



IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL 165 OF 2007

WINNY CHEPKURUI.....APPLICANT/RESPONDENT

VERSUS

ABERCROMBIE & KENT LTD.....1ST APPELLANT/RESPONDENT

STANLEY K. RONO.....2ND APPELLANT/RESPONDENT

RULING

The application before me is seeking that this appeal be dismissed for want of prosecution for the reasons that :

- i) directions were taken on 10th February, 2009 to the effect that the appeal be prosecuted within 90 days
- ii) more than seven (7) months had passed since the directions were taken
- iii) the delay has caused the appellant undue anxiety

The application was argued *ex parte* after the respondent failed to reply to it or attend the court when it was argued. The application is brought under **Order 41 rule 32** of the revoked **Civil Procedure Rules** which is on all forms with the present **Order 42 rule 35** of the **2010 rules** to the effect that, unless within 3 months after the giving of directions the appeal is not set down for hearing by the appellants, the respondent is at liberty to either set it down for hearing or apply for its dismissal for want of prosecution.

Directions having been given on 10th February, 2009 that the appeal be prosecuted within 90 days, the provisions or **Order 41 rule 31** aforesaid were satisfied by the time this application was brought on 21st October, 2009 as nearly seven (7) months had lapsed.

Indeed today it is two years since the directions were taken and yet the appellants have taken no steps to prosecute the appeal. This application is allowed with costs and the appeal herein dismissed also with costs to the applicant.

Dated, Delivered and Signed at Nakuru this 11th day of February, 2011

**W. OUKO
JUDGE**