REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Civil Appeal 127 of 2009

PAUL MWANGI MAINA …….....……. APPELLANT

VERSUS

STEPHEN KIMANI KAMAU …….....…….. 1ST RESPONDENT

MARY WAMBUI WAMBUGU …….....…… 2ND RESPONDENT

STEPHEN NJENGA …….....……. 3RD RESPONDENT

RULING

The Notice of Motion dated 1st August 2011 is made pursuant to provisions of **Order 42 Rule 35 Civil Procedure Rules**, seeking that the appeal filed herein be dismissed for want of prosecution.

It is premised on grounds that the appellant is disinterested in the appeal and has not shown any initiative for the last twelve months.

The application is supported by the affidavit sworn by STEPHEN KIMANI KAMAU (1st Respondent in the Appeal) who states that the appellant lodged the appeal on 26/01/2009 but is not committed to ensure the expeditious hearing of the appeal and it is in the interest of justice that the appeal should be dismissed.

The application was served on the appellant on 7/9/2011 at 2.15 p.m., but he declined to sign acknowledgment of service. From the court record, when the matter came up on 02/02/2010, the appellant requested the court for time to file a record of appeal and he was given 60 (sixty) days to do so. However nothing ever took place almost two years later. It seems the appellant has lost interest in the matter, to the extent that he does not find it necessary to move the court regarding his appeal by filing the record of appeal, or even responding to the application for dismissal. There is no reason whatsoever to warrant keeping this matter alive, and the appeal herein is dismissed with costs for want of prosecution.

Delivered and dated this 18th day of May, 2012 at Nakuru.

H.A. OMONDI
JUDGE