



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 124 OF 2015

PHYLLIS CHEPKOECH KEINO.....PLAINTIFF

VERSUS

THE KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

RULING.

1. The application dated 23/2/2021 seeks orders that;

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2. This Honourable Court be pleased to set aside, vary and/or otherwise discharge the Order of this Honourable Court of 16th October, 2020 by which this suit was dismissed for want of prosecution, together with all consequential orders arising therefrom.

3. This Honourable Court be pleased to reinstate this suit for hearing and final determination.

4. Further to prayer No. 3 hereinabove, this Honourable Court be pleased to issue any other orders it may deem fit to meet the ends of justice, including setting this suit down for hearing.

5. The costs of this application be provided for.

2. It is stated in the grounds set out in the application supporting affidavit that the Applicant was not served with the Notice to Show Cause why the suit should not be dismissed. That the hearing of this suit was placed on hold as the parties were holding negotiations with a view to settling the matter, hence the delay in the prosecution. That the negotiations did not bear fruit and when the Plaintiff took steps to fix the suit for hearing, it was discovered that the suit had been dismissed. It is further averred that the Plaintiff had already complied with pre-trial directions but now stands to suffer the prejudice of not being heard on merits.

3. The Respondent did not file any papers in response to the application.

4. This suit was dismissed by the court on 16/10/2020 under Order 17 Rule 2(1) of the Civil Procedure Rules which provides;

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit dismissed, and if cause is not shown to its satisfaction, may dismiss the suit”.

5. A perusal of the court record reflects that before the said dismissal, the last time any step had been taken in the suit was on 1/2/2018. The suit had therefore been dormant by a period of over 2¹/₂ years and was therefore ripe for dismissal.

6. An affidavit of service sworn by the court’s Process Server reflects that service was effected on the Applicant’s Advocates on 1/9/2020 by way of registered post. However, the Notice to Show Cause is dated 9/9/2020. One wonders how the said Notice was served on 1/9/2020 before it was even issued. The affidavit of service is not satisfactory.

7. The Applicant has explained to the court that the parties were engaged in negotiations with a view to settling the matter. The Applicant has also exhibited correspondence between the parties regarding the said negotiations. Those averments by the Applicant remain uncontroverted.

8. The upshot is that the application is allowed with costs in cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2021

B.THURANIRA JADEN

JUDGE