

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Appeal 594 of 2000

RELIABLE FREIGHT SERVICES LTD..... PLAINTIFF

VERSUS

MEDITERRANEAN SHIPPING CO. S.A.1ST DEFENDANT

KENYA PORTS AUTHORITY2ND DEFENDANT

RULING

This is an application made under Order 16 Rule 5 of the Civil Procedure Rules seeking to dismiss this suit for want of prosecution. The defendants argue that since 9th June 2004 when this case last came up for hearing the plaintiff has not fixed it for hearing.

The purpose of Order 16 Rule 5 with regard to the dismissal of suits for want of prosecution is to take care of suits filed by plaintiffs who thereafter go to sleep. Having perused the replying affidavit and considered the submissions by counsel for the plaintiff, I am satisfied that the plaintiff in this case has not gone to sleep. Apart from making discovery, which the defendants have not done, he has since 9th June 2004 made eight unsuccessful attempts to fix the case for hearing.

In the circumstances this application has no merit and the same is hereby dismissed with costs.

DATED and delivered this 13th July 2007.

D.K. MARAGA

JUDGE