



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 190 OF 2012**

**MICHAEL NDUNGU NJENGA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**KENYA POWER & LIGHTING COMPANY LIMITED.....DEFENDANT/APPLICANT**

**RULING**

1. The application dated 7<sup>th</sup> July, 2014 seeks orders that:

**1. The entire suit be struck out with costs to the Defendant/Applicant**

**2. Alternatively and without prejudice to (1) above, this Honourable Court be pleased to discharge, vary or set aside the injunctive Orders granted by this Honourable Court on 15<sup>th</sup> June, 2012.**

**3. That the costs of this Application be borne by the Plaintiff.**

2. The application is predicated on the grounds stated on the face of the application and is supported by the affidavit in support sworn by the Applicant's counsel, Claire Mwangi. It is stated the Respondent filed the suit herein on 26<sup>th</sup> April, 2012 and served the plaint and an application seeking injunctive reliefs but never served the summons to enter appearance. That the Respondent obtained temporary injunctive orders which he has continued to enjoy for over two years, yet the Respondent has not taken any steps to prosecute the suit.

3. In opposition to the application, the Respondent's counsel Shadrack John Mose filed a replying affidavit. It is deponed that the applicant was served with the plaint and a Notice of motion under a certificate of urgency but the Applicant never responded to the same and the court granted the injunctive orders. That the plaint was filed accompanied by the summons which have not been signed by the Deputy Registrar to date. That a follow up was made but the court file could not be traced.

4. When the application came up for hearing the Respondent was not present though served. The Applicant's counsel proceeded to argue the application.

5. It is not in dispute that the suit herein was filed on 26<sup>th</sup> April, 2012. It is also not denied that todate the summons to enter appearance have not been served. It is also common ground that the Respondent is enjoying mandatory orders of injunction and his electricity supply was reconnected pending the determination of the dispute herein over a bill of Kshs.108,875/=. The Applicant has also been restrained from interfering with the electricity supply to the Respondent's premises over the said bill of Ksh.108,875/= pending the determination of this suit. The bone of contention herein concerns the failure by the Respondent to take any steps to prosecute the suit.

6. The Respondent has exhibited a copy of a letter dated 3<sup>rd</sup> May, 2013 addressed to the Deputy Registrar inquiring about the signing of the summons. The said letter has no court stamp on it to show that it was received by the court. The court's copy is also not on the record. There is on record another letter by the Respondent dated 5<sup>th</sup> August, 2014 addressed to the Deputy Registrar requesting for the signed copies of

the summons. This letter also has no court stamp on it. The courts copy of the summons duly signed and sealed by the Deputy Registrar on 8<sup>th</sup> August, 2012 is on the record. The said summons have since expired. No letters have been exhibited requesting for the file to demonstrate that the Respondent had requested for the same and that it could not be traced. It appears the Respondent obtained temporary orders then relaxed without taking steps to prosecute his suit.

7. Order 40 rule 6 Civil Procedure Rules provides for interlocutory injunctions to be determined within twelve months from the date of grant unless if there is sufficient cause for the court to order otherwise. In the case at hand, I have not seen any sufficient reason to order otherwise.

8. With the foregoing, this court's view is that the Respondent does not merit the continued enjoyment of the injunctive orders herein. Consequently, the injunctive orders herein dated 15<sup>th</sup> June, 2012 are hereby discharged in terms of prayer No. 2 of the application. Costs of the application to the Applicant.

Dated, signed and delivered at Nairobi this 9<sup>th</sup> day of Feb.,2017

**B.THURANIRA JADEN**

**JUDGE**