

REPUBLIC OF KENYA

EIN TH HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2583 of 1990

KARAMA SAIDI.....PLAINTIFF

VERSUS

KENYA COLD STORAGE (1964) LIMITED.....DEFENDANT

R U L I N G

By this notice of motion expressed to be brought under Order XVI Rules 5 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the defendant seeks orders that the plaintiff's suit be dismissed for want of prosecution. The defendant says that there has been inordinate delay in prosecution this suit. In support of the applicant, Ben Simiyu has sworn an affidavit giving grounds for the application. The facts as gathered from the pleadings giving rise to this litigation briefly may be stated.

On 30th May 1987 the plaintiff was lawfully walking along Mombasa – Lunga Lunga Road when he was hit and knocked down by a motor vehicle registration No KWT 386 which belonged to the 2nd defendant and was being driven by the 1st defendant. He filed this suit against both defendants jointly and severally on 25th May 1990 for special damages amounting to Sh 1000/= as well as general damages and costs of the suit. The defendants upon being served with summons failed to enter appearance and file defences.

By letter dated 26th August 1992 the plaintiff sought interlocutory judgment in default of appearance and on 17th February 1993 interlocutory judgment was entered by the Deputy Registrar in the following terms:

The 1st and 2nd defendants herein BAKARI HAMISI AND KENYA COLD STORAGE CO. LTD having been duly served with summons to enter appearance and having failed to enter appearance within the prescribed period and on the application by the plaintiff's Advocate dated 26th August 1992 and filed in court on 22nd September 1993, I enter interlocutory judgments in the sum of Sh 1000/= together with interest thereon at court rates from the date of filing the suit. The award of costs shall await judgment upon the remaining claim when the suit will be set down for assessment for general damages.

The respondent was properly served and there is return of service filed but did not attend. Mr Kabaiko Counsel appearing for the defendant submitted that suit has been in court for 17 years and the last time it was in court was on 21st April 1994 when Counsel for the plaintiff informed the court that interlocutory judgment had already been obtained and it was stood over generally. Counsel submits that there has been inordinate delay on the part of the plaintiff in bringing his suit to speedy conclusion and urged then court to dismiss the suit with costs.

Having considered the application, the affidavit in support and the submissions by counsel I am satisfied that this is a proper case for dismissal under rule 5 of Order XVI of the Civil Procedure Rules.

But the plaintiff having obtained interlocutory judgment in respect of prayer (a) of the claim and having been awarded Sh. 1000/=, the dismissal is in relation to prayer (b) and (c) of the plaintiff's claim with costs.

Delivered and dated at Nairobi this 16th day of May 2008.

J. L. A. OSIEMO

JUDGE