



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.35 OF 2015 (OS)

AHMED SHEIKH AMIN MSELLEM.....PLAINTIFF

=VERSUS=

KENYA POWER & LIGHTING COMPANY LTD.....DEFENDANT

R U L I N G

1. What is before me is the Application by the Defendant dated 26th June, 2015. In the Application, the Defendant is seeking for the following orders:

(a) That this Honourable Court be pleased to review the order made on 2nd June 2015 by the Honourable Justice Angote directing that the hearing of the Originating Summons herein proceed by way of affidavit evidence and unopposed

(b) That this Honourable Court be pleased to issue fresh directions regarding the hearing of the Originating Summons and that the Defendants be granted leave to file its Replying Affidavit so as to defend the Originating Summons.

(c) That cost of this application be provided for.

2. The Application is premised on the grounds that when the matter came up for directions on 2nd June 2015, there was no appearance by counsel for the Defendant; that the failure to attend court on 2nd June 2015 by counsel was an inadvertent error as the matter was not diarized and that the failure to attend court on 2nd June 2015 was not intentional but purely a mistake on the part of the advocate.

3. In his Replying Affidavit, the Plaintiff deponed that the Defendant is not keen in defending the Originating Summons considering that he has not annexed a draft response and that the instant Application for review does not meet the requirements of Order 45 of the Civil Procedure Rules.

4. The suit was commenced by way of an Originating Summons on 6th March 2015. On 16th March 2015, the Defendant filed a Memorandum of Appearance.

5. The matter came up for directions on 2nd June 2015 when I ordered that the Originating Summons should proceed by way of affidavit evidence as undefended.

6. The Defendant is seeking to review the said order on the ground that its advocate misdiarised the date the matter was coming up for directions.

7. Order 45 Rule 1 of the Civil Procedure Rules provides that the court may review its orders for any sufficient reason.

8. Considering that the Defendant's advocate has deponed that the failure to attend court on 2nd July 2015 was an inadvertent mistake due to the failure on his part to diarise the date, and in view of the fact that the suit was filed in March 2015, I shall review my orders of 2nd June 2015 and allow the Defendant to defend the suit.

9. For those reasons, I set aside the orders of 2nd June 2015 and direct that the Defendant files and serves a Replying Affidavit within fourteen (14) days from the date of this Ruling.

10. Each party shall bear his/its own costs.

Dated and delivered in Malindi this 25th day of **September** 2015.

O. A. Angote

Judge