REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
Civil Appeal 91 of 2003

GUSII FARMERS RURAL SACCO LTD …… APPELLANT

VERSUS

HENRY MAGETO KERINA)

PETRO MOSOTI)…… RESPONDENT

AUGOSTINO NYAKUNDI)

RULING

This is an application by the Respondent in the appeal to have the appeal dismissed for want of prosecution. It is brought under Order 41 rule 31 CPR.

The appeal was filed on 23rd May 2003 by the firm of M/S G. J. M. Masese Advocate. The Memorandum of Appeal was served upon counsel for the respondent on the same day 23rd May 2003. Since then the appellant took no action.

The Applicant/Respondent filed this application on 4th February 2005, almost two years after the appeal was preferred. It was served on the firm of M/S. G. M. J. Masese Advocate. He did not file a replying affidavit or grounds of opposition. On 18th April 2005 the firm of M/S. Omariba & Co. Advocates were allowed to come on record for the appellant instead of the firm of M/S G. M J. Masese Advocate. However the said firm of Omariba & Co Advocate never filed a Notice of appointment neither did they file a replying affidavit or grounds of opposition. On the hearing day

Mr. Omariba appeared for adjournment which was rejected. The application therefore proceeded ex parte. It was unopposed. It is clear that after filing the appeal the appellant went to sleep. He never filed record of appeal or took any other steps. Order 41 rule 31 (2) CPR provides that if appeal is not set down for hearing within one year after Memorandum of Appeal has been served then the Registrar can set it for dismissal. It is obvious that more than a year have passed since Memo of appeal was served on 23rd May 2003. No steps have been taken and there is no explanation. This therefore is a proper case for dismissal.

In the circumstances the appeal is dismissed with costs.

Dated at Kisii 28th day April of 2005.

KABURU BAUNI

JUDGE

cc. Mobisa Mr. Nyachae for Mr. Omariba for Appellant.

KABURU BAUNI

JUDGE

Court:- Appellant granted leave to appeal

KABURU BAUNI

JUDGE