



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

Civil Appeal 59 of 2006

NYAMACHE TEA FACTORY COMPANY LIMITED APPELLANT

VERSUS

CONVAS ONTOMWA BUGU RESPONDENT

(Being an appeal from the judgment and decree of the CM's court

**at Kisii in CMCC No. 453 of 2005 – Mrs. Wewa, RM)
RULING**

The memorandum of appeal herein was filed on 4th April 2006. At the time of filing the same the appellant did not lodge the decree appealed against. The decree was filed on 27th April 2006. That notwithstanding, the deputy registrar did not comply with the provisions of **section 79 B** of the **Civil Procedure Act** by placing the file before a judge for perusal to determine whether the appeal should be admitted or not.

That notwithstanding, on 19th August 2009 the respondent filed an application under **section 3A** of the **Civil procedure Act** and **Order L rule 1** of the **Civil Procedure Rules** seeking dismissal of the appeal for want of prosecution. In the alternative, the respondent urged the court to lift the stay of execution of the decree appealed from and order execution to issue forthwith. He accused the appellant of having failed to take any step for the hearing and final disposal of the appeal.

Considering that it is the deputy registrar who has failed to comply with a mandatory legal step in terms of **section 79 B** of the **Civil Procedure Act**, it will be improper to penalize the appellant by granting the orders sought. I dismiss the respondent's application with no orders as to costs. I hereby admit the appeal to hearing and further direct that the same be set down for directions within the next 30 days from the date hereof.

DATED, SIGNED AND DELIVERED AT KISII THIS 1ST DAY OF MARCH, 2010.

**D. MUSINGA
JUDGE.**

1/3/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Oguttu for the Appellant

N/A for the Respondent

Court: Ruling delivered in open court on 1st March, 2010.

D. MUSINGA
JUDGE.