



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 190 OF 2014**

**KIBUWA LEASING AND MANAGEMENT LIMITED.....APPELLANT**

**- V E R S U S -**

**BERNARD DANIEL OWINO.....1<sup>ST</sup> RESPONDENT**

**KENYA POWER & LIGHTING CO. LIMITED.....2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling of the Chief Magistrate's Court Nairobi,*

*delivered on 17<sup>th</sup> April 2014 in CMCC No. 5724 of 2011 by Hon. M. Murage (Mrs)*

**JUDGEMENT**

1. Kibuwa Leasing and Management Ltd, the appellant herein, filed an action before the Chief Magistrate's Court, against Bernard Daniel Owino and Kenya Power & Lighting Company Ltd, the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively in which he sought for *inter alia* payment of ksh.82,688/= in respect of electricity bill left unpaid by the 1<sup>st</sup> respondent when he vacated the appellant's residential premises known as Flat No. Apple 8 Claremount Gardens. On 30.8.2013, the 2<sup>nd</sup> respondent filed a notice of motion in which it sought for *inter alia* the dismissal of the suit for want of prosecution. The appellant resisted the motion by filing a replying affidavit. Hon. Murage (Mrs.) Learned Chief Magistrate heard the application and proceeded to give the appellant 90 days to prosecute the suit. The appellant was unable to prosecute the suit within the 90 days. The appellant instead filed an application dated 28.2.2014 and applied for *inter alia* an order extending time to prosecute the suit by a further 90 days. The application was heard and dismissed on 17.4.2014 thus provoking the filing of this appeal. On appeal the appellant put forward the following grounds:

***1. THAT the learned magistrate erred in law and in fact by dismissing the appellant's application dated 27<sup>th</sup> February 2014 despite the fact that the appellant had partly complied with the court's ruling of 6<sup>th</sup> December 2013 to seek interlocutory judgment against the 1<sup>st</sup> defendant, as well as complete the filing of the documents for pre-trial.***

***2. THAT the learned magistrate erred in law and in fact by failing to appreciate the circumstances and technicalities surrounding the time between the delivery of the ruling of 6<sup>th</sup> December 2013 and the time of compliance i.e Ninety (90) days later.***

***3. THAT the learned magistrate erred in law and in fact by not appreciating that it was next to impossible to fully comply with the ruling of 6<sup>th</sup> December 2013 due to the technicalities affecting such compliance.***

**4. THAT the learned magistrate erred in law and in fact by not appreciating the reasons adduced by the appellant in its application dated 27<sup>th</sup> February 2014.**

2. When the appeal came up for hearing, learned counsels appearing in the matter recorded a consent order to have this appeal disposed of by written submissions. I have re-evaluated the arguments presented before the trial court. I have also considered the rival submissions. The record shows that the learned Chief Magistrate dismissed the appellant's application on the basis that no good reasons were given to explain why the appellant was unable to prosecute the suit within the 90 days given by the court. The record shows that the appellant informed the trial court that it took a long time to prepare documents in readiness for the hearing of the suit and that by the time the compliance documents were filed, the dates available for pre-trial preparation were way beyond the time frame fixed by the court. It was also argued that by the time the court diary for the year 2014 had already closed. The 2<sup>nd</sup> respondent strenuously opposed the motion. It argued that the appellant was not diligent and keen to prosecute his suit.

3. I have already outlined the grounds the learned Chief Magistrate relied upon to dismiss the appellant's application. The learned Chief Magistrate was categorical that the appellant did not give good reasons for his failure to prosecute the suit. Though the appellant put forward a total of four(4) grounds of appeal, I find the aforesaid grounds to be interrelated. In my humble view the main ground which may dispose of this appeal is whether or not the trial magistrate appreciated the reasons advanced by the appellant in support of his application for extension of time. It is the appellant's submission that the learned Chief Magistrate failed to give due and serious attention to the grounds he advanced in support of his application.

4. The 2<sup>nd</sup> respondent on the other hand is of the view that the delay to prosecute the suit was not explained and was in any case inordinate and inexcusable.

5. After a careful re-evaluation of the arguments presented before the trial court, it is clear in my mind that the appellant explained in detail what prevented him from prosecuting the suit in time. He narrated that it took him time to prepare the documents to be relied upon during the trial. The appellant also argued that he only realized that time to have the matter prosecuted had lapsed and that the diary to list matters for hearing for that year had been closed. In my view the reasons advanced by the appellant appear to be plausible and reasonable. The conduct of the appellant shows the attributes of a party who is ready and interested in prosecuting his case. It cannot therefore be right to state that no good reasons had been put forward by the appellant.

6. In the end, this appeal is found to be with merits. It is allowed.

Consequently, the order issued on 17.4.2014 dismissing the motion dated 27.2.2014 is set aside and is substituted with an order allowing the application as follows:

**i. The time given to the appellant to prosecute the suit before the trial court is extended by 45 days.**

**ii. Costs of the aforesaid motion to abide the outcome of the suit.**

**iii. Each party to meet its own costs of the appeal.**

Dated, Signed and Delivered in open court this 29<sup>th</sup> day of September, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent