



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CIVIL APPEAL NO. 74 OF 2011**

**DICKSON MAINA KIBIRA.....APPELLANT**

**Versus**

**DAVID NGARI MAKUNYI.....RESPONDENT**

*(Appeal arising from the Judgment of Hon. K. Cheruiyot  
Resident Magistrate Nyeri in Civil Case No. 555 of 2005)*

**RULING**

1. By a notice of motion dated 15th November 2011 the Respondent/Applicant under order 42 rule 35(2) and order 51 rule 1 of CPR moved this honourable court for orders:

***That the appeal be dismissed with cost for want of prosecution.***

2. The application was supported by the affidavit of CHARLES WAHOME GIKONYO wherein he deponed that the memorandum of appeal was filed on 23rd June 2011 and served on 4th July 2011 and since that time more than one (1) year the appeal has not been fixed down for hearing.
3. In reply thereto the applicant/respondent through Grace Mukuha filed a replying affidavit in which she deponed that the appeal was admitted in June last year and that the applicant has now compiled all the documents.
4. The appeal herein was filed on 23rd June 2011 and was admitted on 20th June 2013 and the record of appeal filed on 3rd March 2014. Directions have not been given herein and as I stated in the case of JOSEPH KIIRU GACHUKIA & ANOTHER v JOHN WAGURA IKIKI NYERI HIGH COURT CIVIL APPEAL NO. 130 OF 2010 the respondent can only move the court under order 40 rule 35(1) three (3) months after directions have been given.
5. Under order 42 rule 35(2) under which the application is premised it is only the registrar who can upon giving notice to the parties fix the matter before the judge for dismissal.
6. Since directions have not been given in this matter I find no merit on the application herein which I hereby dismiss with no order as to cost.
7. However taking into account the fact that litigation must come to an end I hereby order that the applicant/respondent take out directions on this appeal within the next 30 days failure of which the appeal shall stand dismissed with cost to the respondent.

Dated, signed and delivered at Nyeri this 13th day of June 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in court in the presence of Mr. Ombongi and in the absence of Mr. Wahome.

J. WAKIAGA

JUDGE

13/6/2014