

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 87 OF 2009

OVERDRIVE CONSULTANTS LIMITED.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

RULING

1. As the plaintiff counsel concedes that only Prayer (1) pends after the plaintiff vacated the premises and the accounts terminated, the issue the court has considered in determining the application is whether there exists a real dispute for it to determine. In other words, what would be the practical and efficacious effect for an order in terms of prayer (i).
2. I do note for these pleadings that the suit was to stop the defendant for seeking to recover the same of Kshs.729,760/= by disconnecting the plaintiffs supply accounts. That was the ultimate goal to be achieved by a declaration that the sum were not due or payable.
3. Now that the service accounts have been terminated and no threat exists towards disconnections, there is no dispute for the court to determine hence there is no cause of action revealed by the plaint. This may have been different if the defendant had mounted a counterclaim, which it did not. The effect is that the said claim cannot be pursued meaningfully now by a suit or indeed any other way for it having become statute barred.
4. On that basis, I do accede to the application and order that the plaintiffs suit against the defendant be struck out.
5. On costs, it is noted that the dispute between the parties was dissipated when the statutory relationship between the two as a licensee and consumer of electric power was terminated. Prayer (1) would have remained live had the defendant filed a counterclaim but it did not thus participating in dissipation of the dispute between the parties.
6. For that reason, I order that each party bears own costs.

Dated and delivered at Mombasa this 25th day of September 2019.

P.J.O. OTIENO

JUDGE