



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 173 OF 2006

(Appeal from the judgment of the Naivasha Magistrate – NJAGI (Ag.PM) and delivered on 31st October 2006 in Naivasha SPMCC No.190 of 2005)

ZAKHEM CONSTRUCTION LTD.....APPELLANT

VERSUS

GIDEON LULU MBUKUKU.....RESPONDENT

RULING

This appeal was admitted to hearing on 26/1/09. The Memorandum of Appeal had been filed way back on 23/11/06 when the appellant challenged the judgment of the lower court in Naivasha CMC No. 190/2005. The respondent contends that despite request that the appeal be fixed for hearing, the same has never been set down for hearing and that is why the applicant/respondent filed the Chamber Summons application dated 30/11/2010, seeking to have the appeal dismissed for want of prosecution. The respondent has exhibited a letter dated 4/2/2009 and another dated 22/1/2010 reminding the appellant that they had not set the appeal down for hearing. In reply, counsel for the appellant Mr. Paul Wahome Kimani deponed that they have taken steps towards prosecution of the appeal when they wrote the letter dated 7/7/2010 to Omwoyo Advocates inviting them to take dates at the registry. When the clerk went to the registry on 16/7/2010, he found that the dairy for 2010 was closed.

I do agree with the respondent's counsel that since 29/1/2009 the appellant has not been keen to have this appeal prosecuted. The counsel who swore the affidavit does not disclose why the year 2009 went by without them fixing a hearing date. They waited till July 2010 to seek a hearing date. Since the appellant has suddenly been awakened from his deep slumber, I will allow them 30 days within which to fix this appeal for hearing, failing which it stands dismissed. The appellant/respondent will bear the costs of this application.

DATED and DELIVERED this 25th day of March 2010.

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

PRESENT:

Ms Momanyi holding brief for Mr. Masese for the appellant.
Mr. Ombati holding brief for Mr. Wainaina for the respondent.
Kennedy – Court Clerk.