



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Civil Appeal 123 of 2002**

**SILAS GIKUNDI M'MURITHI ..... APPLICANT/  
APPELLANT**

**VERSUS**

**STANLEY MANYARA .....  
RESPONDENT**

**RULING ON A PRELIMINARY OBJECTION**

1. In the cause of the hearing of this appeal, Mr. Riungu raised the point that there was no proper Appeal before court as the Appellant failed to obtain leave before filing the Appeal. He argued that the order appealed from was made under Order XVI Rule 4 of the Civil Procedure Rules and invoking s.75(1) of the Civil Procedure Act as read with Order XLII Rule 1 of the Rules he urged the point that the Appeal was not a matter of right and that since no leave was sought nor granted, the Appeal was improperly before court and should be struck out.
2. Mr. Karuti for the Appellant had a very simple and straight forward answer to the objection; that page 5 of the typed record of the lower court, the learned trial magistrate at the end of his Ruling, subject of Appeal, added these words;  
**“Right of Appeal 28 ”days.** The meaning of these words was that leave to appeal had been granted and no other leave was necessary. He urged that the objection should be disallowed and the Appeal should proceed to finalization.
3. At the time that the objection was raised I noted that if it was allowed then there was no reason to hear the Appeal as it would have to be struck out. I now think that I am persuaded by Mr. Karuti’s response to it.
4. Under s.75(1) of the Civil Procedure Act, an Appeal shall be either as **“of right”** or **“with leave”** of either the court appealed to or appealed from. What happened in this case is that the court appealed from, with no prompting of either party granted the Appellant **“the right”** to appeal and that the right so granted should be exercised within 28 days. That to my mind is sufficient a direction as to be leave and I agree that there was no basis for another Application for leave to be filed when the right to appeal, which is the purpose of leave, had already been granted.
5. I shall overrule the objection, order Mr. Riungu to reply to the submissions on behalf of the Appellant and bring the matter before me to an end.

6. I shall make no order as to costs at this stage. Let any costs abide the Appeal.

7. Orders accordingly.

Dated, signed and delivered in open court at Meru this 2<sup>nd</sup> Day of March 2006

**ISAAC LENAOLA**

JUDGE