



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE 2131 OF 2001**

**PAMELA JESCA KIURA ..... PLAINTIFF**

**VERSUS**

**JACOB NJIRU RWARE ..... DEFENDANT**

**RULING**

Before me is a RUNNING DOWN action whereby the plaintiff, one Pamela Jesca Kiura was run down by a motor vehicle belonging to and driven by the defendant Jacob Njiru Rware. The plaintiff sued the defendant through her next of friend Morris Kiura Ndwiga who is also her further on 1.12.2001. The accident is alleged to have occurred on 11.12.98.

On the day the hearing was fixed to be heard the defendant did not appear and the suit was to proceed on under order 9b and 3(a) CPR. The court brought it to the advocate for the plaintiffs attention that the authority by the next of friend had not been filed on 1.12.2001. Order 31 rule (11) CPR is specific that this authority be filed and that it must be in writing.

If the defendant was in court the issue would have been raised as to whether the suit be dismissed for lack of there being authority by the next of friend to sue. The plaintiff on the other hand stated that the authority was given to the advocate but filed recently.

Such application must be raised in an application by the defendant and in writing. The defendant had raised this point in its defense and stated it will raise it as a preliminary objection.

I though would allow the defendant to address me on this point regardless that I stated that this matter proceed under Order 9b Rule 3(a) CPR.

**Dated this 4th day of November, 2002 at Nairobi.**  
**M. A. ANG'AWA**  
**JUDGE**