



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 1016 of 2003**

**1. GEORGE MAIGO WAWERU**

**2. WILLY WAWERU MAIGO**

**3. DANIEL NGANGA GEORGE.....PLAINTIFFS**

**VERSUS**

**NATION MEDIA GROUP LTD.....DEFENDANT**

**R U L I N G**

1. This is an application by **notice of motion dated 2<sup>nd</sup> September 2008** (filed on **19<sup>th</sup> May 2009!**) for an order to dismiss the Plaintiffs suit with costs for want of prosecution. It was brought under the then in place **Order XVI, rule 5(d)** of the **Civil Procedure Rules** (the **Rules**). Under that rule, if within three months after the adjournment of the suit generally, the plaintiff, or the court of his its own motion on notice to the parties, did not set down the suit for hearing, the defendant could either set the suit down for hearing or apply for its dismissal.

2. The application is supported by the affidavit of one BARBARA LUNANI, the Defendant's advocate.

3. There is a replying affidavit sworn by the 1<sup>st</sup> Plaintiff in opposition to the application. He says that the 3<sup>rd</sup> Plaintiff is his son while the 2<sup>nd</sup> Plaintiff was his father who died on 16<sup>th</sup> June 2004. He has also deponed that he instructed one KIHORO CERERE of **Messrs Cerere, Mwangi & Co., Advocates** to act for the Plaintiffs; that he has subsequently leant that Mr Cerere left Kenya and is now resident in the United States of America since the year 2004; and that he believes that the suit was not prosecuted due to the fact that the Plaintiff's advocate was not in Kenya.

4. The Plaintiff's suit is in defamation. The 2<sup>nd</sup> Plaintiff's suit therefore died with him.

5. As for the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs, they must have filed suit so that their good names and reputation could be vindicated as soon as possible. That was on 2<sup>nd</sup> October 2003! By 19<sup>th</sup> May 2009 when the present application was filed, the suit had remained unprosecuted, nearly 6 years later.

6. The 1<sup>st</sup> Plaintiff does not disclose in his replying affidavit when he or the 3<sup>rd</sup> Plaintiff leant that their advocate, Mr Cerere, had emigrated to the United States of America in 2004. Nor does he state whether he or the 3<sup>rd</sup> Plaintiff made any enquiries or follow-ups at the offices of their advocates regarding their case. The explanation offered in the replying affidavit for the inordinate delay is casual and not detailed enough as to merit acceptance. It appears to me that the Plaintiffs simply lost interest in the suit.

7. I am satisfied that the long delay in prosecuting this defamation suit will render a fair trial of the action impossible. The Defendant will be prejudiced, and the suit should not be allowed to continue hanging over its head.

8. In the circumstances I will allow the application. The 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs' suit is dismissed with costs for want of prosecution. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 2<sup>ND</sup> DAY OF MAY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF MAY 2013**