

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL 170B OF 2008

JAMES MBUGUA.....1ST
APPELLANT

BEAUTY LINE LIMITED.....2ND
APPELLANT

VERSUS

JOSEPH
NGOMERO.....**RESPONDENT**

RULING

The application dated 28/04/2011 is made pursuant to **Order 42 Rule 35(1), (2)** of the **Civil Procedure Rules**, seeking that the appeal herein be dismissed for want of prosecution and the costs of the application be borne by Appellants. It is premised on grounds that:

1. The memorandum of appeal was filed on 9th December, 2008 and over two years have lapsed since then.
2. The appellant has lost interest in the appeal, so it is only fair that the same be dismissed.

In the affidavit sworn by **GITHUI JOHN** in support of the application, it is deponed that the suit giving rise to the appeal was filed in the year **2006** and judgment delivered on **25th November 2008**. After the appellants filed a memo of appeal in the year 2009, no steps have been taken towards preparing record of appeal, taking directions or even setting down the matter for hearing.

The application is opposed and the appellants have filed grounds of opposition stating that the application is premature as the subordinate court has not availed proceedings to enable the appellant prepare the record of appeal and take directions.

The hearing proceeded *ex parte* – it is not disputed that since filing the memorandum of appeal two years ago, the appellants have not taken any other steps towards prosecuting the appeal. Although the court is being blamed for not availing proceedings to enable the appellants prepare the record of appeal, I have not seen a single correspondence from the appellants or their counsel, to the court, requesting for proceedings. The only reasonable inference I can draw is that this inactivity stems from a lack of interest on the part of the appellants. Consequently, there would be no justification in keeping this appeal pending – my finding is that the application is merited. The appeal filed herein is thus dismissed for want of prosecution.

Delivered and dated this 30th day of July, 2012 at Nakuru.

H.A. OMONDI
JUDGE