



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 257 OF 2015

HON. MIKE MBUVI SONKO.....PLAINTIFF

VERSUS

GOVERNOR EVANS ODHIAMBO KIDERO.....1ST DEFENDANT

THE STAR NEWSPAPER.....2ND DEFENDANT

RULING

- 1) The subject matter of this ruling is the motion dated 31.1.2018 taken out by The Star Newspaper, the 2nd defendant herein, in which it sought to *inter alia* have this suit dismissed for want of prosecution.
- 2) The motion is supported by the affidavit of Aisha Namwoli, the 2nd defendant's advocate.
- 3) The aforesaid motion was served upon the firms of Mungatana & Co. Advocates and that of Prof. Tom Ojienda & Associates which firms represented Hon. Mike Mbuvi Sonko and Governor Evans Odhiambo Kidero the plaintiff and 1st defendant respectively. The aforementioned parties did not deem it fit to file a response to the motion, therefore the 2nd defendant was granted leave to prosecute the application *ex parte*. The 2nd defendant was granted leave to file written submissions.
- 4) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavits plus the written submissions. It is the submission of the 2nd defendant that the plaintiff has not taken any steps to have the suit prosecuted for over one year and 10 months hence it should be struck out. The defendant went ahead to argue that the plaintiff appears to have lost interest in pursuing this action.
- 5) The 2nd defendant further stated that it is prejudiced by the continued pendency of this suit because its key witness has left its employment. The 2nd defendant's averments have not been controverted by the respondents.
- 6) This suit is founded on the tort of defamation which was filed on 28.7.2015. The 2nd defendant filed its statement of defence on 24.9.2015. It is apparent from the record that since 24th March 2016 to date, the plaintiff has not taken any step to fix this suit for hearing.
- 7) It is now more than 2 years 6 months since then. In the circumstances, this court can infer that the plaintiff has lost interest to pursue this matter.
- 8) With respect, I agree with the defendant that the delay to prosecute this suit will greatly prejudice the 2nd defendant in that by the time the suit comes up for hearing, it will have no witnesses to testify in support of its defence.
- 9) In the circumstances of this case, the 2nd defendant was perfectly right to seek for the dismissal of this suit for want of prosecution.
- 10) In the end, the motion dated 31.1.2018 is found to be meritorious. It is allowed as prayed with costs being given to the 2nd defendant.

Dated, Signed and Delivered in open court this 2nd day of November, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendants