



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

**Civil Appeal 169 of 200**

**THE CHAIRMAN )**

**THE BOARD OF GOVERNORS ) ..... APPELLANTS**

**IKOBA SECONDARY SCHOOL )**

**VERSUS**

**PHILIP OTEINO )**

**T/A PNOSCO LABORATORY EQUIPMENT ..... RESPONDENT**

**RULING**

The appellant filed this appeal on 3rd April 2000. In October 2002, the court dismissed the appeal as the parties had not taken any steps to prosecute it. Applicant filed this application on 20th February 2003 seeking to have the dismissed order set aside.

Mr. Onyancha for the applicant said he was not served with Notice for dismissal. He further said that the appellant is an institution and they did not give him instructions to prosecute the appeal.

Application was opposed by Mr. Ochillo who submitted that the counsel for appellant did not need any instructions to prosecute the appeal.

It could be true that counsel for the appellant may not have received notice for dismissal of the appeal. However even if he had there was no good reason he would have given why the appeal remained unprosecuted for two years. His only reason was that the appellant being an institution kept on changing officials. That is no good reason. The appeal was admitted on 12/6/01. Appellant did not even file a record of appeal for over one year. As submitted counsel did not need any instructions to do that. The delay therefore is not explained and therefore not excusable.

In the circumstances the application is dismissed with costs.

**Dated this 18th November, 2004**

**KABURU BAUNI**

**JUDGE**

**18/11/04**

**Mr. Nyasimi H/B for Mr. Ochilo for Respondent**  
**N/A for Application**

**KABURU BAUNI**

**JUDGE**