



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 8 OF 2020

MANUFAA FEEDS LTD.....APPELLANT

VS.

DAVID NG'ANG'A.....RESPONDENT

(Appeal from the judgment of the Chief Magistrate's Court at Thika, Hon. J.M. Nang'ea Civil Case No. 611 of 2019 dated 10th December, 2019)

RULING

1. **MANUFAA FEEDS LTD** (appellant) filed this appeal on 23rd January, 2020. The appeal is against the decision of 10th December, 2019 of the Chief Magistrate's Court Thika. **Section 79G** of the Civil Procedure Act, Cap 21 provides the period within which an appeal from the subordinate court should be filed. That section provides:-

“79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

2. It will be seen that the appellant did not file the present appeal within the period set out in **Section 79G Cap 21**. This appeal should have been filed by 9th January, 2020 but in fact it was on 23rd January, 2020. There is nothing in this file to indicate that the appellant sought extension of time to file this appeal out of time. I draw benefit from the discussion of that **Section 79G** by Justice Ngaah Jairus in the case **LAWRENCE NGUTHIRU RICCARDAHW VS. GEORGE NDIRANGU [2015] eKLR** as follows:-

“...the Court of Appeal decision in the case of KYUMA VERSUS KYEMA (1988) KLR 185... The appellant was entitled to appeal to the High Court against these orders if he felt aggrieved by them. Section 65(1) of the Civil Procedure Act confers a right of appeal on him. But in order to set on foot a competent appeal, the appellant must have filed his appeal within thirty days from the date of the order...This period may be extended provided he obtained from the magistrates court a certificate of delay within the meaning of Section 79G of Act 21.”

3. Appellant filed its appeal forty four days after the subordinate Court's ruling. It becomes plain that the appellant's appeal is incompetent. Indeed it is not an appeal until it is admitted out of time as provided under Cap 21.

4. The appellant filed a Notice of Motion application dated 24th January, 2020. Appellant seeks by that application stay of execution of the subordinate order pending this appeal. This Court, having made a finding that there is no valid appeal, it becomes manifest that the application without a proper foundation, that is, without a valid appeal must and does fail.

5. I have considered the replying affidavit and the submissions filed by the respondent but because there is no valid appeal I will not proceed to reproduce the same in this ruling.

6. In the end, the Notice of Motion dated 24th January, 2020, in view of the above discussion is without a foundation and this Court has no jurisdiction to entertain the same and is therefore struck out with costs.

RULING DATED and DELIVERED at KIAMBU THIS 27TH DAY OF MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Appellant: Ms Ndungu H/B for Mbiu Kamau

Respondent: Ms. Chacha H/B for Mr. Muiruri

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE