



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

**MILIMANI LAW COURTS  
Civil Appeal 1017 of 2004**

**HARRISON KAYERI KIBIDI .....**  
**..... APPELLANT**

**VERSUS**

**JAMES KAMARU ..... 1<sup>ST</sup>**  
**RESPONDENT**

**STEPHEN GATIMU ..... 2<sup>ND</sup>**  
**RESPONDENT**

**INTERNATIONAL FOREIGN TRADE AND COMPANY ..... 3<sup>RD</sup>**  
**RESPONDENT**

**KANMOTH KADHAKRISHNAH ..... 4<sup>TH</sup>**  
**RESPONDENT**

**(An Appeal from the Judgment of Hon. Mr. Kaikai, RM in**

**Nairobi CMCC No. 10326 consolidated with 10327 of 2004**

**delivered on 26<sup>th</sup> October, 2004).**

**RULING**

This is an application for striking out of the appeal under Section 79 G of the Civil Procedure Act on the ground that it was filed out of time, without leave of the Court.

Indeed, it is not in dispute that the Judgment in the lower court was handed down on 26<sup>th</sup> October, 2004, and the Memorandum of Appeal was filed on 29<sup>th</sup> November, 2004, four days after the date prescribed in Section 79 G of the Civil Procedure Act. That section states 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.”***

There is no doubt that this appeal was filed out of the time prescribed in the above section without leave of this court, and, is, accordingly struck out with costs to the Respondent.

Dated and delivered at Nairobi this 25<sup>th</sup> day of October, 2006.

**ALNASHIR VISRAM**

**JUDGE**