

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 926 of 2002

GLOBAL GASES KENYA LIMITED
PLAINTIFF

VERSUS

THE KENYA POWER & LIGHTING COMPANY LIMITED
.....DEFENDANT

RULING

The Notice of Motion dated 7th August, 2006 is brought by the Defendant under Order XVI Rule 5(a) and (d) of the Civil Procedure Rules. The Defendant seeks a prayer that this suit be dismissed for want of prosecution. The affidavit in support of the application states that the Plaintiff was filed on 25th July, 2002 together with an injunction application. On the 25th July, 2002 the Plaintiff was granted ex parte temporary injunction which injunction was extended from time to time. The injunction was finally vacated on 14th April, 2005. The Plaintiff was granted leave to amend its plaint on 27th July, 2005. The Defendant filed its amended defence in reply to the amended Plaintiff on 11th August, 2005. The pleadings therefore closed on 25th August, 2005. The deponent stated that it is 11 months since the pleadings closed and the

Plaintiff had failed to take any action to set the suit down for hearing. It was further deponed that the subject matter dated back to 2001 and the long delay in the prosecution of this suit was detrimental to the defendant. The defendant is of the view that the Plaintiff has lost interest in this matter.

When the matter came up for hearing the Advocate holding brief for the Plaintiff's advocate informed the court that the instructions he had in respect of the application was that the matter would be left to the court to make its determination.

I have considered the matter brought before me. Indeed it is 11 months since the Plaintiff took action to actively prosecute this matter. The Plaintiff does not oppose the application before court and I do find that the same is merited. Order XVI of the civil Procedure Rules provides that a suit can be dismissed if a party does not set it down for hearing within 3 months. The Plaintiff has exceeded that period and such delay can indeed prejudice the defendant. The court therefore, grants the following orders:-

- (1) This suit is dismissed as against the Defendant for want of prosecution.
- (2) The Plaintiff shall pay to the defendant the costs of this suit and the costs of the Notice of Motion dated 7th August, 2006.

MARY KASANGO

JUDGE

Dated and delivered this 29th day of September, 2006.

MARY KASANGO

JUDGE