



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 8 OF 2013

S A R.....APPELLANT

VERSUS

1. A R S

2. Z R S

3. M K K.....RESPONDENTS

RULING

Before court is the Notice of Motion dated 17th September, 2013 by which the applicant seeks the following orders:

- “1. THAT the appeal herein be dismissed for being time barred.**
- 2. THAT the costs of this application be provided for.”**

The grounds upon which the application is based are as follows:

- The appellant did not seek leave before filing the appeal.
- No notice of appeal was served before the appeal was filed.
- The appeal was filed irregularly and ought to be dismissed.

The background of this matter is that the appellant **S A R** did on 18th February, 2013 file an appeal against a decision rendered by the Hon. Kadhi in case No. 91 of 2008 in which the Hon. Kadhi entered judgment in favour of the respondents (now the applicant). The judgment of the Kadhi was delivered on 13th September, 2012. The appellant had 30 days within which to file an appeal if she was dissatisfied with that decision. As it turned out the appellant filed her appeal on 18th February, 2013 a full five (5) months **after** the Kadhi rendered his decision. As such technically the appeal would be time barred in view of the fact that no enlargement of time was sought and/or granted by the court.

The appellant did file a replying affidavit dated 18th November, 2013 in which she attempted to explain this delay. She stated that she was still defending an application filed by the respondents before the Kadhi. The appellant appeared to be laboring under the misapprehension that she had to finalize all

matters before the Kadhi before she could file her appeal.

This court does appreciate that the appellant was a layperson who was acting in person. However, that being the case she was obliged to acquaint herself with the legal requirements since ignorance of the law is not a defence. I have considered the cited authority of **ALICE WAMBUI KARANJA & ANOTHER –VS – JACINTA WAIRIMU NJOROGE 2013 eKLR**. This was a Court of Appeal decision which held that where an appeal is filed out of time without any leave the same ought to be struck out. In this case the delay has been inordinate. It is more than four (4) months beyond the thirty (30) day period provided for. I am bound by the Court of Appeal decision. No convincing explanation has been given for the delay and the appellant did not seek the leave of court to file her appeal out of time. As such this appeal is time barred and is therefore incompetent and the court has no option but to strike it out. I make no order on costs.

Dated and delivered in Mombasa this 18th day of December, 2013.

M. ODERO

JUDGE