

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 54 OF 2013

MOHAMMED SAID OMAR.....APPELLANT

VERSUS

MILLICENT ACHIENG OTIENO.....RESPONDENT

R U L I N G

The application dated 20-11-2013 by the applicant prays that this appeal be dismissed for the reason that it was filed out of time. The same is supported by the affidavit of Joseph Musomba. He depones that the appellant filed his appeal on 20-6-2013 yet the judgment of the lower court was delivered on 6-8-2013. According to him the 30 days window had already lapsed.

The respondent on the other hand filed grounds of opposition where she argued that the appeal contrary to the applicant's assertion was filed on 22-7-2013 which was within 30 days period required. The counsel for the respondent contended that 30 days expired on 20th July 2013 which was a Saturday and that the appeal could only be filed on a Monday which was a working day.

I have heard the sentiments by the parties. I have also perused the court proceedings and noted that judgment was delivered on 20th June, 2013 and therefore 30 days was to expire on 20th July, 2014. The same was fell on a Saturday and naturally pursuant to the provisions of Order 50 Rule 3 the next working day was on Monday 22-7-2013 when the filing was done.

I do agree with the respondent submissions. If for example the 30 days had expired in the usual working days then it would have been necessary to file the same within the requisite period. For now I do not find the application meritorious and I shall proceed to disallow the same with costs.

Dated, signed and delivered at Kisumu this 30th day of June, 2014.

**H.K.
JUDGE**

CHEMITEI