



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 3275 of 1989**

**BERNARD K. MWANGI.....PLAINTIFF**

**VERSUS**

**AFRICAN MEDICAL & RESEARCH FOUNDATION.....DEFENDANT**

**R U L I N G**

This is an application by the defendant under Order XVI rule 5 (a) of the Procedure Rules for an order that the suit against him be dismissed for want of prosecution. The defendant says there has been inordinate delay. In support of the application Michael Kibe the Human Resources and Administration Manager of the defendant has sworn an affidavit giving grounds for the application.

The suit was filed on 26<sup>th</sup> July 1989. the relief sought is general damages for unlawful dismissal, payment of terminal benefits, two months' salary in lieu of notice, payment in lieu of accumulated leave salary from the date of dismissal to the date of judgment. The defendant entered appearance and filed the defence on 29<sup>th</sup> September 1989. This case has been in court for the last 18 years since the pleadings were closed and the plaintiff has not taken any steps to set it down for hearing. The defendant was served with this application but and not file any papers to oppose the same.

Mr. Muthuri counsel for the defendant submitted that this is a suitable case for dismissal under Order XIV Rule 5(a) of the Civil Procedure Act.

The question of delay in bringing actions to speedy conclusion has been considered in several decisions both of this court and the Court of Appeal. When the delay is prolonged and inexcusable and is such as to do grave injustice to the one side or the other or both the court may in its discretion dismiss the action straight away. On the other hand this power should not be exercised unless the court is satisfied that there has been inordinate and inexcusable delay will give rise to a substantive risk that it is not possible to have a fair trial of the issues in action or is likely to cause prejudice to the defendant.

This claim arises out of unlawful dismissal. It has been in court for the last 18 years. The plaintiff was served but did not file any papers in opposition to the application nor did he appear in court to oppose the application and no excuse has been offered for the delay.

I agree with counsel for the defendant that the delay is inordinate and inexcusable and that the defendant will be prejudiced if the suit is allowed to continue and justice cannot be done now.

Accordingly in the exercise of my discretion I allow the application and dismiss the suit for want of prosecution.

I award the defendant the costs of the suit and of the application.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of March 2008.

**J. L. A. OSIEMO**

**JUDGE**