



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION APPEAL NO. 4 OF 2020

IN THE MATTER OF THE ESTATE OF MUKHONO CHIBO ALIAS MUHOMO CHIBO (DECEASED)

(An appeal arising from the ruling and order of Hon. Hazel Wandere, Senior Principal Magistrate, in Kakamega CMCS No. 924B of 2018, of 8th March 2020)

RULING

1. I am tasked with determining a preliminary objection, dated 24th March 2021, which raises four grounds:
 - a. The appeal is incompetent for it was filed on 31st August 2020, in respect of a decision made on 3rd March 2020;
 - b. The appeal was filed out of time, without leave of court;
 - c. Directions, to file record of appeal within 14 days, were made on 26th January 2021, but the record of appeal was filed on 15th March 2021; and
 - d. There is lack of jurisdiction on account of the appeal being filed out of time.
2. The appeal was canvassed by way of written submissions. The respondent's written submissions are dated 29th June 2021. It is submitted that the appeal was filed 150 days after date of delivery of the decision impugned, without leave of court, and the appeal was, therefore, incompetent.
3. The appeal herein arose from a decision of a subordinate court. The law with respect to time for filing appeals from subordinate courts is in section 79G of the Civil Procedure Act, Cap 21, Laws of Kenya. An appeal should be filed within thirty days from the date of the decree or order appealed against, excluding any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.
4. The appeal herein, therefore, was filed way outside the thirty days, allowed by section 79G of the Civil Procedure Act. There is no certificate of delay exhibited, and, therefore, the appellant did not benefit from the exclusion permitted under section 79G.
5. Section 79G has a proviso, which gives a window to the appellant, who finds himself outside the time allowed for filing appeal, which is by asking the court to allow admission of an appeal out of time, if there is good and sufficient case for not filing appeal in time. There is no evidence that the appellant obtained leave of court for admission of the appeal out of time.
6. An appellate court would have no jurisdiction to entertain an appeal which is incompetent, on account of having been filed outside the time allowed in law, and without leave of court.
7. The final order shall be that the appeal herein is incompetent, for it was filed out of time, and without leave of court, and I have no jurisdiction to entertain it. I hereby accordingly strike it out. With costs.
8. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18TH DAY OF FEBRUARY, 2022

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Abraham Asutsi Mukhono, the appellant, in person.

Mr. Mukavale, Advocate, for the respondent.