



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL 85 OF 1994**

**SAID SALIM RAJAB .....PLAINTIFF**

**VERSUS**

**JOHN OLUOCH SIGO & 2 OTHERS .....RESPONDENTS**

**R U L I N G**

This appeal was filed on the 5<sup>th</sup> day of October 1994. The same was admitted to hearing on the 13<sup>th</sup> day of October 1998. So far directions have not been given. No reasons have been given as to why the appeal has not been listed for directions either before the Deputy Registrar or before the Judge.

Pursuant to the provisions of order XLI rule 31 (2) Civil Procedure Rules, the Deputy Registrar issued a notice for dismissal of the appeal for Want of prosecution.

Mr. Maosa advocate for the appellant beseeched this court to spare the appeal for a while because he just came on record for the appellant the other day and that he is yet to serve the memorandum of appeal upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondent by substituted service upon obtaining leave of court.

I have perused the record of Appeal. It is clear that the firm of Maranga Maosa & Associates came on record in the year 2004. It is not clear as to what that firm of advocates has been doing since then. It just came on record, prepared a record of appeal and filed it on 24<sup>th</sup> September 2004. From then it developed cold feet and went to sleep. The appellant's sleep appears to have been rudely interrupted by the dismissal notice issued by the Deputy Registrar of this court.

I see no merit in the excuses put forward by Mr. Maosa for the appellant. Consequently the appeal is ordered dismissed for want of prosecution with no order as to costs.

**Dated and delivered this 10<sup>th</sup> day of February 2006.**

J.K. SERGON

**J U D G E**

Read in the presence of Mr. Maosa for the Appellant and

Mr. Khatib h/b for Kadima for the 3<sup>rd</sup> Respondent.