



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL APPEAL NO. 114 OF 2009**

***(Being an Appeal from the Judgment of the Senior Resident Magistrate S.M. MOKUA i***

***n Civil Case No. 40 of 2007 at Siakago – PM Court)***

**NGUNGI NGARI.....APPELLANT**

**VERSUS**

**ELIJAH NJOROGE MWANGI.....RESPONDENT**

**RULING**

This is the Notice of Motion dated 2/8/2011 under Order 42 Rule 35 Civil Procedure Rules for dismissal of the Memorandum of Appeal filed on 29/8/2009. It is supported by the affidavit of Macharia Muraguri. The record is clear that directions were given on 1/3/2011.

To date the Appellant has taken no steps to prosecute his appeal. The Respondent made an election to apply for dismissal under Order 42 Rule 35(1) of the Civil Procedure Rules.

The Appellant was served and has not filed any Replying Affidavit nor appeared for hearing.

**Order**

I therefore dismiss the memorandum of Appeal for want of prosecution with costs to the Respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 18<sup>TH</sup> DAY OF  
OCTOBER 2011.**

**H. I. ON'GUDI  
JUDGE**