

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 108 of 2008

KIMILILI HAULIERS:.....APPELLANT

VERSUS

ESTHER JEMUTAI KIASAINA:.....RESPONDENT

RULING

The Applicant herein moves this court for Orders for striking out the Memorandum of Appeal as the same is an abuse of the court process and for the costs of the application. It is based on the grounds that the appeal was filed on 15/10/2008 and the Appellant has done nothing towards prosecuting the same which inaction is described as being an abuse of the process of the court.

In opposition to the application counsel for the Appellant/Respondent has sworn an affidavit stating that it is the court which has not typed the proceedings from which the Appeal arises and which has therefore not admitted the appeal to hearing as the record of Appeal cannot be prepared in the absence of the proceedings. Directions as to how the appeal is to proceed have also not been taken for the same reasons above.

As filed this application must fail as indeed the appeal is not ready for hearing. It is not denied that the Record of Appeal has not been prepared for the reasons that the proceedings have not been availed to the Appellant by the court. The Appellant must now move with speed to prompt the Deputy Registrar of the court to supply the proceedings and set the Appeal down for admission by the Judge in chambers. This the Appellant must do within **THREE (3) MONTHS** of the date of the delivery of this Ruling in default of which the Appeal shall automatically stand dismissed. The application filed in court on 16th September 2009 is in the meanwhile dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 25th DAY OF FEBRUARY 2010.

P.M.MWILU
JUDGE

IN THE PRESENCE OF:-
Paul Ekitela - Court Clerk

N/A for the Advocate for the Applicant

Mr. Manani holding brief for Nyairo Advocate for the Respondent.