



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CORAM: A.K NDUNG'U J**

**CIVIL APPEAL NO. 111 OF 2019**

**APEX JAPAN MOTORS LIMITED..... 1<sup>ST</sup> APPELLANT**

**MOHAMMED TANVEER GABA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**FREDRICK OGORO MOKUA ..... RESPONDENT**

**(Being an appeal of the Orders of Hon. N.S Lutta, delivered on 28<sup>th</sup> November, 2018 in Kisii Chief Magistrates Civil Case No. 321 of 2018)**

**RULING**

1. Counsel for the respondent has pointed out to the court that the propriety of the appeal herein is in question, the same having been filed outside the timelines set by court in HC Misc 13 of 2019.
2. This court called for the record in H.C Misc 13 of 2019 and the same has since been availed.
3. At paragraph 2 of the ruling of Ougo J in H.C Misc 13 of 2019 the court stated;

*“The applicant is granted leave to appeal out of time on the Order dated 28/11/2018. The appeal shall be filed within 21 days from the date of this Ruling.”*

That ruling is dated 24.4.2019.

4. My reading of the record in H.C Misc 13 of 2019 and the record in this appeal prima facie show that the grouse raised by counsel for the respondent is not entirely without basis and needs the attention of the court before a laborious prosecution of the appeal only for it to be found incompetent at the end.
5. Tenets of a fair hearing dictate that no person should be condemned unheard.
6. In order to give the parties a fair opportunity to be heard on the issue of the propriety of the appeal, it is desirable that the respondent moves the court in an application to strike out the appeal.
7. This will enable the parties to place all relevant matters before the court for a just and fair determination thereof.
8. I direct that the said application be lodge within the next 30 days and served.
9. In the absence of an application this matter shall be mentioned for further directions.

**Dated, Signed and Delivered at Kisii this 22<sup>nd</sup> day of July, 2020.**

**A. K. NDUNG'U**

JUDGE