



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL APPEAL NO. 3 OF 2010**

**OBADIAH NG'ETHE NGUGI .....APPELLANT**

**V E R S U S**

**CHANIA TRANSPORT CO. LTD .....RESPONDENT**

***(Being an appeal from the Judgment of the Resident Magistrate Court, Kwale Hon. Mrs. A. M. Obura in RMCC No. 16 of 2009 on 2<sup>nd</sup> December 2009 in RMCC No. 16 of 2009)***

**JUDGMENT**

1. Appellant filed a case before the Resident Magistrate at Kwale Court seeking special and general damages which resulted in accident involving a vehicle allegedly owned by the Respondent.
2. The trial Court after receiving evidence from the Appellant, since Respondent did not offer any, delivered its judgment on 2<sup>nd</sup> December 2009. The trial Court by that judgment dismissed Appellant's case. Appellant being dissatisfied with that judgment filed this appeal. Appellant filed his appeal before this Court on 13<sup>th</sup> January 2010.
3. 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 satisfied the Court that he had good and sufficient cause for not filing the appeal in time.”**

4. From my calculation Appellant should have filed his appeal on or before 1<sup>st</sup> January 2010. Having filed it on 13<sup>th</sup> January 2010 clearly ran afoul of the Law, more particularly Section 79G reproduced above. It follows therefore that there is no competent appeal before this Court since the Appellant did not seek leave of the Court for the appeal to be admitted out of time.
5. The appeal was heard by way of written submissions on merit. That as it may be the appeal will be determined by Appellant's failure to obtain leave to admit the appeal out of time.
6. Accordingly this appeal is hereby struck out with costs to the Respondent for having been filed out of the thirty (30) days period provided under Section 79G.

**DATED and DELIVERED at MOMBASA this 3<sup>RD</sup> day of MARCH, 2015.**

**MARY KASANGO**

**JUDGE**