



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NUMBER 536 OF 2005

WILLIAM MUCHAI THIAKAPLAINTIFF

VERSUS

KENYA POWER & LIGHTING & CO. LTD.DEFENDANT

RULING

The application for determination is the Notice of Motion dated the 6th day of June 2016 seeking for dismissal of the suit for want of prosecution and the costs of the application.

It is brought under order 17 Rule 2 (3) and Order 51 Rule 1 of the Civil Procedure Rules and all the enabling provisions of the law.

It is premised on the grounds set out on the body of the same, and it's supported by the affidavit of **DANIEL KABATA** sworn on the 6th June 2016.

The facts in support of the application are that, it has been three years since the matter was last set down for hearing. That it was last in court on the 22nd October 2012 for hearing of the defendant's application dated the 10th day June of 2012 when the court allowed the defendant to amend his defence.

That the pendency of the suit and the continued inaction by the plaintiff is prejudicial to the defendant and its apparent that the plaintiff is not interested in the same any more.

The court has considered the application together with the supporting affidavit and the oral submissions made in support of the same.

From the record, the plaint was filed on the 6th day of May 2005. The defendant filed an appearance on the 17th May 2005 and a defence on the 26th May 2005. The plaintiff filed a reply to defence on the 31st May 2006 which marked the close of the pleadings.

The defendant filed an application dated 10th July 2012 seeking leave to amend the defence which was allowed vide a ruling delivered on the 22nd October 2012. Thereafter, the plaintiff filed a list of documents on the 21st January 2013 with the defendant filing a pre-trial questionnaire on the 11th day of June 2013. Since then no other action was taken in the matter until the application herein was filed by the

defendant.

As pointed out hereinabove, the last action in the matter was taken on 21st January 2013 when the plaintiff filed list of documents which is a period of over three years without any action being taken by the plaintiff.

It is noted that the plaintiff did not defend the application and he did not attend court when it came up for hearing despite having been served with a hearing notice.

Order 17 Rule 2 (3) is very clear and it provides;

“Any party to the suit may apply for its dismissal as provided in sub rule (1).

Order 17 (2) (1) 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 should not be dismissed and if cause is not shown to its satisfaction, may dismiss the suit.”

It is clear from the record that more than three years have lapsed since the last action was taken in the matter

In view of the foregoing, the court finds that the defendant’s application dated 6th June 2016 has merits and it is hereby allowed as prayed. The suit is hereby dismissed for want of prosecution.

Costs of the application and the suit are awarded to the defendant.

Dated and delivered at Nairobi this 19th day of January, 2017.

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LUCY NJUGUNA

JUDGE

In the Presence of

..... for the Plaintiff

.....for the Defendant