



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 770 of 2006

HARJIT SINGH BRAR.....APPELLANT

VERSUS

LEGAL FOUNDATION RESOURCES TRUST.....1ST RESPONDENT

JEDIDAH WAKONYO.....2ND RESPONDENTS

R U L I N G

1. The legal foundation Resources Trust and Jedidah Wakonyo (hereinafter referred to as the applicants), are the respondents to this appeal. They have moved this court under Order XLI Rule 31 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, seeking to have the appeal filed against them dismissed for want of prosecution. The applicants contend that no steps have been taken to have the appeal set down for hearing since the appeal was filed on 9th November, 2006.
2. Harjit Singh Brar who is the appellant objects to the application contending that it is premature, bad in law and fatally defective. Counsel for the appellant has pointed out that neither Order XLI Rule 31(1) nor Rule 31(2) of the Civil Procedure Rules, can be used to dismiss the appeal. Firstly, because no directions have been given in the appeal and secondly, because the application has not been initiated by the Registrar of the Court. Counsel further explains that the respondent cannot be held responsible for the delay in filing the record of appeal because efforts to obtain copies of proceedings from the lower court have been fruitless.
3. Having given due consideration to this application, I cannot but concur with the advocate for the appellant. It is evident that the original record of the lower court has not been forwarded to this court despite a request having been made to the lower court. Therefore, the appeal cannot even be considered for admission under Section 79B of the Civil Procedure Act. The appellant has explained that he is experiencing difficulties in getting copies of proceedings hence his inability to file a record of appeal. That explanation is plausible given the correspondences exhibited and the failure by the lower court to forward the original lower court file to this court.
4. I find that the application before me is premature and also lacks merit. It is accordingly dismissed with costs.

Dated and delivered this 18th day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Mutiso H/B for Menezes for the appellant/respondent

Kabue for the respondents/applicants

Erick - Court clerk