

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 4083 of 1994

JOSEPH KAMAU.....PLAINTIFF

VERSUS

KENYA BUS SERVICE.....DEFENDANT

RULING

The claim arises out of a road accident which occurred along Kenyatta Avenue involving a motor vehicle reg. No. KWX 587 which belonged to the 1st defendant and was being driven by the 2nd defendant.

The said bus left the road and knocked down the plaintiff who was walking on the pedestrian path. As a result of the said accident the plaintiff sustained serious injuries. He brought this suit against the defendants claiming damages. Unfortunately as a result of the said accident the plaintiff developed a mental illness and he has never recovered.

On 9th October 1998 the defendants filed an application by way of Chamber Summons seeking dismissal of the plaintiffs' suit for want of prosecution which was heard by Githinji J as he then was on 14th June 2001 and the order was granted. Because the plaintiff never recovered from his mental illness, Hannah Wanjiru Mbai applied and was granted leave to act for the plaintiff as his legal representative. She now applies for orders to set aside the dismissal order of the plaintiff's suit for want of prosecution.

The application is based on the ground that the delay to prosecute the suit was due to the mental illness of the plaintiff. The application is opposed on the ground that the plaintiff had lost interest in prosecuting his suit and that the suit has been in court for over 10 years.

Taking into account the plaintiff's state of mind and the steps taken by the applicant and now that she has been granted leave by the court to act for the plaintiff as a legal representative it cannot be said that the applicant has not given reasons for the delay.

I am satisfied that the applicant has given reasonable explanation for the delay and I allow the application and order that the dismissal order of this court which was issued on 14th June 2001 be and is hereby set aside.

The defendant is entitled to costs of this application and it is so ordered.

Dated at Nairobi this 23rd day of June 2005.

J.L.A. OSIEMO

JUDGE