



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT NAKURU**

**Civ Appli 92 of 2006**

ANIL WALIA .....  
.....APPLICANT

AND

VIJAY VIR SINGH ..... 1<sup>ST</sup>  
RESPONDENT

ST. ANN GIRLS SECONDARY SCHOOL ..... 2<sup>ND</sup> RESPONDENT

*(An application for striking out the notice of appeal from the decision of the High Court of Kenya at Nakuru (D. Musinga, J.) delivered on 16<sup>th</sup> July, 2004*

in

H.C.C.C. NO.455 OF 1999)

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**RULING OF THE COURT**

This is an application by **Anil Walia**, expressed to be brought under **section 3(2)** of the **Appellate Jurisdiction Act** and **Rules 81 and 82** of the Rules of this Court.

The respondent herein having been dissatisfied with the ruling of Musinga Ag J. dated 16<sup>th</sup> July, 2004, in **Nakuru High Court Civil Case No.455 of 1999**, lodged a Notice of Appeal, on 28<sup>th</sup> July 2004, expressing his intention of appealing against that decision. He thereafter applied for copies of proceedings but took no further steps to ensure that his appeal was filed timeously. By a letter dated 14<sup>th</sup> August 2004, his advocate was advised that copies of proceedings were ready for collection, but although he says in a replying affidavit sworn on 28<sup>th</sup> August 2006 that his advocates did not receive the letter, we are persuaded by counsel for the applicant Mr. Kahiga that that may not be true since the respondent has not shown what steps he took after receiving a second letter from the Court Registry advising him that proceedings were indeed ready. Clearly the respondent has shown indolence in the pursue of his intended appeal; and it is clear that he does not intend to pursue it. That being our view of the matter we do not think the notice of appeal dated 26<sup>th</sup> July 2004 and lodged in court on 28<sup>th</sup> July 2004, should be sustained. And as Mr. Mwangi for the respondent concedes that the respondent has indeed not been diligent in pursuing his appeal, the order that commends itself to us is to order which we hereby do that

the aforesaid notice of appeal be and is hereby deemed to have been withdrawn. The costs of this application to the applicant.

**Dated and delivered at Nakuru this 28<sup>th</sup> day of September, 2006.**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**E.O. O’KUBASU**

.....

**JUDGE OF APPEAL**

**E.M. GITHINJI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**