMAX COMPANY LTD.....1STDEFENDANT/APPLICANT

HON.FERDINAND WAITITU.....2NDDEFENDANT

RULING

1. The Application dated 31th May, 2017 by the 1st Defendant/ Applicant seeks orders that:

1. That this honourable court be pleased and dismiss the Plaintiff's suit as against the 1st Defendant for want of prosecution.

2. That the costs of this suit and application be awarded to the 1st Defendant/Applicant in any event

2. The Applicant's contention is that the Respondent has not taken any steps to prosecute this case for a period of over five (5) years. That the Respondent has also failed to comply with the directions issued by this court on 18th June, 2015. The Applicant fears that the continued delay is prejudicial to their case as their witnesses may become unavailable.

3. In the replying affidavit filed in opposition to the application, it is stated that the Applicant had previously filed a similar application, which they later withdrew. That the Respondent had severally requested for a date for directions and the Respondent's counsel appeared in court on 11th July, 2016.

4. I have considered the application and the reply to the same. I have also considered the written submissions filed by both parties.

5. A perusal of the court record reflects that prior to the filing of the application at hand dated 31st May, 2017 and filed in court on 5th June, 2017, the suit was last in court on 30th August, 2016. By the time the application was filed on 5th June, 2017, the period of over one year had not yet lapsed.

6. Order 17 rule 2(1) provides:

“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 dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

7. The suit herein is therefore not ripe for dismissal for want of prosecution. Consequently, the application is dismissed with costs.

Dated, signed and delivered at Nairobi this 8th day of April, 2019

B THURANIRA JADEN

JUDGE