

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. 42 OF 2014

RIFT VALLEY ROSES (K) LTD.....APPELLANT

-VERSUS-

BENKI LEPIRKINE.....RESPONDENT

RULING

1. The judgment of the lower court which is the subject of the Memorandum of Appeal and Notice of Motion filed contemporaneously on **1st December 2012** was delivered on **22nd October 2014**. Thus whether the Applicants had been served with notice to attend the judgment or not, the Memorandum of Appeal was filed out of time, and without leave of the court. The preliminary objection reused by the applicant therefore has merit.

2. However, the delay in filing the application is not excessive and any prejudice occasioned upon the Respondent can be compensated by costs. In any event the Applicant has in compliance with the orders of the court deposited into court a substantial part of the decretal sum.

3. In order that substantive justice may be done between the parties without further delay, I will deem the impugned Memorandum of Appeal as properly filed but award the costs of the Preliminary Objection to the Respondent.

4. The pending application will be heard interpartes in the new term on a date to be agreed by the parties. Execution stayed until then.

Delivered and signed this 19th day of December, 2014 in the presence of:-

N/A for Applicant

Mr. P. K. Njuguna holding brief for Mr. Mbeche for the Respondent

Court Clerk: Stephen

C.W. MEOLI

JUDGE