



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 100 OF 2015

HON. DR. EVANS KIDERO.....PLAINTIFF

- V E R S U S -

STANDARD GROUP LIMITED.....1ST DEFENDANT

PAUL WAFULA.....2ND DEFENDANT

DANIEL WESANGULA.....3RD DEFENDANT

NATION MEDIA GROUP LIMITED.....4TH DEFENDANT

RAMENYA GIBENDI.....5TH DEFENDANT

RULING

1) The 4th and 5th defendants herein took out the motion dated 20th June 2018, whereof they sought for the following orders:

- 1. THAT the plaintiffs suit against the fourth and fifth defendants be dismissed for want of prosecution.***
- 2. THAT the injunction orders herein issued by the court on 21st September, 2015 be discharged forthwith in any event.***
- 3. THAT the costs of this application and suit herein be awarded to the forth and fifth defendants.***

2) The motion is supported by the affidavit of Zehrabanu JanMohamed. The plaintiff filed the replying affidavit he swore to oppose the application.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the rival oral submissions made by learned counsels appearing in this matter.

4) It is the submission of Janmohamed learned advocate for the applicants that the plaintiff has failed to take any action in this suit since 21.9.2015 to have it prosecuted. It was further argued that the continued pendency of this suit is highly prejudicial to the applicants and that the orders of injunction issued on 21.9.2015 have since lapsed by virtue of the provisions of Order 40 rule 6 of the Civil Procedure Rules.

5) It is the submission of Miss Awuor, learned advocate for the plaintiff that the plaintiff has taken steps to have the suit ready for hearing. It was also pointed out that this court has no jurisdiction to have this suit dismissed whereas there is a pending appeal.

6) In response to the plaintiff's submission the applicants stated that since there is no stay of proceedings issued by the Court of Appeal this court has jurisdiction to hear and determine both the application and the substantive suit.

7) Having considered the material placed before this court and the oral submissions made by learned counsels, it is apparent that on 21st September 2015, this court issued a temporary order of injunction in favour of the plaintiff and against the defendants. The question is whether the plaintiff has taken any steps since then to have this suit listed for hearing.

8) The plaintiff stated that his advocate wrote a letter dated 5.9.2016 to this court seeking to have the file placed before the duty judge to give directions on how to proceed with matter. The plaintiff also pointed out that parties are yet to comply with the provisions of Order 11 of the

Civil Procedure Rules to have the suit certified as ready for hearing. This assertion is not controverted by the defendants.

9) It would appear from the plaintiff's averment that the plaintiff was also distracted from focusing on having the suit ready for hearing by the application dated 7th October 2016 filed by the 1st, 2nd and 3rd defendants seeking to have this suit dismissed for want of prosecution. The application is yet to be fixed for hearing. The plaintiff appears to appreciate the fact that there is a considerable delay in having this suit heard and determined.

10) It appears from the plaintiff's averments that he has not lost interest in pursuing this matter. There is evidence that he has taken keen interest in responding to the applications filed against him. The plaintiff has also shown that he has taken one step to have the file placed before a judge for directions on the way forward. In my view, the delay to have the matter prosecuted appears to be long but in view of the explanation given by the plaintiff, I find the delay to be excusable.

11) The applicants have urged this court to make a finding that the injunctive orders issued on 21.9.2015 lapsed by operation of law. There is no dispute that the 4th and 5th defendants filed a notice of appeal to have the aforesaid decision impugned before the Court of Appeal. The defendants are yet to serve the plaintiff with the record of appeal or a notice of withdrawal of the appeal.

12) In the circumstances it will not be appropriate for this court to issue the orders sought unless it is shown that the appeal has been conclusively dealt with.

13) In the end I am persuaded to have the motion dated 20th June 2018 dismissed. In the circumstances of this case a fair order on costs is that each party should meet its own costs.

Dated, Signed and Delivered in open court this 9th day of November, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendants