



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

**Civil Appeal 626 of 2004**

**JOHN KARIUKI MAINA.....APPELLANT**

**VERSUS**

**WILFRED M. KAMITA.....RESPONDENT**

**R U L I N G**

1. This appeal came up before me for directions under Order XLI Rule 8B of the Civil Procedure Rules when Wilfred Muriuki Kamita who is the respondent to this appeal raised a preliminary objection to the hearing of this appeal contending that the appeal is fatally defective as the appellant has not complied with the mandatory provisions of Order XLI Rules 1(1) & (2) of the Civil Procedure Rules and further that the appeal has been filed out of time.
2. Counsel for the respondent has submitted that the memorandum of appeal is narrative and contains evidence and that the prayers sought are not clear and it is therefore difficult for the respondent to respond to the appeal. It is further contended that the appeal is defective having been filed out of time without leave of the court.
3. The appellant on his part maintains that he filed his appeal on 23.08.04 and that the same was admitted to hearing and that the grounds raised in the memorandum of appeal are nothing but the truth.
4. I have considered the preliminary objection and the submissions made. The memorandum of appeal filed on 23<sup>rd</sup> August 2004 states as follows:  
  
***“Applicant: I am being aggrieved by the way the learned Chairman of Nairobi Rent Restriction Tribunal Court handled the Rent Restriction Tribunal Case No.525/93 when it came up for hearing before him due to the following reasons or errors:”***
5. It is not clear from the memorandum of appeal as to what order or ruling of the Rent Tribunal that the appellant is aggrieved of or when such order was made.
6. On the cover of the Record of Appeal the appellant has stated as follows: -  
  
***“this is an appeal of the order which was made and delivered on 30<sup>th</sup> July, 1993 by the Chairman of the Rent Restriction Tribunal Court at Nairobi in respect of the Rent Restriction Tribunal Court at Nairobi, Civil Case No.525/93 and the judgment and order that he made and delivered on 16<sup>th</sup> March 1994 and another judgment that he made and delivered on 13<sup>th</sup> June, 1994 in respect of the said Rent Restriction Tribunal Court, Civil Case No.525/93.”***
7. That means that the appeal is against 3 orders/judgment made on different dates i.e. 30<sup>th</sup> July, 1993, 16<sup>th</sup> March, 1994, and 13<sup>th</sup> June, 1994. The Memorandum of Appeal having been filed on 23<sup>rd</sup> August 2004, it is evident that the appeal was filed out of time as it relates to all the 3 orders.
8. The appellant has not obtained leave to file his appeal out of time. I do note that the appellant had

filed a chamber summons dated 15<sup>th</sup> August, 2005 on 21<sup>st</sup> December, 2005 in which he sought inter alia to be allowed to continue his appeal out of time. However, that application has apparently not been heard to date.

9. This means that the appeal before the court is not ready for hearing. Indeed, the memorandum of appeal is defective. However, appreciation that the appellant is acting in person, I will give him an opportunity to redeem himself by giving directions that an appropriate amended memorandum, of appeal shall be filed within 21 days from today and that appropriate leave shall also be obtained within the same period.

Those shall be the orders of this court.

Dated and delivered this 29<sup>th</sup> day of January, 2009

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

The appellant present in person

Miss Githinji for the respondent