

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 71OF 2013

STEPHEN WANYEE ROKI.....PLAINTIFF/RESPONDENT

VERSUS

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

RULING

1. The application dated 11th July, 2016 seeks orders that this suit be dismissed for want of prosecution.
2. According to the affidavit in support the suit herein was filed on 1st March, 2013 contemporaneously with a Notice of Motion which was under a certificate of urgency. That interim orders were granted but the court was not sitting on the day the application was scheduled for hearing inter-partes on 10th October, 2013. That since then the Plaintiff has not taken any steps to have the suit set down for hearing. It is stated that the Plaintiff has been indolent and the suit ought to be dismissed.
3. The Respondent filed a replying affidavit in opposition to the application. It is averred that the notice of motion came up for hearing on numerous dates and directions were given by the court that the application be disposed by way of written submissions. However the court did not sit on 10th October, 2013 and the case was taken out of the cause list. That on the next mention date on 14th October 2013 once again the court did not sit and the parties were advised to await the decision of the Judges and magistrates vetting Board to confirm the availability of judges to hear the matter. That subsequent attempts to have the matter placed before the judge were not successful. The Respondent's contention is that he has not lost interest in the matter and is keen to have it heard to its logical conclusion.
4. The application was canvassed by way of written submissions which I have duly considered.
5. Order 17 (2)(1) of the Civil Procedure Rules Provide as follows:

“ In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”
6. The last entry in the proceedings herein was on 10th October, 2013. The case was scheduled for mention on 14th October, 2013 but that never happened. The Respondent has exhibited a notice that was issued by the Deputy Registrar that reflects that the court was not sitting on 14th October, 2013. The Respondent has also exhibited copies of letters dated 11th May, 2015 and 9th March 2016 requesting for this matter to be cause listed. These letters indeed bear a stamp which reflects that they were received by the court. However, it seems no step was taken in the matter by the Deputy Registrar. From the date 24th March, 2016 when the Respondent's letter dated 9th March, 2016 was received by the court to the date of the filing of the application under consideration on 9th August, 2016, a period of one year had not yet elapsed. However, the letter dated 9th March, 2016 was not copied to the Applicant. There is also no copy of the said letter on record. It is therefore not surprising that the Applicant filed the application at hand.

7. This court also takes judicial notice of the Judges Magistrate Vetting Board's exercise that was being conducted during the period under consideration. It was not business as usual in the courts during the said period.

8. With the foregoing, this court is inclined to give the Plaintiff his day in court. Consequently, I dismiss the application with costs in cause.

Dated, signed and delivered at Nairobi this 23rd day of March, 2017

B. THURANIRA JADEN

JUDGE