

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 44 of 2001

HARAKA HIRE PURCHASE..... PLAINTIFF

VERSUS

WESSEL GUNTER1ST DEFENDANT

WESERPORT (EPZ) LTD.2ND DEFENDANT

RULING

The defendant is seeking the dismissal of the plaintiff's suit for want of prosecution.

The suit was filed on 16th January 2001, and a Defence thereto was filed on 20th March 2001.

According to the court records, the suit has been fixed for hearing on only one occasion, which was on 17th and 18th of June 2003.

When the case came up for hearing before the Hon. Nyamu J., on 18th June 2003, the advocate for the plaintiff sought an adjournment, on the grounds that the plaintiff's witness was abroad. As the defendant did not oppose the application for adjournment, the case was adjourned indefinitely. Since that date, the plaintiff has taken absolutely no steps to have the case set down for hearing.

Pursuant to the provisions of Order 16 rule 5 of the Civil Procedure Rules, if a case has been adjourned generally, and it is thereafter not set down for hearing within three months, the defendant is entitled to either set the suit down for hearing or apply for its dismissal.

By bringing this application for dismissal, the defendant herein has exercised one of the options available to it.

Even though the plaintiff's advocates have been served with the application, they have failed to respond thereto, in any manner. Accordingly, as it is almost three years since the case was last adjourned, I find the defendant's application justified. I therefore hereby order that the suit herein be dismissed, for want of prosecution. The defendant is awarded the costs for both the application dated 1st February 2006, as well as for the suit itself.

Dated and Delivered at Nairobi this 29th day of May 2006.

FRED A. OCHIENG

JUDGE