



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NUMBER 405 OF 2012

JOSEPHINE MONYANGI ONCHARI. PLAINTIFF

VERSUS

KENYA POWER AND LIGHTING CO. LTD. DEFENDANT

RULING

There are two applications before the court. The first one is dated the 7th November, 2011 by the Plaintiff and seeks the striking out of the Defendant's defence and entering judgment in favour of the plaintiff on the basis that the Defendant filed the defence but failed to serve it within the prescribed 7 days and thereafter for a year.

The second application is dated 1st February, 2012 and was filed by the Defendant. It sought mainly for extension of time to serve the unserved defence. It, however also sought in equal voice, to strike out the first application by the Plaintiff on the basis that the Plaintiff himself, had failed to serve the said application within the prescribed 7 days.

I have carefully considered the applications which I have perused. I have no doubt in my mind that both parties in their own way and for their own reasons, committed a similar offence of failing to serve pleadings on each other within the period prescribed by the rules. It is also clear to me that if both are excused and are given time to serve the unserved proceedings, the suit and the pleadings and processes related thereto, will be rectified and regularized. Thereafter the parties can move on with the case. This will be so notwithstanding the fact that the court indeed has power to strike out the unserved pleadings under order 10 rule 3, a power which should be exercised only with discretion.

On the other hand, the court under Section 95 of the Civil Procedure Act, and Order 50 Rule 6 of the Civil Procedure Rules has power and discretion to enlarge time for the doing of any act prescribed or allowed under the Civil Procedure Act and rules even if such time has expired.

It is on record that although either party had failed to serve their relevant pleadings or process in time, they have later done so and each party is conversant of those pleadings or processes already filed. It is also clear in my mind that enlarging the relevant time would, as already stated, regularize the suit and will indeed not prejudice either party.

It is trite that the purpose of court is to grant parties maximum access to agitate their cases. That is to say, the court will strive to save a suit and allow a fair and just and final determination of the same. The court will avoid to make any order that would unnecessarily impede proper agitation of the case.

In passing also and not least, the suit appears to carry issues that are of public interest and which

need to be freely and fairly investigated and determined to their finality.

The end result therefore shall be that this court will allow the Defendant's application dated 1st February, 2012 in the following orders: -

ORDERS

1. **The Defendant's application for extension of time is hereby granted.**
2. **The Defendant shall serve its defence within 10 days.**
3. **The Plaintiff's application dated 1st February, 2012 shall stand compromised with no orders in respect thereof.**
4. **The costs shall be in the cause.**

Dated and delivered in Nairobi this 20th day of February, 2014.

.....

D A ONYANCHA

JUDGE