



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 170 OF 2013**

**WILLIAM ODUOL.....PLAINTIFF**

**VERSUS**

**ROBERT ALAI.....DEFENDANT**

**RULING**

1. By virtue of a Notice to Show Cause dated 15<sup>th</sup> March, 2018 issued under the provisions of Order 17 Rule 2 of the Civil Procedure Rules, this court listed the suit herein for dismissal for want of prosecution on 13<sup>th</sup> April, 2018. On the said date the Plaintiff filed an Affidavit dated 10<sup>th</sup> April, 2018 and sworn by **EVANS OCHIENG**; the Plaintiff's Advocate in response to the Notice.

2. The Plaintiff avers that the suit is a defamation claim and the defamatory statements are still available at the Defendant's online blog and twitter handle. Annexed to the Affidavit are extract copies of the publications. It is further averred that the Plaintiff's reputation is still being maligned by the offensive posts which posts the defendant has declined to pull down and he wishes to expedite the prosecution of the suit to its conclusion.

3. The Defendant did not file a Reply to the Notice.

4. I have considered the Affidavit and the grounds advanced by the Plaintiff. Order 17 Rule 2 empowers this Court to dismiss a suit in which no action has been taken for a period of 12 months. However, if the parties show cause to the satisfaction of this court as to why the same has not been prosecuted, the court can exercise its discretion in favour of the plaintiff. I have perused the Affidavit of the Plaintiff and nowhere in that Affidavit has he explained why he has not been able to prosecute the case. He has only sought to explain the subject matter of the suit. The last time the suit was in court was on 16<sup>th</sup> May, 2013 and for a period of almost 5 years, the case has been dormant. The delay of almost 5 years has not been explained. Order 17 Rule 2 presupposes that a person ought to explain to the satisfaction of the court why he was not able to prosecute a suit for a period of one year. That explanation was not given and in the circumstances, the suit is hereby dismissed with costs to the defendant.

Dated, Signed and Delivered at Nairobi this 3<sup>rd</sup> Day of May, 2018.

.....

**L. NJUGUNA**

**JUDGE**

**In the Presence of**

.....*For the Applicant*

.....*For the Respondent*