



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 16 OF 2018

BETWEEN

ZACHARY NJANJA MUGO.....1ST APPELLANT

BOLPAK TRADING COMPANY LIMITED.....2ND APPELLANT

VS

KIMEMIA GEOFFREY MAKUMI.....RESPONDENT

(Appeal from the judgment of the Chief Magistrate's Court

at Thika Onsarigo, RM of 2014 dated 23rd November, 2016

in Thika CMCC No. 470 of 2013)

RULING

1. The trial court's judgment which is the subject of this appeal was delivered on 25th November, 2016. In accordance with the provisions of Section 79G of the Civil Procedure Act Cap 21, the appellants should have filed their appeal against that judgment within 30 days of the date of that judgment. **Section 79G of Cap 21** 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 to the appellant 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. This appeal was filed on 3rd February, 2017.

3. I have perused the file of this appeal and I have not seen evidence of the appellants seeking and obtaining leave to have their appeal admitted out of time of the period of 30 days required under Section 79G of Cap 21. It follows that if indeed no such leave was sought and obtained, this appeal is incompetent. This appeal needed to be admitted for hearing out of the period prescribed under Section 79G. On that ground alone, this appeal would be dismissed.

4. I however note that the respondent in this appeal did not raise an issue that this appeal was filed out of time and because more frequently than not parties seek and obtain leave to file an appeal out of time under miscellaneous file, one which is separate from the main appeal file, I therefore find it prudent to ask the parties to inform the court whether indeed leave to admit the appeal out of time was obtained. It is then important, if leave was indeed obtained, for the order granting such leave to be provided to this court.

5. It is for the above reason that although parties were expecting delivery of judgment in their appeal today, I opted to deliver this Ruling to get the parties confirmation on whether leave was obtained. It is only on getting that confirmation this court will be able to determine the next course of action.

6. I now request the appellant to inform this Court whether leave was obtained for the admission of this appeal out of time.

RULING DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

For the Appellants:

For the Respondent:

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE