

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 172 OF 2016

ANTONY MWAU WAMBUA.....PLAINTIFF/RESPONDENT

VERSUS

KENYA POWER & LIGHTING CO.LTD.....DEFENDANT/APPLICANT

RULING

1. In the Application dated 30th October, 2018, the Defendant is seeking for the dismissal of the suit for want of prosecution. The Application is premised on the grounds that the Plaintiff has not taken any steps to prosecute the matter for over one (1) year; that the matter was last in court on 22nd September, 2017 when the court delivered its Ruling and that the Plaintiff has lost interest in the suit.

2. In his response, the Plaintiff deponed that after the Ruling of 22nd September, 2018, he tried to have the suit settled amicably through the Judiciary Annexed Alternative Mediation which he initiated with the Defendant and that he has always been interested in prosecuting the suit. Both parties relied on their respective Affidavits.

3. Before the Defendant filed the Application dated 30th October, 2018 on 1st November, 2018, the court had dismissed the Plaintiff's Application dated 27th October, 2016. The Ruling of the court was delivered on 22nd September, 2018.

4. Between the time that the current Application was filed and when the matter was last in court, a period of one (1) year and one (1) month (*13 months*) had lapsed.

5. The Plaintiff has produced in evidence several letters that he wrote to the Defendant in his attempt to negotiate the matter out of court. Indeed, Article 159(2) (b) of the Constitution encourages parties to pursue alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.

6. In view of the several attempts that the Plaintiff made to settle the dispute out of court, I find that a delay of 13 months to fix the matter for hearing is not unreasonable. In the circumstances, I dismiss the Application dated 30th October, 2018 but with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE