



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 116 OF 2009**

**JOSEPH NDERITU.....1<sup>ST</sup> APPELLANT**

**JOSEPH WAIHAKA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**SAMUEL ODHIAMBO OYAMO.....RESPONDENT**

**RULING**

This appeal was filed on 19/6/2009. No steps had taken towards its prosecution for over 2 years and the court issued a Notice to Show Cause why it cannot be dismissed. Upon service of the Notice to Show Cause, counsel for the Appellant, John Njomo filed a replying affidavit. He blamed the Respondents for failing to co-operate in order to have the matter proceed to hearing. At paragraph 5 to 10 of the affidavit, counsel set out efforts made by the appellants' counsel to have the decretal sum to be deposited in a joint fixed deposit account in accordance with a consent order recorded on 15/8/2009. It was not until 13/9/2011 that they managed to open the account. Counsel also deponed that he has been following up with Naivasha Law Courts with a view to obtaining copies of the relevant documents to enable them prepare the record of appeal.

He exhibited copies of letters dated 10/3/2010, 28/4/2011 (**JN7 & 8**) requesting for proceedings; that when they were supplied a copy of the decree and certified costs was omitted. In August 2011, he requested for the other documents (**JN9**) from Naivasha Law Courts and the Appellants were asked to pay further court fees. It was counsel's contention that they have been ready and willing to prosecute the appeal and hence request for time to be allowed to prepare the record of appeal and have it heard on merit.

Mr. Moseti, counsel for appellants did not oppose the request. I have considered the replying affidavit and submissions by Mr. Njomo. He has exhibited documents to demonstrate that there has been an attempt to get the Lower court record for purposes of preparing the record of the appeal. The counsel has shown that they are still keen on prosecuting the appeal and the court will exercise its discretion in their appellant's favour and allow them time to prepare the record of appeal and set it 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 26<sup>th</sup> day of October, 2011.

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

**PRESENT:**

No appearance for Appellants

Mr. Moseti for Respondents

Court Clerk - Kennedy