

REPUBLIC OF KENYA

High Court at Nakuru

Civil Appeal 246 of 2010

EMILY MKANGA APPELLANT

VERSUS

JOHN CHEGE NJOROGE 1ST RESPONDENT

SAMUEL KAMAU GIKONYO 2ND RESPONDENT

RULING

This appeal was filed on 8/9/2010. For the last 2 years no steps had taken towards its prosecution. The court issued a Notice to Show Cause why the appeal cannot be dismissed under **Order 42 Rule 35 (2)** of the **Civil Procedure Rules**. Upon service of the Notice to Show Cause, the appellant, Emily Mkanga, filed an affidavit. She stated that she instructed her advocates, Rodi Orege & Company Advocates to file the appeal. They so did, but advised her that the lower court file number 1762 of 2006 could not be traced. She exhibited letters drawn by her advocates to the Executive Officer of the court in attempt to have the file availed for purposes of obtaining typed proceedings. She deponed that she has not received any response from the Executive Officer and thus the reason for the delay in prosecuting the appeal.

I have considered the affidavit of Ms Emily Mkanga. I note that the delay has not be occasioned by the appellant. I therefore direct the Executive Officer to avail to the appellant the lower court file no. 1762 of 2006 within 30 days from the date hereof and the appellant to prepare the record and set down the matter for hearing within 120 days from the date the file is availed, failing which the appeal will stand dismissed.

The appellant to bear costs of the Notice to Show Cause.

DATED and DELIVERED this 31st day of October, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

Mr. Simiyu holding brief for Mr. Rode for the appellant

N/A for the respondents

Kennedy – Court Clerk