



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Civil Case 528 of 2000**

**SAFARI MUPE (A minor suing thro' his mother and next friend**

**HARUSI MUMBA**

**MUZUNGU.....**

**.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LTD.....**

**.....DEFENDANT**

**RULING**

The hearing of this case was admittedly last adjourned on the 17<sup>th</sup> November 2004. Since then, the defendant says, the plaintiff has not bothered to fix it for hearing. The Defendant has in the circumstances applied under Section 3A of the Civil Procedure Act and Order 16 Rule 5(d) of the Civil Procedure Rules for its dismissal for want of prosecution.

In response to the application the plaintiff claims in the replying affidavit sworn by his advocate that the failure to fix the hearing has been occasioned by inter alia the defendant's insurers being placed under statutory management and a moratorium declared on all the claims. Annexed to that affidavit are copies of the letters written to the defendant's advocates enquiring if they still have instructions to act in the matter in view of their clients' insurers' position. Counsel also claims that the court file has been missing and has also annexed copies of letters to court on the issue.

I have considered the matter. I know it as a fact that quite a number of cases against parties previously insured by United Insurance Company Limited have not been heard for the reason that it is not clear whether the claims covered by that insurance company will eventually be settled or not. Not many counsel would want to conduct a hearing of a case and obtain a decree they can never enforce. But that is no excuse in this case as the defendant is a corporation capable of paying any damages that may be awarded. The plaintiff and his advisers must be aware of that. However because counsel for the defendant did not respond to their counterpart's letters and confirm that they still have instructions in the matter, I am prepared to give the plaintiff the benefit of doubt. I therefore disallow this application and order that the plaintiff do fix this case for hearing within six months failing which this suit shall stand dismissed with costs for want of prosecution. The Defendant shall have the costs of this application.

DATED and delivered this 22<sup>nd</sup> day of October 2007.

**D. K. MARAGA**

**JUDGE**