

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE 1124 OF 2005

KIBWANA LEASING LIMITED.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.....RESPONDENT

R U L I N G

The Notice of Motion herein, dated 5/6/06, seeks dismissal of the suit for want of prosecution, under Order 16 rule 6 of the Civil Procedure Rules. This is on the grounds, that whereas the suit was filed on 14/9/05, and issues agreed upon on 19/12/05 no action has been taken by the Plaintiff to fix or set down the suit for hearing. The Respondent has never filed its list of documents, even though the Applicant filed its list. In opposition, the Plaintiff/Respondent blames the Defendant/Applicant for not fixing the hearing of the case, even though, it never invited the Defendants to pick such a date at the Registry. The Respondent further avers that the file was missing for a period of 3 months.

A quick perusal of the pleadings clearly shows that there is no evidence whatsoever, that the file could not be traced at any time, from the court registry. Nor did the Respondent produce any letter from the court Registry that the file could not be traced, at any time, since the suit was filed.

It is trite to add that whereas the Applicant/Defendant can fix the hearing date of a suit, primarily, that is not the responsibility of a Defendant. The obligation to prosecute the suit, with due speed and diligence rests on the Plaintiff. The defendant has an option to either fix the suit for hearing or apply for its dismissal. No such an option exists for the Plaintiff/Respondent.

All in all, I have reached the finding and conclusion that no reason, good or otherwise, has been advanced to explain the delay in prosecuting the suit, as by law required.

Accordingly, I grant the Notice of Motion herein, and dismiss the suit for want of prosecution since 19/12/05. I further order that the Respondent/Plaintiff do pay costs of both this application, and the suit herein.

DATED and delivered in Nairobi, this 22nd Day of January 2007.

O.K. MUTUNGI

JUDGE