



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 33 of 2005

DWA ESTATE LIMITED.....APPELLANT

VERSUS

FREDRICK MUSYOKA MULEI.....RESPONDENT

R U L I N G

1. Frederick Musyoka Mulei who is the respondent to this appeal has moved this court under Section 3A and Section 79G of the Civil Procedure Act seeking to have the appeal filed on 21st January, 2005 struck out with costs on the grounds that the appeal was filed out of time without leave of the court. It is not disputed that judgment subject of the appeal was delivered on 14th December, 2004 and that the appeal was filed on 21st January, 2005.

2. Under Order XLIX Rule 3A of the Civil Procedure Rules, except where otherwise directed by a judge, the period between the 21st day of December in any year and the 6th day of January, in the year next following, both days inclusive, are excluded from any computation of time for the amending, delivering and filing of any pleading or the doing of any other act.

3. In this case, therefore, the computation of time runs from 15th December, to 20th December 2004 (6 days) and then 7th January, to 21st January 2005 (14 days). Although Section 79G of the Civil Procedure Act provides for the filing of an appeal within 30 days, the computation of that time must be done in accordance with Order XLIX Rule 3A of the Civil Procedure Rules. Therefore, it is evident that the appellant filed his appeal within 30 days and therefore the appeal was filed in accordance with Section 79G of the Civil Procedure Act.

4. Accordingly, I find no substance in the respondent's application and dismiss the same with costs.

Dated and delivered this 9th day of June, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the appellant absent

Mithika H/B for Kaburu for the applicant/respondent

Eric - Court clerk