



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO 257 OF 2003**

**LAW SOCIETY OF KENYA LIMITED ..... APPELLANT**

**VERSUS**

**PETER MUIRURI KIMANI ..... RESPONDENT**

**RULING**

This is an application to strike out the appeal for want of prosecution. The Memorandum of Appeal was filed on 2nd May, 2003. Since then, at the request of the Appellant's advocates, several letters have been written by the Deputy Registrar to the lower court asking for the Record of Proceedings and the original file. These requests were made on 2nd May, 2003, 31st October, 2003, 17th November, 2003, 7th January, 2004 and 13th May, 2004. However, the original file and the record have not been forthcoming, and as such the Record of Appeal has not been filed and served on the Respondent. The latter, tired of waiting indefinitely asked the Deputy Registrar to issue a Notice to Show Cause why this appeal should not be dismissed under Order 41 Rule 31 (2).

When Counsels appeared before this Court on 24th September, 2004 I made orders requiring the Appellant to take active steps to obtain the proceedings. This required them to pursue the matter with the Deputy Registrar, through further reminders. It seems that they have taken no further steps, and although technically in breach of the court order, considering the history of this matter, it would not be just to penalize them by striking out this appeal. Accordingly, I disallow the application dated 22nd November, 2004 with no order as to costs, and further order that the Executive Officer, Milimani Commercial Court do forward to this Court the documents already requested by the Deputy Registrar in the aforesaid letters within the next 30 days, and that the Appellants file and serve their Record within 30 days of delivery to them of the Record.

Dated and delivered at Nairobi this 15th day of February, 2005.

**ALNASHIR VISRAM**  
**JUDGE**