



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 100 OF 2013

JEREMIAH NG'AYU KIONI.....PLAINTIFFS

VERSUS

THE STANDARD MEDIA GROUP LIMITED...1ST DEFENDANT

JUMA KWAYERA.....2ND DEFENDANT

RADIO AFRICA GROUP.....3RD DEFENDANT

MAINA KAGENI.....4TH DEFENDANT

DANIEL NDAMBUKI.....5TH DEFENDANT

ROYAL MEDIA SERVICES.....6TH DEFENDANT

SWALE MDOE.....7TH DEFENDANT

MEDIA MAX.....8TH DEFENDANT

ALPHONCE OLADIPO.....9TH DEFENDANT

BUNI LIMITED.....10TH DEFENDANT

NATION MEDIA GROUP LIMITED.....11TH DEFENDANT

MOSES NGURE.....12TH DEFENDANT

RULING

1. This ruling is the outcome of four notices of motion taken out

by seven Defendants to have the Plaintiff's suit dismissed for want of prosecution. The first motion dated 23.5.2015 taken out by the 6th and 7th Defendants, while the motion dated 12th May 2015 was filed by the 1st and 2nd Defendants. The final motion dated 22nd May 2015 was filed by the 11th

Defendant. The aforesaid motions were served upon the Plaintiff who in turn did not deem it fit to respond. The Plaintiff was further invited for the interpartes hearing of those application but neither

the Plaintiff nor his counsel was present in court, hence the Defendants were permitted to prosecute the applications *ex parte*.

2. When the application came up for *inter partes* hearing,

learned counsels who appeared made oral submissions in support of those application. What runs through the Defendants' submissions is that the Plaintiff and his advocates have not set down the hearing of the suit for more than 1 year since the case was closed. It is also argued that the Plaintiff has completely lost interest to pursue the case hence it is only just and fair for the Defendants to be relieved of the burden of this litigation in the circumstances. The averments contained in the supporting affidavits have not been controverted and this court has no reason to doubt the veracity of the averments.

3. I have considered the grounds set out on the face of the motions and the facts deposed in the supporting affidavits. I have also considered the oral submissions of this dispute began when Jeremiah Ng'ayu Kioni, the Plaintiff herein filed the plaint dated 26th March 2013 and amended on 5.4.2013 in which he sought judgement against the Defendants in the following terms:

1. ***Damages for defamation.***
2. ***Aggravated, exemplary and punitive damages.***
3. ***An injunction restraining the each of the Defendants whether by themselves, their servants and/or agents or otherwise, from further publishing or causing to be published the said or similar words defamatory of the plaintiff.***
4. ***Costs of this suit and interests per courts rates.***
5. The Plaintiff named The Standard Media Group Limited, Juma Kwayera, Radio Africa Group, Maina Kageni, Daniel Ndambuki, Royal Media Services, Swaleh Mdoe, Media Max, Alphonse Oladipo, Buni Limited, Nation Media Group and Moses Ngunge as the 1st to 12th Defendants respectively. The Plaintiff was served and each of the Defendants filed a defence to deny the Plaintiff's claim. The Plaintiff filed last reply to the 12th Defendant's defence on 15th July 2013. The date when the pleadings closed was therefore on 15th July 2013.
6. Having given the brief background of the dispute before this

court, let me now consider the substance of the applications which seek to have the suit dismissed for want of prosecution. I have already given the main grounds argued by the Defendants in support of their applications. The relevant provision in which most of the Defendants cited is order 17 Rule 2(3) of the Civil Procedure Rules. Under the aforesaid provision, a party may apply for the dismissal of the suit if a year passes and no step has been taken to list the suit for hearing. I have already stated that pleadings closed on 15.7.2013. The Plaintiff and his legal advisers are enjoined by law to give an explanation as to why they have not taken any step to have the suit fixed for hearing for more than a year. Pleadings closed about 24 months ago. This court can only infer that the Plaintiff has lost interest in prosecuting this case. With respect, I agree with the Defendants that it is just and equitable in the circumstances to have the suit dismissed for want of prosecution.

7. In the end, the applications are found to be well founded, they are allowed with costs to the Defendants. The consequence is that the whole suit is dismissed with costs to all the Defendants.

Dated and delivered in open court this 3rd day of July, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant