



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

**Civil Case 147 of 2001**

**E.A.T.E.C. LIMITED AND PETER EMACHUKU**

.....**APPELLANTS**

**V E R S U S**

**FESTO AHANZA ANGOSI..... RESPONDENT**

**RULING**

Order XLI rule 31 of the Civil Procedure Rules, stipulates that:-

*“Unless within three months after the giving of directions under rule 8B the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution”.*

Mr. Miyienda, learned counsel for the respondent who relies on the above provision of the rules of civil procedure amongst others, has moved this court in an application in which he prays that the appeal filed herein be dismissed for want of prosecution.

It is his contention that though the appeal herein was filed in 2001, the appellants have not taken the appropriate action to have the appeal heard and determined, which act of omission is to the detriment of his client, who has in the process been denied the enjoyment of the fruits of his judgment.

Mr. Kuloba has however raised a preliminary objection to the application, which he claims is premature, as directions have yet to be taken. He urged the court to strike it out with costs.

I have taken the submissions of both counsel into account and in my mind, it cannot be gainsaid that the provisions of the aforementioned rule can only apply where directions have been obtained. Yet it is clear in this appeal, a fact which Mr. Miyienda concedes to, that no directions have been taken in this appeal, which means that the application is premature and for which reason it is struck out with costs.

I do however order that the Deputy Registrar ensures that this appeal is listed for directions in line with rule 8B aforementioned, within the next 30 days.

Dated and delivered at Eldoret this 19<sup>th</sup> day of April 2005.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Kuloba for the respondent /Appellant

Mr. Ruto holding brief for Mr. Miyieda for the applicant/respondent.