

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CIVIL APPEAL 481 OF 2004

EUNICE WAMBUI NDUNGU.....APPELLANT

VERSUS

GABRIEL NGUGI.....RESPONDENT

R U L I N G

1. On 14th November, 2008, this court dismissed this appeal under Order XLI Rule 31(2) of the Civil Procedure Rules. Notices had been issued and served on the parties, to appear in court on that day to show cause as to why the appeal should not be dismissed for want of prosecution, as no action had been taken to prosecute the appeal. The respondent's counsel attended court, but neither the appellant nor his counsel attended court.
2. The appellant has now come to this court under Order 3A Rule 9 of the Civil Procedure Rules, seeking *inter alia*, to be allowed to act in person, an order staying the proceedings in Kiambu CMCC No.1876 of 1996, and an order setting aside the order made on 14th November, 2008 dismissing her appeal.
3. The appellant appeared in person before Sitati J. on 26th February, 2009, and was directed to serve the application for *inter-parte* hearing on 17th March, 2009. On 17th March, 2009, the appellant and the respondent's counsel appeared before me and the matter was adjourned to 28th April, 2009 at the request of the respondent's counsel. On 28th April, 2009, one Mr. Njoroge appeared for the appellant and argued the application before me. The application was opposed by counsel for the respondent who submitted *inter alia* that the application was defective.
4. Having considered this application, I come to the conclusion that the same is incompetent. First, because it is made under Order 3A Rule 9 of the Civil Procedure Rules which does not exist. Secondly, because the application was made by the appellant in person and yet a counsel appeared and argued the application without any leave from the court. In the circumstances, I strike out the chamber summons dated 25th February, 2009 as incompetent. The appellant is at liberty to make a proper application.

Those shall be the orders of the court.

Dated and delivered this 20th day of May, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Appellant present in person

Gachuhi for the respondent