

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 3598 of 1989

MUCHIRI NJARARUHI KAIGAI.....PLAINTIFF/RESPONDENT

VERSUS

KITHAVAN ESTATE LIMITED.....DEFENDANT/APPLICANT

RULING

The plaintiff was employed by the defendant to do various duties assigned to him from time to time. On or about the 18th July 1987 while the plaintiff was engaged in the cause of employment placing a chemical power around coffee plants to reduce soil acidity the power particles rose in the air and get into his eye causing infection around the eye. He filed this suit against the defendant his employer seeking damages.

The defence was filed by the defendant on 26th September 1989 and the pleadings were closed since then no steps have been taken by the plaintiff to set the suit down for hearing.

On 28th November 2005 the defendant brought this Notice of Motion under Order XVI Rule 5 of the Civil procedures seeking orders to have the plaintiffs suit dismissed for want of prosecution. The accident occurred in 1987 but the plaintiff took about 2 years to file his suit in 1989. The pleadings were closed in 1989 and it is now about 17 years and no steps have been taken.

The defendants submits that this is inordinate delay and that the plaintiff has been guilty of inexcusable delay which has seriously prejudiced the defendant on the issue of damages so that there is a substantial risk of a fair trial.

Order XVI Rule 5 of the Civil Procedure Rules provides that if within 3 months after the close of the pleadings the plaintiff does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal. It is now 17 years since the pleadings were closed and the defendant has applied for the dismissal of the plaintiff's suit. I am satisfied that the delay is inexcusable and the defendants deserves the orders sought.

The plaintiff's suit is dismissed with costs to the defendant for this application as well as the entire suit.

Dated and delivered at Nairobi 2nd day of March, 2006.

J.L.A. OSIEMO

JUDGE