

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 9 OF 2012

JAMAL FARAJAPPELLANT

-V E R S U S-

CHARLES KHALAMBULA RESPONDENT

(Being an appeal from the Judgment and Decree of the Mombasa Ag. Chief Magistrate Hon. L. Mutende delivered on 13th December 2012 in the CMCC No. 188 of 2009)

JUDGMENT

1. Section 79G of the Civil Procedure Act 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 preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

2. The Judgment of **Mbsa Senior Resident Magistrate’s Court Civil Case No. 188 of 2009** was delivered on 13th November 2011 and not on 13th December 2011 as erroneously stated on the Memorandum of Appeal. The date reflected in the handwritten judgment and in the extracted Decree in that case show the date of judgment was 13th November 2011.

3. Bearing that date in mind this appeal having been filed on 26th January 2012 was clearly filed out of the 30 days envisaged in Section 79G. It is on that ground alone that I find Appellant’s appeal is incompetent.

4. The appeal filed on 26th January 2012 would still be filed out of time even if the correct date of judgment was 13th December 2011 since it would also have been filed beyond the thirty (30) days required.

5. Appellant failed to obtain leave of the Court for the appeal filed to be admitted out of time before the appeal was heard by written submissions. There is therefore no competent appeal before Court. Consequently this appeal is hereby struck out with costs to the Respondent.

DATED and DELIVERED at MOMBASA this 20TH day of NOVEMBER, 2014.

MARY KASANGO

JUDGE