

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

Civil Appeal 52 of 2003

CHARLES NDUMU WANYOIKE..... APPLICANT/RESPONDENT

Versus

GERALD MUCHIRI NDIRANGU.....1ST RESPONDENT/APPELLANT

TIMOTHY KOGLI.....2ND RESPONDENT/APPELLANT

*(An appeal from the Judgment of the Nyeri Chief Magistrate Kaburu Bauni dated 26th
March 2003 in Nyeri CMCC NO. 739 of 2002)*

RULING

By a Notice of Motion dated 7th March 2005 the Respondent sought the dismissal of this appeal for want of prosecution. By a ruling dated 13th July 2005 the court found that the appeal had not yet been admitted and therefore rejected the prayer for dismissal for want of prosecution. The appeal was admitted on 13th February 2006. By the present application by way of Notice of Motion dated 10th June 2006, the Respondent again seeks the dismissal of this present appeal for want of prosecution. The Appellant though served did not attend the hearing. I however find that the orders sought by the Respondent cannot be granted because *Order XLI Rule 31(1)* of the Civil Procedure Rules requires that before such an application is entertained that directions be given as required by *Order XLI Rule 8B*. Such directions have not been given in this matter and accordingly the Court cannot grant the prayers sought. However I am alive to the fact that it does seem that the Appellant has lost interest in this matter and accordingly I will require the Deputy Registrar of this Court to give notice to the Appellant in accordance with *Order XLI Rule 31(2)* of the Civil Procedure Rules. That notice should be given as a matter of priority for indeed it does seem that the Respondent has been frustrated by the non activity of the Appellant in this matter. These then are the orders of this Court.

1. That the Notice of Motion dated 10th June 2006 is struck out and the costs therefore shall be in the cause.
2. The Deputy Registrar of this Court shall give notice to the parties in accordance with *Order XLI Rule 31(2)*.

Dated and delivered at Nyeri this 27th day of July 2007.

MARY KASANGO

JUDGE