



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

**CIVIL APPEAL NUMBER E100 OF 2024**

**EDGAR KINYANJUI NJIRIRI .....**  
**APPELLANT**

**VERSUS**

**SAMUEL KARIUKI MWANGI .....**  
**RESPONDENT**

**RULING**

1. *Vide* Notice of Motion dated 15<sup>th</sup> September 2025 the Respondent to this Appeal seeks dismissal of the Appeal for want of prosecution. He avers through his affidavit in support of the Motion that the Appeal was lodged by Memorandum of Appeal dated 30<sup>th</sup> April 2024. Since then, the Appellant has not taken steps to have the matter listed for directions. The default is

said to be deliberate and inexcusable. The Respondent contends that the delay is calculated to deny him the right of enjoying the fruits of judgement entered in his favour in the lower court and therefore he is greatly prejudiced.

2. Despite obtaining leave to put in a late reply to the Application, the Appellant has not complied and neither has he filed submissions.
3. I have perused the Application and written submissions dated 2<sup>nd</sup> October 2025 filed by the Respondent. Citing **order 42 rule 35(2) of the Civil Procedure Rules 2010**, the Respondent submits that an Appeal could be dismissed if it is not set down for hearing within one year of service of the Memorandum of Appeal. Counsel further submit that even where directions on disposal of an Appeal have not been given the Appeal may still be dismissed if it is not set down for hearing within the above stated period. In support of this Submission reliance is placed *inter*

*alia* on case Law in **Abraham Mukhola Asistsa vs Silver Style Investment Company Limited (2020) eKLR** and **Profenix Fruits Processors Limited & Another vs Trust Bank Kenya Limited (2015) eKLR.**

4. I am persuaded by the Respondent's affidavit evidence and submissions. It is about 2 years since Memorandum of Appeal was filed yet the Appellant has not moved to fix the Appeal for hearing. Besides, the Application is deemed as unopposed, no reply thereto having been made.
5. Consequently, the Application is allowed and this Appeal is dismissed with costs for non-prosecution.

**J. M NANG'EA, JUDGE.**

**Ruling dated, signed and delivered virtually this 18<sup>th</sup> day of March, 2026.**

**In the presence of:**

Mr. Nyachiro Advocate for the Appellant

Mr. Kairu Advocate for the Respondent

Court Assistant (Jeniffer)

**J. M NANG'EA, JUDGE.**

ORIGINAL