



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

**Civil Appeal 108 of 2000**

*(Arising from Original Webuye RM CC. No.87 of 1995)*

**1 GABRIEL WANYONYI**

**2 CHARLES WAFULA BARASA**

**3 KENNEDY JUMA**

**WANYONYI .....APPELLANTS**

**VS**

**HUDSON N.**

**WALERA.....RESPONDENT**

**RULING**

By a letter dated 15<sup>th</sup> July 2005, M/S Bulimo & Co. Advocates applied that the appeal be placed before the Judge for dismissal under Order XLI Rule 31 of the Civil Procedure Rules (Cap 21) Laws of Kenya. The applicant cited two grounds:

- i) Since the appeal was admitted on 24<sup>th</sup> February 2003, the appellants have never prepared the record of appeal.
- ii) That the appellants have never made any application for directions.

Acting upon the said letter, the High court Registry, on 13<sup>th</sup> October 2006, listed the appeal for dismissal.

When the parties appeared before me, Mr. Wekesa for the respondent urged me that the appeal be dismissed on the grounds cited hereinabove.

Mr. Inganga, for the appellant, urged me to save the appeal since the memorandum of appeal has already been filed.

I have on my own, perused the court file and found as a fact that the memorandum of appeal was filed on 25<sup>th</sup> January, 2006. In addition thereto, there is an application by way of chamber summons dated 9<sup>th</sup> November 2005, by the appellant, seeking that direction be taken which has not been heard.

In the light of the foregoing, I take the position that the appellant has at least woken up from the deep slumber.

In the circumstances, the only order that commends itself to me is to put the appellant on his toes. Accordingly, I order that the appellant do process the appeal for hearing within 12 months, failing which this appeal be deemed as dismissed with costs to the Respondent.

Dated at Bungoma this 21<sup>st</sup> day of February 2006.

N.R.O. OMBIJA

JUDGE

Wekesa for Respondent

N/A for Appellant.