

REPUBLIC OF KENYA

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

Civil Case 205 of 2003

MARTIN WAFULA KHAEMBA.....APPELLANT

VERSUS

WHEAT BEE (B) LIMITED.....RESPONDENT

R U L I N G

By this application expressed to be brought under Order XLI Rule 31(1) of the Civil Procedure Rules the applicant seeks orders that the appellant's appeal be dismissed for want to prosecution. The applicant says that there has been inordinate delay. In support of the application Joseph Njoroge Mbugua Advocate for the Respondent has sworn an affidavit giving grounds for the application. The memorandum of appeal was filed on 8th May 2003 and the appellant has since then made any effort to fix down this appeal for hearing.

From perusal of the record it is clear that this appeal has not been admitted and before that is done the appellant cannot take any

step to fix the same down for hearing. This application is therefore premature. On further perusal of the record it is clear that no certified copy of the decree or order appealed against was filed with the memorandum of appeal Order 41 Rule 1A of the Civil Procedure Rules provide:-

“where no certified copy of decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order, and the court need not consider whether to reject the appeal summarily under Section 79B of the Act until such certified copy is filed.”

In the result I decline to grant the order sought and dismiss the appeal for want of prosecution and order that the appellant do file certified copy of the decree or order appeal against within 14 days from the date of this ruling. I further order that immediately such certified copy of decree or order is filed the appeal to be placed before the judge in chambers for consideration under Section 79B of the Civil Procedure Act.

Costs be in the appeal.

Dated and delivered at Nairobi this 27th day of February 2008.

J. L. A. OSIEMO

JUDGE