

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 704 OF 2002

ALPHA KNITS LTD.....APPELLANT

VERSUS

WYCLIFFE WANJALA MANYONGE.....RESPONDENT

R U L I N G

By a chamber summons dated 31st March, 2006, Wycliffe Wanjala who is the respondent in this appeal, seeks to have the appeal dismissed for want of prosecution, and the orders for stay of execution discharged. It is the respondent's contention that the appellant has taken no steps to prosecute the appeal. For the appellant it was submitted that under Order XLI of the Civil Procedure Rules there is no power to dismiss an appeal for want of prosecution before directions are taken. It was therefore submitted that the application was premature as no directions had been taken.

Having perused this file it is apparent that the appellant was requested sometime in July 2006 to comply with Order XLI Rule 8B (4) of the Civil Procedure Rules in regard to the preparations of the record of appeal. To date, the appellant has taken no action. The matter cannot therefore be dealt with under Order XLI Rule 31 (1) of the Civil Procedure Rules as the appeal has not reached directions stage.

In view of the appellant's apparent laxity, this would have been an appropriate matter for dismissal for want of prosecution under Order XLI Rule 31(2) of the Civil Procedure Rules. That rule however, can only be initiated by the court. For this reason I will reject the chamber summons dated 31st March, 2006 and order that the Deputy Registrar issue notices in accordance with Order XLI Rule 31 (2) of the Civil Procedure Rules. Those shall be the orders of this court.

Dated and delivered this 26th day of May, 2008

H. M. OKWENGU

JUDGE