

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO. 186 OF 2015

CORAM: D.S. MAJANJA J.

BETWEEN

EVANS MANYIBE NYABERO.....APPELLANT

AND

MICHAEL MOMANYI.....1ST RESPONDENT

JUSTUS ATUTI.....2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon.M. Nyagah, RM dated 10th September 2015 at the Chief Magistrates Court at Kisii in Civil Case No.82 of 2014)

JUDGMENT

1. At the hearing of this appeal, counsel for the respondents raised an objection on the ground that the appeal was filed out of time and without leave and that it ought to be struck out. He pointed out that the judgment was delivered on 10th September 2015 and that the Memorandum of Appeal was filed on 24th December 2015, a period of 3 months and 14 days outside the time permitted for filing appeal under **section 75G** of the *Civil Procedure Act (Chapter 21 of the Laws of Kenya)*.
2. Counsel for the appellant did not dispute the fact that the appeal was filed out of time. He contended that under the **section 79G** aforesaid, the court should exclude from the time taken to appeal such time as was necessary to prepare the and certify copies of the proceedings.
3. There is no dispute that the appeal herein was filed out of time and without leave contrary to **section 79G** of the *Civil Procedure Act*. That being the position, the only order that commends itself to this court is that the appeal be and is hereby struck out with costs to the respondents which I assess at Kshs. 5000/- only.

DATED and DELIVERED at KISII this 26th day of June 2018.

D.S. MAJANJA

JUDGE

Mr Soire instructed by Soire and Company Advocates for the appellant.

Mr Gichana instructed by Ochoki and Company Advocates for the respondents