



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 518 of 2000**

**SIMON MBURU KIANDO ..... PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LIMITED .....1<sup>ST</sup> DEFENDANT**

**WAMBUGU KANYI SAMUEL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

The notice of motion dated 25<sup>th</sup> August, 2006 brought pursuant to Order 16 rules 5 and 6 of the Civil Procedure Rules was argued *ex parte* as the plaintiff/respondent did not respond to it or attend court when it came up for hearing despite notice.

The defendant/applicant contends that the plaintiff/respondent has failed to take any steps in the matter since 20<sup>th</sup> July, 2004 when it was stood over generally; that due to that delay the defendant/applicant has been prejudiced. Under order 16 rule 5 aforesaid the court may, within three months after the close of pleadings or the removal of the suit from the hearing list or the adjournment of the suit generally, on the application of the defendant or on its own motion, on notice to the parties, set down the suit for hearing. Alternatively the defendant may apply for its dismissal. The applicant has elected to apply for its dismissal.

***HCCC.518/2000***

Rule 6 on the other hand gives the court the power to dismiss a suit for want of prosecution if the parties have failed to make any application or take any steps in the matter for three years. It is clear to me that the last action in this matter was before Apondi J. on 20/7/2004, when interlocutory judgment entered against the 2<sup>nd</sup> defendant was set aside and thereafter matter stood over generally. Nearly five years have passed and no action has been taken to move the matter forward. I am satisfied that the respondent has lost interest in the matter and it will be prejudicial to the applicant to be kept in suspense.

It is ordered that the suit herein be and is hereby dismissed with costs for want of prosecution.

Dated and delivered at Nakuru this 1<sup>st</sup> day of July, 2009.

**W. OUKO**

**JUDGE**