



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
Civil Appeal 77 of 2009**

**IRENE NJOKA.....APPELLANT**

**VERSUS**

**PETER NJERU NYAGA.....RESPONDENT**

**RULING**

The Application at bar is the one dated 17/8/2009. It was filed during the court vacation and taken to the High Court sitting in Nyeri where there was a Judge on duty.

My brother Hon. Justice Serگون perused the file and noted that the Judgment in the lower court file was rendered on 20/11/2008. The appeal was filed on 20/6/2009 without leave to file the same out of time. I have perused the said files and I do not see any application seeking leave to file the appeal out of time or an order granting such leave. What I have seen in the file is a certificate of delay dated 24/6/2009 one day before the said Appeal. An application for leave to file the appeal out of time could not have been filed before the said certificate of delay was issued. The only inference I am able to make is that the “*appeal*” herein was filed out of time and without the leave of the court. There is therefore no competent appeal before this court. That being the case, orders of stay pending the hearing and determination of the appeal cannot lie.

In the circumstances, I make a finding that the application dated 17/8/2009 is totally devoid of merit and the same is hereby dismissed with costs to the decree holder/Respondent.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 13th day of May 2010.

In presence of:- Respondent Peter Njeru present

N/A by Appellant