



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO. 341 OF 2010

KENNEDY OTIENO NOOH T/A BRILLAND CONSTRUCTION LTD.....PLAINTIFF

VERSUS

THE KENYA POWER & LIGHTING COMPANY LIMITED.....DEFENDANT

RULING

1. This is an application to review the order of 31st October, 2012- where the suit was dismissed- and reinstate the same under **Order 45 r 1** of the **Civil Procedure Rules** and other enabling provisions thereof.
2. The application is supported by the affidavit of one Kennedy Otieno Nooh of the same date as the application.
3. There has been change of advocates. M/s Nyatundo & Company Advocates replaced Mr. Anthony Okuto & Company Advocates by their Notice of Change of Advocates dated 22nd day of November, 2012.
4. The replying affidavit, by one B.K. Langat, sets out the grounds of opposition to the applicant by defendant/Respondent.
5. The thrust of the Applicants case is as follows:-
 1. *That seeks review of the orders of 31st October, 2012 and 31st November, 2012, the existence of which he learnt on 1st April, 2014- one year and five months when he received a letter from the Defendant/Respondent Advocates, M/s Kibichiy and Co. Advocates.*
 2. *The defendant/respondent did not serve the orders of 31st October, 2012 and therefore had no notice of responding dismissal prayed for by the defendant/respondent.*
 3. *By filing in a list of witnesses, the Applicant/Plaintiff had taken concrete steps to prosecute his case.*
6. The Defendant/Respondent's grounds of opposition are listed as 5 and are dated 13th May, 2013.
7. I have read both applicant's affidavit of support of their case, I have also read the Respondent's grounds of opposition and his supporting affidavit. I listened to the arguments by both counsels in support of their respective stand. I have formed my considered opinion that in the interest of justice, I allow the application dated 7th April, 2014 and order the reinstatement of the said suit for hearing and

determination by the court on merit. Therefore the order of dismissal is hereby set-aside.

8. The plaintiff/Applicant to move with reasonable speed to prosecute his case. Any delays in future to move fast on the matter, the court will not hesitate to dismiss the suit again with costs to the plaintiff.

9. Order accordingly. No orders as to costs.

Ruling dated and delivered at **KISII** on the 2nd day of October, 2014.

C.B.NAGILLAH,

JUDGE.

In the presence of:-

Odhambo Kanyangi holding brief for Nyatundo for Applicant

Bunde holding brief for Wetese for Respondent