



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

**Civil Appeal 214 of 2006
(BEING AN APPEAL FROM ORIGINAL JUDGMENT AND IN KISII
CMCC NO. 24 OF 2004 – S.M.S. SOITA, SPM)**

BETWEEN

SOUTH NYANZA SUGAR COMPANY LTD. APPELLANT/RESPONDENT

VERSUS

OMWANDO OMWANDO RESPONDENT/APPLICANT

RULING

The respondent's application dated 6th November, 2009 prays for dismissal of this appeal for want of prosecution. The application was made on grounds that since 18th October 2006 when the appellant was granted stay of execution of the trial court's judgment, no action had been taken towards prosecution of the appeal.

The appellant filed replying affidavit and stated, *inter alia*, that the subordinate court's file is missing and has since 2007 been writing to the court urging the deputy registrar to have the file traced. So far there has not been any response to numerous enquiries. The appellant paid a sum of Kshs. 300/= way back on 25th October, 2007 as a deposit for the typed proceedings and judgment.

Upon perusal of this file, I realize that this appeal has never been admitted to hearing. It is also true that the lower court file has gone missing. The appellant's counsel has written to the court a total of nine letters requesting for the typed proceedings and judgment to facilitate preparation of the record of appeal but the same have so far not been supplied. In the circumstances, the appellant cannot be blamed for the delay in prosecution of the appeal.

The respondent's application is without merit and I dismiss the same with costs to the appellant. Having done so, I direct the deputy registrar to conduct a diligent search for the subordinate court file and avail a report to this court on the issue within the next 30 days from the date hereof. Mention on 9/7/2010.

DATED, SIGNED AND DELIVERED AT KISII THIS 10TH DAY OF JUNE, 2010.

D. MUSINGA
JUDGE.
10/6/2010

Before D. Musinga, J.

Mobisa – cc

Mrs. Otieno for Mr. Menezes for the Respondent

Mr. Ogari for the applicant

COURT: Ruling delivered in open court on 10th June, 2010.

D. MUSINGA
JUDGE.