

REPUBLIC OF KENYA

High Court at Nakuru

Civil Appeal 301 of 2010

FRANCIS MUNGAI APPELLANT
VERSUS

WILLIAM MUGANDA RESPONDENT

RULING

This appeal was filed on 24/11/2010. For the last 2 years no steps have been taken towards its prosecution. The court issued a Notice to Show Cause why the appeal cannot be dismissed pursuant to **Order 42 Rule 35 (2)** of the **Civil Procedure Rules**. Upon service of the Notice to Show Cause, counsel for the appellant, Mr. Githiru, filed a replying affidavit. He stated that since January 2010, the appellant has been suffering from undiagnosed chronic illness which has rendered him completely bedridden and incapable of giving proper instructions on the prosecution of this appeal. He further deponed that the appellant lost his only source of income and this made it impossible for him to give instructions and pay the requisite legal charges and disbursements. However the appellant is still willing to prosecute this appeal.

I have considered the replying affidavit of Mr. Githiru. I note that the deponent has not exhibited proof of the ill health of the appellant. There are also established procedure for litigants who can not meet the cost of litigation. Mr. Githiru has not explored those avenues or at least advised his client on the same. In the affidavit, he has requested the court for 60 days to prosecute this appeal. He has however not indicated whether the appellant has recovered to be able to issue instructions to the advocate and where he will obtain the required finances. Despite these discrepancies, this court will exercise its discretion in the appellant's favour and order that this matter be set down for hearing within the next 6 months from today's date, 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. Githiru for the appellant

N/A for the respondent

Kennedy – Court Clerk