



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

**Civil Appeal 951 of 2004**

**BOOTH MANUFACTURERS CO. LTD.....APPELLANT**

**VERSUS**

**DAVID NGANGA KIENJE.....RESPONDENT**

**R U L I N G**

1. On 9<sup>th</sup> March, 2004, a Principal Magistrate in Thika Law Courts awarded general and special damages in favour of the respondent, David Nganga Kienje as against the appellant, Booth Manufacturers Co. Ltd.
2. Being dissatisfied the appellant filed a memorandum of appeal on 4<sup>th</sup> November, 2004. More than 5 years down the line, the appellant has taken no further action in that appeal. The respondent has now brought an application under Order XLI Rule 31(2) of the Civil Procedure Rules, seeking to have the appeal dismissed for want of prosecution.
3. The appellant objects to the application contending that the application is premature as no directions have been given by the court under Order XLI Rule 8B of the Civil Procedure Rules.
4. It is true that under Order XLI Rule 31(1) of the Civil Procedure Rules, a respondent to an appeal can only apply for a dismissal of an appeal for want of prosecution where the appeal has not been set down for hearing more than 3 months after giving of directions under Order XLI Rule 8B of the Civil Procedure Rules. In this case, directions have not been given as the appellant has not filed a record of appeal or any other documents required under Order XLI Rule 8B(4) of the Civil Procedure Rules .
5. The proper procedure would have been for the Registrar of this court to place the appeal before me for dismissal under Order XLI Rule 31(2) of the Civil Procedure Rules. That has unfortunately not been done, and it is therefore not surprising that the respondent out of desperation has now sought to move the court. The appellant has not offered any explanation for the failure to provide the necessary documents.
6. That being the position, the appeal before this court is an abuse of the process of the court and I would accordingly order that unless a record of appeal containing all appropriate documents is filed within 30 days from the date hereof, the appeal herein shall stand dismissed.

Those shall be the orders of this court.

Dated and delivered this 4<sup>th</sup> day of June, 2009

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Advocate for the appellant absent

Respondent present in person

Court clerk - Njihia