



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**CIVIL APPEAL NO. 84 OF 2006**

**JOHN KALANZA ..... APPELLANT/RESPONDENT**

**VERSUS**

**MWENDE KINYALI ..... RESPONDENT/APPLICANT**

**R U L I N G**

This appeal was lodged by **memorandum of appeal dated and filed on 9<sup>th</sup> June 2006**. The appeal is against the **decree** of the lower court **passed on 11<sup>th</sup> May 2006**. The decree was to the effect that the Appellant was under obligation to maintain his two children with the Respondent. The court ordered that he pays KShs. 7,000/00 per month to the Respondent for this purpose until the children attain the age of majority. The court also awarded costs of the suit to the Respondent.

The memorandum of appeal was served shortly after the appeal was lodged. Since then (2006) the appeal has not been set down for hearing. The Appellant has never even moved the court for admission of the appeal or for the giving of directions. The Appellant appears to have lost interest in the appeal. This prompted the Respondent to apply by **notice of motion dated 27<sup>th</sup> May 2008** for dismissal of the appeal for want of prosecution and the setting aside of the order of stay of execution apparently obtained by the Appellant. The application is made under **Order 41, rule 31(2)** of the **Civil Procedure Rules (the Rules)**. The inherent power of the court is also invoked. The application is supported by an affidavit sworn by the Respondent's counsel.

The Appellant has opposed the application as set out in his **replying affidavit sworn on 5<sup>th</sup> and filed on 7<sup>th</sup> May 2010**. He explains the delay in prosecuting his appeal by saying that there has been delay by the court in supplying to him certified copies of proceedings and judgment. He has not exhibited one single correspondence or document showing any efforts he may have made to obtain copies of the proceedings and judgment. His explanation for the delay has no factual basis and I hereby reject it.

There has been inordinate delay in prosecuting this appeal. The Appellant has not offered any credible explanation for this delay. The memorandum of appeal was served in the year 2006, that is, four years ago. The appeal has not been set down for hearing. In these circumstances one can only conclude that the Appellant has lost interest in his appeal.

I will allow the application at hand as prayed with costs. The appeal herein is hereby dismissed with costs under Order 41, rule 31 (2) of the Rules. It is so ordered.

**DATED AT MACHAKOS THIS 12<sup>TH</sup> DAY OF OCTOBER 2010**

**H. P. G. WAWERU**  
**JUDGE**

**DELIVERED THIS 15<sup>TH</sup> DAY OF OCTOBER 2010**

