



**BROOKE BOND (K) LTD ..... APPELLANT**

**VERSUS**

**BENSON NYAKOE NYAGANDA ..... RESPONDENT**

**RULING**

**I: Background**

1. The Respondent being dissatisfied with a ruling within a trial made by the magistrate, applied to appeal against the same. The trial magistrate granted the application to appeal within 30 days a stay of proceedings was also granted.
2. The file was placed before the Hon. Judge and on 9<sup>th</sup> June, 2004 (L. Kimaru J) it was admitted for hearing.
3. The directions was taken up on 31<sup>st</sup> March, 2009. The Applicant/Respondents application had been dismissed for non attendance on 2<sup>nd</sup> December, 2008. The Applicant/Respondent instead of giving good cause why the said application should not be reinstated, files a notice stating the very same thing as the application that was struck out on 2<sup>nd</sup> December, 2008.
4. Objection to the court's jurisdiction requires to be taken prior to the hearing of an appeal.
5. In response the Appellant/Respondent's advocate states **order XLIX** Civil Procedure Rules should apply.
6. To enlarge time an application under **order LI r 1** Civil Procedure Rules as read with **order XLIX** Civil Procedure Rules should be made by chamber summons in the same file or by originating summons in a file not before Court.
7. It was therefore noted that the appeal had been filed out of time. No leave to apply to file the same within time was made.

The preliminary objection is upheld and appeal is dismissed and struck out.

**DATED** this 31<sup>st</sup> day of March, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

E.M. Orina advocate from M/S E.M. Orina & Co. advocates instructed to hold brief

for M/S R.K. Muthiga & Co. advocates for the appellant originally Defendant – present

S.B. Mbeche advocate instructed by M/S S.B. Mbeche & Co. advocates

for the Respondent originally Plaintiff - present