

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 92 of 2006

AVLAK CONTRACTS LIMITED APPELLANT

VERSUS

JOAKIM WAWIRE RESPONDENT

(Being an appeal from the judgment and decree of the Honourable G.K. Mwaura Principal Magistrate Murang'a Law Courts in SPMCC No. 184 of 2003)

JUDGMENT

The Respondent filed a claim against the appellant seeking judgment for Kshs.278,000/- being the balance of the amount due to him for work done for the appellant. After trial before the SPM's Murang'a Court judgment was delivered on 20th May 2005. The defendant appellant filed this appeal on 29th December 2006. The appellant failed to obtain leave to file this appeal out of time. Section 79G of the Civil Procedure Act provides that an appeal from the subordinate court should be filed within 30 days. If indeed the appellant obtained leave to appeal out of that period the order giving that leave was not extracted and was not provided to this court as it considered this appeal. Such an order is required by Order XLI 8B (4) (f) of the Civil Procedure Rules which provides as follows:

“Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say-(f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal;”

Further rule 8B (4) (g) (ii) provides as follows;

“The judge may dispense with the production of any document or part of a document which is not relevant other than those specified in paragraphs (a), (b) and (f).”

That rule requires as it can be seen that such an order be extracted and the court in hearing an appeal cannot dispense with the requirement of that order being on record. There being no such extracted order in this appeal I do find that this appeal is incompetent and the same is hereby struck out with costs being granted to the respondent.

Dated and delivered at Nyeri this 8th day of October 2008.

MARY KASANGO

JUDGE