



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 42 OF 2007**

**ASMAN SHIKUKU.....APPELLANT**

**VERSUS**

**AUGUSTINO STEPHEN NJOROGE.....RESPONDENT**

**RULING**

This appeal was filed way back on 16/5/2007. On 27/10/2010 this court took out a notice on the appellant to show cause why this appeal cannot be dismissed for want of prosecution. Mr. Mongeri, counsel for the appellant asked for time to file an affidavit in reply to the notice to show cause. When the matter came up for hearing Mr. Mongeri had not served the affidavit on the respondent who requested to be served so that they could reply. In the affidavit opposing the notice to show cause, Mr. Mongeri deponed that the appellant had been unable to compile the record of appeal since the decree had not been signed or certified and that copies were pending before the Deputy Registrar. When the notice to show cause was pending the appellant went ahead and filed the record of appeal on 24/11/2010.

I have looked at the record and noted that the decree was signed on 15/11/2010. If only signing of the decree was withholding the preparation of the record of appeal, it means that the appellant had just sat back and not attempted to request for the decree. It is not until he was prompted by this application that he took steps to get the decree signed and prepare the record. Since the appellant has now shown his interest in the matter, the court will exercise its discretion and give the appellant a chance to serve the record of appeal and have this appeal heard and determined. The appellant should ensure that this appeal is set down for hearing within 45 days hereof, in default it will stand dismissed. Costs of the notice to show cause on the respondent.

**DATED and DELIVERED this 20<sup>th</sup> day of December, 2010.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

.....for the appellant.

.....for the respondent.

Kennedy – Court Clerk.