REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 407 OF 2013

SAMMY WAITHAKA WANJAU.....PLAINTIFF/RESPONDENT

= VERSUS =

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

RULING

1. An application was made by the Defendant/Applicant under order 17 Rule 2(1), (2) and (3) for dismissal of this suit for want of prosecution. The applicant contends that the plaintiff filed this suit on 26th March 2013. A defence was filed on 29th May 2013. The case underwent through pre-trial and was certified ready for hearing.

2. The case was fixed for hearing on 21st of December 2015 but it was not listed. Since then, the Plaintiff/Respondent did not take any steps to have the matter fixed for hearing. The applicant therefore prays for dismissal of this case as the plaintiff has lost interest in the same.

3. The application for dismissal of this case was served upon the plaintiff's Advocate who did not file any response to the application. There is no doubt that the last activity in this file took place on 20.2.2015 when this suit was fixed for hearing on 21st December 2015. The case was not listed for hearing. The Plaintiff did not take any step to have the case listed down for hearing until 8th March 2017, when the present application was filed.

4. The plaintiff was obliged to give an explanation why the suit could not be fixed down for hearing. This was not done. When the application came up for hearing on 17th May 2017, the Court directed the applicant to file written submissions. The Plaintiff's advocate was present. As no explanation has been given why the suit has not been fixed for hearing, I find that this application should be allowed with the result that the plaintiff's suit is hereby dismissed with costs to the defendant.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this ***10th*** day of **October, 2017.**

E.O.OBAGA

JUDGE

In the presence of :

Mr Maina for defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE