

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 85 OF 2003

(Appeal from the Orders of the Chief Magistrate at Kakamega, A. O. Muchelule Esq., in
CMCC No. 1053 of 1995 delivered on 20/12/2002)

MARK MUNANDI ::: APPELLANT
V E R S U S
SHEM NYAMBASI ::: RESPONDENT

RULING

The Respondent in the appeal herein, Shem Nyambasi, applied by Chamber Summons dated 10-8-2004 for an order to dismiss the appeal for want of prosecution. The application was premised on Order XLI Rule 31 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya. It was supported by an affidavit of Charles Lutta Kasamani Esq., the Advocate for the Respondent who deposed that from the time the appeal was filed on 21-7-2003, the Appellant had not taken steps to prosecute it.

The application was opposed by the Appellant who filed grounds of objection dated 26-4-2005 through his advocates, C. O. Samba & Co. In the said grounds, the Appellant contended that the application by the Respondent was premature and misconceived in law because the appeal has not been admitted and no directions have hitherto given.

I have perused the application and given due consideration to the submissions made by both counsel. The record shows that the lower court record has not been submitted to this court although a request in this regard was made on 17-12-2003 following the filing of the appeal on 21-7-2003. Consequently the appeal has not yet been admitted to hearing and for this reason no directions have been given. The appeal is therefore not ripe for hearing and in the premises the application for its dismissal is premature. It is dismissed with costs.

Dated at Kakamega this 24th day of June, 2005.

G. B. M. KARIUKI
J U D G E