

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 63 OF 2002

IBRAHIM AHMED HIDIK PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY DEFENDANT

RULING

This suit involves an industrial accident whereby a cable electrocuted a pedestrian in the slum area of Thika.

The hearing was set down for the 9th and 10th of March 2004. On the day of the call over the suit was taken out and matters referred to the deputy registrar on the grounds that the file was missing and could not be traced. The deputy registrar kindly traced the file and according to the advocate for the plaintiff made the file available on 3.3.04.

The plaintiff on 4.3.04 took dates for 8.3.04 as a date to mention this suit. It has now transpired that, though the file had been traced, the plaintiff wishes for the witnesses who come from Mandera to appear to court on Thursday 11.3.04 and have only their evidence taken down.

The advocate for the defendant, through the advocate for the 3rd party, leaves it to court. The advocate for 3rd party states that as the matter was taken out, his clients were asked not to attend court.

My direction on this matter is as follows, together with the reasons therefor:-

The application made by the advocate for plaintiff to examine witnesses evidence as they come from Mandera amounts to requesting for evidence taken De Benee esse. This means that, evidence of a person and or witness is taken down. The suit is then suspended until a suitable date is found. To do this, there must be a formal application made to court. In the absence of this it is not possible for the court to proceed as such. See Order 17 r 11 CPR as read with Order 17 r 14 CPR. The court file had been missing. The suit was referred to the deputy registrar to trace the file. The deputy registrar has now traced the file after a few weeks.

This court had taken this matter out of the list. The party cannot come to court to ask for a hearing date of the witnesses in absence of the defence preparing their case. If all the parties were ready to proceed on the 9th and 10th for March 2004 and the deputy registrar had notified this court as such, with knowledge of the parties – the practice rules allows the deputy registrar to fix cases that are ready for hearing more so at the call over. As the defendants were not aware of this, in the interest of justice this matter stands taken out of the list.

There is another form of recording evidence for witnesses and that is before an examiner – especially so where witness are abroad.

See Order XXVII CPR. Such procedure is by way of an application, (See Order XXVII r 20 CPR), during the old days at the stage of summons for directions.

I would hereby direct that the plaintiff is to take fresh hearing dates. The advocate for the plaintiff had 2 weeks in which to notify this witnesses not to attend court. They are to bear their own costs. The matter is stood over generally. Dates in the registry. Costs in the cause.

Dated this 8th day of March 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Ahmednasir, Abdikadir & Co. Advocate for the plaintiff

Mohammed & Muigai advocates for defendant

Pramod Patel Advocate for the 3 rd party