



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Civil Appeal 14 of 2005**

**SAMUEL KIONGO NDEGWA ..... APPELLANT**

**VERSUS**

**NATIONAL BANK OF KENYA )**

**FRANCIS WAINAINA KARIUKI )**

**DANIEL KARIUKI ..... RESPONDENT**

**JUDGMENT**

This appeal relates to a ruling delivered in CMCC Nyeri No. 505 of 2005 on 30<sup>th</sup> March 2005. The appeal was filed on 3<sup>rd</sup> May 2005. Section 79G of the Civil Procedure Act provides as follows:-

*“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”*

It is clear from those provisions that the appellant ought to have filed his appeal within 30 days of the ruling the subject of the appeal. The appellant if the appeal could not be filed within that period ought to have moved this court for leave to appeal out of time. The appellant did not file the application for leave. He filed the present appeal 33 days after the ruling was delivered. That period makes this appeal to be out of time. Accordingly on that basis alone the appellant’s appeal is hereby dismissed with costs to all the respondents.

*Dated and delivered at Nyeri this 16<sup>th</sup> day of October 2008.*

**MARY KASANGO**

**JUDGE**