

THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 228 OF 2013

DANIEL NG'ANG'A KABERERE.....APPELLANT

VERSUS

PHYLIS NJERI MUHORO.....RESPONDENT

R U L I N G

1. Section 79G of the Civil Procedure Act, Cap 21 provides as follows -

"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 reparation and delivery to the Appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time and the Appellant satisfies the court that he had good and sufficient cause for not filling the appeal in time."

2. The decree appealed against this appeal was passed on 12th July 2013. Any appeal against that decree had thus to be filed on or before 11th August 2013. 11th August 2013 happened to be a *Sunday*. The memorandum of appeal herein was filed on following working day, 12th August 2013, thus within the time stipulated in section 79G aforesaid. Contrary to what has been urged by the Respondent in her application by **notice of motion dated 21st July 2014, the memorandum of appeal was **not** filed on **22nd August 2014**. In the said application the Respondent seeks an order to strike out of the appeal upon the ground that there is no competent appeal before the court on account of the same having been filed out of time.**

3. The Respondent has also urged that the appeal is an abuse of the process of the court in that the same has not been prosecuted. It is also urged that the copy of the memorandum of appeal has never been served.

4. I have read the supporting affidavit as well as replying affidavit filed by the Appellant in opposition to the application. I have also perused the court file. I note that the Appellant filed her record of appeal on 12th November 2014. The appeal has not yet been admitted to hearing by this court, but that is something that can be easily taken care of. Service of the record of appeal which would ordinarily contain a copy of the memorandum of appeal is also something that can be directed to be done without further delay. Issues of stay of execution and conditions pertaining thereto appear to be matters that were dealt with by the trial court. I do not understand the Respondent to be saying that the Appellant has not met those conditions.

5. All in all, it is my considered view that the appeal herein ought to be allowed to be heard and determined on its own merits. At the delivery of this ruling the Court shall give appropriate directions in that regard.

6. The notice of motion dated 21st July 2014 is therefore refused; it is hereby dismissed, but with costs thereof to be in the appeal. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 26TH DAY OF FEBRUARY 2015

H P G WAWERU

JUDGE

DELIVERED THIS 27TH DAY OF FEBRUARY 2015