

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 77 OF 2014

(An appeal against Decree in Gatundu RMCC No 151 of 2011 – Ms Kinyanjui, Ag. Rm)

ANTHONY NJUGUNA GATHURI.....APPELLANT

VERSUS

DAVID PETER OWUOR.....RESPONDENT

RULING

1. On 10/10/2014 the Appellant herein lodged his appeal against the decree passed by the lower court on 11/09/2014. The Respondent has challenged the appeal by **notice of motion dated 10/02/2016** upon the ground that the appeal was lodged out of time and without leave of the court.

2. By dint of **section 79G** of the **Civil Procedure Act Cap 21**, every appeal from a subordinate court to the High Court must be filed within a period of 30 days from the date of the decree or order appealed against. The decree appealed against in this present appeal having been passed on **11/09/2014**, the Appellant had until **11/10/2014** to lodge his appeal. However 11/10/2014 was a Saturday and therefore not a working day. The next working day was 13/10/2014. So the Appellant had until **13/10/2014** to lodge his appeal. As a matter of fact, the Appellant lodged his appeal on 10/10/2014, well within time.

3. The Respondent's application is thus founded on an erroneous fact. It has no merit. It is hereby dismissed with costs to the Appellant. It is so ordered.

4 I do not deem it necessary to discuss the other grounds upon which the application was also founded, save to say that payment of a money decree does not take away a litigant's right of appeal. The Appellant's appeal herein is not compromised in any way by the fact he paid the decretal sum.

DATED AND SIGNED AT MURANG'A THIS 24TH DAY OF NOVEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANGA THIS 25TH DAY OF NOVEMBER 2016