



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CIVIL APPEAL 28 OF 2008**

**LEVIN KIMEU MULEI.....APPELLANT/RESPONDENT**

**VERSUS**

**JAMES MUSYOKA NYAMAI.....RESPONDENT/APPLICANT**

**R U L I N G**

Before me is a an application by way of Chamber Summons dated 29<sup>th</sup> September 2010, filed by James Musyoka Nyamai, the respondent in the appeal. It was filed under Order XLI rule 31(2) of the Civil Procedure Rules and section 3A of the Civil Procedure Act (Cap 21). It seeks the following orders:-

- 1. That the appellant/respondent's appeal against the respondent/applicant be dismissed with costs to the respondent/applicant.**
- 2. That costs of this application be provided for.**

In the grounds of the application, it was stated that since the court gave directions on the appeal on 13<sup>th</sup> March 2009, the appeal has not been set down for hearing.

The application is not opposed. On the hearing date which was 6<sup>th</sup> June 2012, nobody for the appellant appeared in court. Counsel for the applicant Mr Mulu, urged the court to allow the application. Counsel also asked that the amount deposited in court as security for costs be released.

This application is not opposed. Under Order XLI Rule 31(2) of the Civil Procedure Rules, this court has power to dismiss an appeal which has not been set down for hearing after one year from service of the memorandum of appeal. The appeal, not having been set down for hearing from 2009, and this application being unopposed, I find no reason not to allow the application. The effect will be to dismiss the appeal. If the respondent in the appeal, who is the applicant herein, had deposited money as security for costs, I find no reason for the same not to be released, if the appeal is now dismissed.

I allow the application and grant prayer 1. The costs of this application will be to the applicant. In case, the applicant has deposited money as security for costs, same be released to him.

It is so ordered.

Dated and delivered this **18<sup>th</sup>** day of **July** 2012.

.....  
**George Dulu**  
**Judge**

**In the presence of:**

Nyalo – Court clerk

N/A for Appellant

Mulu for Respondent present