



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

**MILIMANI LAW COURTS
Civil Case 5189 of 1993**

RAMJI HARJI KIMJI PLAINTIFF

VERSUS

SAFARI WORLD (K) LTD. DEFENDANT

RULING

1: PROCEDURE

1. The application herein is under Order 23 r (1) and (2) Civil Procedure Rules that seeks main suit on grounds that the plaintiff had passed away and thus the suit has abated .
2. On the 22.10.93 almost 13 years ago, Ramiji Harji Kimji Patel filed a suit in the High Court of Kenya at Nairobi whereby he claimed damages for injuries sustained whilst travelling in the 1st defendants vehicle Safari World (Kenya) Ltd and driven by Ibrahim Abadalla the 2nd defendant herein. The vehicle was involved in a motor vehicle collision on 8.12.90 at 12.30 p.m. along the Nakuru/Gil Gil road. It is alleged that the driver left its rightful lane and overtook other vehicles and caused a collision. A 3rd party vehicle, not party to the suit was involved.
3. The advocates for the defendants filed defence on entering appearance and blamed the accident on the plaintiffs and 3rd party.
4. On 4th July 2005, the Advocate for the defendant withdrew an application of 19.8.99 to cease from acting for defendant as he was no cooperation.
5. An application 26.5.04 was also withdrawn on 4.7.05 seeking the transfer of this suit to the lower court. The defendants prayed in a third subsequent application between the parties dated 14.6.04 that the suit be dismissed for lack of prosecution.
6. This court was notified on 13.1.05 by the advocate for the plaintiff that the plaintiff had passed away on unknown dates. This information was confirmed on 17.10.05, the date of death being 16 August 2004. The suit was then stood over generally to allow for appropriate application to be filed. None was filed.
7. It is thereafter the lapse of 12 months that the advocate for defendant sort though the application of 7 July 2006 the subject matter of this ruling that there was sort leave to have the suit dismissed as it had abated.

8. The advocate for plaintiff did not appear to court on the date the application came for hearing.

Finding:

9. It has indeed been 12 months and no action has been taken by the plaintiff. The application is hereby allowed with costs to the defendants.

Dated this 30th day of October 2006 at Nairobi.

M.A. ANG'AWA

JUDGE

Ramesh Manek, Esq. Advocates for the plaintiff/respondent

Shah & Parekh Co. Advocates for the defendant/applicant