

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 283 of 1995

FRANCIS OMBIMBO JEMO.....PLAINTIFF

VERSUS

KOISAGAT TEA ESTATE.....1ST DEFENDANT

JOHN WAIGWA NJOROGE.....2ND DEFENDANT

RULING

This is an application brought by the defendant by way of Notice of Motion under Order XVI Rule 5 of the Civil Procedure Rules seeking orders that the plaintiff's suit be dismissed for want of prosecution.

The claim in this suit arose as a result of a traffic road accident which occurred on 29th January 1994 along Kapsabet – Nandi Hills Road involving motor vehicle registration number KAA 365M and the plaintiff who was cycling along the same road. The plaintiff filed this suit on 27th January 1995 for damages. Defence was filed on 24th February 1995 and the plaintiff has not taken any steps to set the suit down for hearing. Order XVI Rule 5 of the Civil Procedure Rules provides:-

“If within 3 months after:-

- (a) the close of the pleadings or*
- (b) the removal of the suit from the hearing list, or*
- (c) the adjournment of the suit generally; the plaintiff or the court of its own motion on notice to the parties does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal.*

The defendant has elected to apply for the dismissal of the suit. I allow the application and dismiss the plaintiff's suit for want of prosecution under Order XVI Rule 5 of the Civil Procedure Rules.

The plaintiff will also bear the costs of this application as well as the entire suit.

Dated and delivered at Nairobi this 9th day of February, 2006.

J.L.A. OSIEMO

JUDGE