



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**  
**CAUSE NO. 355 OF 2013**

**JOEL MWANGI.....CLAIMANT**

**- VERSUS -**

**KENYA POWER AND LIGHTING CO. LTD.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 16<sup>th</sup> May, 2014)

**RULING**

The claimant **Joel Mwangi** filed a notice of motion on 5.03.2014 as brought under **Order 45 rule 1 of the Civil Procedure Rules 2010**. The claimant prayed that the court be pleased to review the order made on 25.11.2013 and upon such review, the case be reinstated and the plaintiff be allowed to continue with the prosecution of the suit against the defendant. The application was supported by the affidavit of Githui John, counsel for the applicant, attached to the application.

On 25.11.2013, Mr. Karanja Advocate held brief for Mr. Githui Advocate for the claimant. The respondent and the respondent's counsel were not present in court. The claimant had not paid Kshs.400.00 being court adjournment fees as ordered on 4.11.2013.

On 25.11.2013, the case was called out and the court directed the claimant to pay the adjournment fees and the case to be called out thereafter. The case was called out at 11.25 am and both parties were absent. The court then ordered thus, **“Case dismissed for failure to attend and to comply with court orders.”**

The applicant's counsel's case is that Mr. Karanja Advocate who held his brief on 25.11.2013 did not inform him about the court orders and in particular that there was court adjournment fees to be paid as ordered by the court. It was the applicant's case that his advocate discovered the orders dismissing the case on 22.01.2014 upon seeking to fix a hearing date in the matter. It was submitted that the mistake of the advocate should not be visited upon the applicant especially in circumstances whereby the claimant's case had high chances of success.

The respondent opposed the application by filing on 25.04.2014 the replying affidavit of Sigilai Kirui, the respondent's Acting Benefits and Staff Relations Manager. The affidavit was drawn and filed for the respondent through the Federation of Kenya Employers.

The court record shows that the respondent did not enter appearance or file a memorandum of response.

The record further shows that the Federation of Kenya Employers did not file and serve the relevant notice of appointment to act for the respondent. In the circumstances, the court finds that the replying affidavit was irregularly filed, the irregularity is not curable at this stage and the affidavit is amenable to be struck out from court record. The application would therefore stand unopposed.

The applicant has complied with the orders to pay the court adjournment fees as ordered. In absence of the memorandum of response, the court finds that the claimant's case has a high chance of success. In the circumstances of the case, the court finds that the claimant is entitled to the orders as prayed for.

In conclusion, the application is allowed with orders as follows:

- a. **The orders of 25.11.2013 dismissing the case are set aside and the claimant is at liberty to take steps to prosecute the suit.**
- b. **The respondent at liberty to enter appearance and to file and serve the memorandum of response by 23.05.2014 and the claimant at liberty to file a reply thereto by 30.05.2014.**
- c. **The case to be mentioned on a date convenient to the parties for directions on the hearing of the suit.**
- d. **The costs of the application shall be in the cause.**

**Signed, dated and delivered in court at Nakuru this Friday 16<sup>th</sup> May, 2014.**

**BYRAM ONGAYA**

**JUDGE**