

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Case 38 of 2003

MBINYO MULOKYA

ELIZABETH WAYUA APPELLANTS

VERSUS

EDWARD NGULI RESPONDENT

R U L I N G

This application for enlargement of time to file an application for leave to appeal was filed in the lower court vide an application dated 26/8/03. It was dismissed by the Resident Magistrate. Instead of the applicant seeking leave to appeal against the ruling, he instead filed a fresh application in this court, which is the one before the court. In the meantime he had also filed a substantive appeal in this court without obtaining leave of the lower court that made the ruling he is appealing against. So in this application before court, the applicant also sought that this court enlarges time to file application seeking the leave to appeal. That is to say, that the appeal presently is incompetent for lack not only of leave to file it but also for being filed out of time. Further more, the application before the court is itself incompetent incurably because, what the applicant should have done is to file an appeal with leave of the court.

Under these circumstances, this court has no jurisdiction to entertain this application. It must fail therefore. It is dismissed with costs to the respondent. The effect of the same is to strike out and dismiss the appeal which was filed without leave of court. Orders accordingly.

Dated and delivered at Machakos this 9th day of November 2005.

D.A. ONYANCHA

JUDGE