

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 1137 OF 2006

PATRIOTIC GUARDS LTDPLAINTIFF

VERSUS

KENYA ELECTRICITY GENERATING CO. LTD.....DEFENDANT

RULING

1. The application dated 23rd May, 2017 seeks orders that this honourable court be pleased to dismiss the Plaintiff's suit against the Defendant for want of prosecution.
2. It is stated in the grounds and the affidavit in support of the application that no steps have been taken to prosecute this case. That the inordinate delay is prejudicial to the Applicant. It is further averred that the delay reflects the Respondent's lack of interest in the suit.
3. In opposition to the application, the Respondent filed the grounds of opposition dated 23rd October, 2017. It is stated that the application is unconstitutional and violates the overriding objectives of Sections 1A & 1B of the Civil Procedure Act to determine matters with finality and not through interlocutory applications. The court was referred to the history of the case and the triable issues raised in the suit. An affidavit filed supports the grounds raised and blames the delay on the appointment of the Respondent's counsel as a judge.
4. I have considered the application and the reply to the same.
5. A perusal of the court record reveals that the suit herein was last fixed for hearing on 10th July, 2014. The file had therefore been dormant for about three years prior to the filing of the application at hand. This connotes lack of diligence on the Applicant's side. Appointment of another counsel to take over the conduct of the Respondent's case would not have taken that long. The same Civil Procedure Act that the Respondent places reliance on provides for expeditious resolution of disputes. Be as it may, this court is inclined to give the case a chance to be heard on merits.
6. In the upshot, the application is dismissed with costs to the Applicant. The Plaintiff to fix the suit for hearing within 120 days from the date hereof. In default the suit to stand dismissed.

Date, signed and delivered at Nairobi this 16th day of Oct., 2018

B. THURANIRA JADEN

JUDGE