

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

Civil Case 2843 of 1997

ERNS MEIR.....PLAINTIFF

VERSUS

KENYA RENT A CAR & 2 OTHERS.....DEFENDANTS

RULING

By way of this Notice of Motion brought under the provisions of Order XVI Rule 5 of the Civil Procedure Rules and Section 3A of Procedure Act the 1st defendant seeks orders that the plaintiff's suit be dismissed for want of prosecution. The plaintiff also seeks costs of this application.

The application is based on the ground that the cause of action arose on 8th January 1995, that the suit was filed on 13th November 1997, that the applicant filed its defence on 23rd December 1997; that the plaintiff's advocate obtained leave to cease acting on 30th March 2004 and since then the plaintiff has not taken any step to prosecute her claim and that the delay is prejudicial to the applicant.

The plaintiff was served with this application but she did not file any papers to oppose the application. Mr. Tiego counsel for the Respondent submitted that the cause of action arose on 8th January 1995 and this suit was filed on 13th November 1997 about 3 years later. The pleadings closed on 23rd December 1997.

The plaintiffs advocate obtained leave to cease acting on 30th March 2004 and since then the plaintiff has not taken any step to prosecute her claim. The cause of action arose about 12 years ago as a result of a road accident. I agree with the respondent that the delay is prejudicial in that it is not possible for the defendant to have a fair trial and the plaintiffs suit is therefore dismissed for want of prosecution. The defendant is also awarded costs of the suit as well as costs of this application.

Dated and delivered at Nairobi this 12th day of September 2006.

J.L.A. OSIEMO

JUDGE