



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
CIVIL CASE NO. 672 OF 2000

SALOME WANJIKU MIRINGA and

JOSEPHINE MWANGI

(Suing on their behalf and on behalf of Kujitolea Women Group).....PLAINTIFFS

VERSUS

**THE KENYA POWER & LIGHTING COMPANY
LIMITEDDEFENDANT**

R U L I N G

By an application by Notice of Motion dated 19th January, 2010, the Defendant seeks from the Court orders that the Plaintiffs' suit be dismissed for want of prosecution and that the Plaintiffs do pay to the Defendant the costs of this application as well as those of the suit. The application is brought under **Order XVI Rule 5 (d)** of the **Civil Procedure Rules**.

The application is supported by the annexed affidavit of Michi Kirimi, an Advocate in the firm of the Advocates who have the conduct of this suit on behalf of the Applicant. It is based on the grounds that –

1. ***The Plaintiffs have failed to set down the suit for hearing or take steps to prosecute the suit to-date since the matter was last adjourned on 19th November, 2007, and more than 2 years have since elapsed.***
2. ***The delay in prosecuting this case is prejudicial to the Defendant.***
3. ***It is in the interests of justice that the suit be dismissed.***

On the date appointed for the hearing of the application, Mr. Murugara

appeared for the Applicant but the Respondents neither appeared, nor were they represented. According to the record, the Plaintiffs' Advocates were initially represented by the firm of Eboso & Wandago, Advocates which firm appears to have split into the firms of Eboso & Co. Advocates, and Okong'o

Wandago & Co. Advocates. An affidavit of service sworn by Godwin Maina, a process server of this Court, shows that he served the firm of Eboso & Co. Advocates on 15th November, 2010. This service is confirmed by that firm's rubber stamp of that date. The same affidavit shows that Wandago, Advocate, was served on 19th November, 2010 at his office in the chambers of Okong'o Wandago & Co., Advocates and that a copy of the application was left with him but that he refused to acknowledge receipt. Service was effected by leaving a copy thereof with the Advocates' Secretary who did not give her name citing that they did not have instructions from the Plaintiffs. On being satisfied that the Plaintiffs' Advocates were duly served but failed to attend court for the hearing, the Court proceeded *ex parte*.

Mr. Murugara for the Applicant relied on the 3 grounds on which the application was based and asked the Court to grant the orders as prayed. It is instructive that from the date the application was served, the Respondents filed neither a replying affidavit nor grounds of opposition. And on the hearing date, they chose not to attend Court. This is a clear manifestation of their lack of interest in prosecuting this case and, in the circumstances, the application is unopposed and the Applicant is entitled to the orders sought.

I accordingly make the following orders –

(a) The Plaintiffs' suit herein be and is hereby dismissed for want of prosecution as prayed.

(b) The Plaintiffs' will pay the Defendant's costs of this application as well as the costs of the suit.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 20th day of January, 2011.

L NJAGI

JUDGE