



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

**AT NAKURU**

**CIVIL APPEAL NO. 9 OF 2009**

**A. P. A. INSURANCE LTD.....APPELLANT**  
**VERSUS**  
**G.W.G (Suing as a**  
**Next friend to S.K).....RESPONDENT**

**RULING**

This appeal was filed on 19<sup>th</sup> January 2009. It has not been prosecuted since. On 27<sup>th</sup> April 2011, the court took a Notice to Show Cause under **Order 42 Rule 35(2) of the Civil Procedure Rules, 2010**. Counsel for the Applicant, **Mr. Kagucia** filed an affidavit seeking that the appeal should not be dismissed. He has deponed that the ruling appealed from was delivered on 16<sup>th</sup> December 2008, the appeal was filed on 17<sup>th</sup> January 2008. On 16<sup>th</sup> January, 2009, he wrote to the Senior Resident Magistrate asking for typed proceedings and a certified copy of the Ruling (**JGK1**). Visits to Molo Court by the office of the Advocate bore no fruits and on 25<sup>th</sup> June 2010, he addressed a letter to the Deputy Registrar, High Court to intervene in procuring a copy of the proceedings and Ruling.

The Registrar, Nakuru wrote to Molo Registry to forward the file on 2<sup>nd</sup> April 2009 (**JGK4**) but by letter of 23<sup>rd</sup> October 2010 from Mbeche Advocate, counsel was notified that the file was still in Molo, the same having been perused by Mr. Mbeche's clerk. It is then that **Mr. Kagucia** wrote to the Senior Resident Magistrate, Molo to avail the file (**JGK6**) and on 8<sup>th</sup> November 2010 he received a certified copy of Ruling and proceedings. When preparing the record of appeal, they noted an error in the order extracted.

On 5<sup>th</sup> January 2011, he wrote to Deputy Registrar, Nakuru to have it amended (**JGK7**). That the order has now been amended and the record is being compiled and that all efforts were made to have the appeal prosecuted but the delay was occasioned by factors beyond its control.

The Respondent did not have anything to say in response to the affidavit. I have taken into account the averments by counsel contained in his affidavit. It is my view that counsel could have done better than he did. For example, from 16<sup>th</sup> January 2009 when the letter requesting for proceedings was written, there is no evidence to show that the counsel's office made any physical visits to Molo Court to ascertain what was going on in the file. From 17<sup>th</sup> January 2009, the next step that was taken was on 25<sup>th</sup> June 2010, over a year later. It took the Respondent's counsel to find that the file was still in Molo. Even after the proceedings were delivered the counsel on 8<sup>th</sup> November 2010, it took counsel till 5<sup>th</sup> January 2011 to extract the order and it again took another 2 months to notify the Deputy Registrar, Nakuru, that there was an error in the order. There was delay on the part of counsels office too.

However, since the proceedings are now in court and this court should not visit the mistakes of counsel on the party, I will allow the appellant 90 days within which to prepare the record of appeal, have it admitted and take a date for hearing, in default, the appeal will stand dismissed upon expiration of the 90 days.

**DATED and DELIVERED this 11<sup>th</sup> day of May 2011.**

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

**PRESENT:**

Mrs Mugweru holding brief for Mr. Kagucia  
Mr. Nderitu holding brief for Mr. Mbeche for Respondent  
Kennedy – Court Clerk

**Court:** Ruling read.