



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

**CIVIL APPEAL NO. 137 OF 2007**

FRED KANYIRI KIRAGU.....APPELLANT

**VERSUS**

PETER LINUS LEMPEI.....RESPONDENT

**RULING**

The Memorandum of Appeal herein was filed on 1st August 2007. Since then the appellant has not done anything towards prosecution of the appeal. The court issued a notice to show cause why the same should not be dismissed.

Counsel for the appellant filed a replying affidavit in which he deponed that he applied for proceedings and paid for the same, extracted the order and served it on 3rd September, 2007. But due to an error on his part, the order was never served on the court as required and the court could not therefore have invoked Order XLI Rule 1A Civil Procedure Rules.

Counsel has admitted that he is to blame for the delay in having this appeal prosecuted as he failed to take any steps due to inadvertence on his part. The court will therefore give the appellant another chance and allow him 45 days from today's date, within which to prepare the record of appeal, have it admitted and have it fixed for hearing. In default, it will stand dismissed. Costs be borne by the appellant.

**DATED** and **DELIVERED** this 14th day of February 2011.

**R. P. V. WENDOH**  
**JUDGE**

**PRESENT**

No appearance for Appellant  
No appearance for Respondent  
Ken Oguma – Court Clerk

**Court:**

Counsels to be notified of court's ruling.