



**REPUBLIC OF KENYA**  
**COURT OF APPEAL AT KISUMU**  
**CIVIL APPL NO.NAI.222 OF 98**

**NJOROGE NGANGA AND ANOTHER.....APPLICANT**

**AND**

**THOMAS OLANDO OGOLA.....RESPONDENT**

**RULING OF THE COURT**

This is an application under rule 80 of the Court of Appeal Rules seeking an order to strike out the Notice of Appeal lodged by the appellants Njoroge Nganga and John Marenga on the ground that the said Notice was lodged out of time and without the leave of the Court. The copy of the Notice of Appeal dated 17.5.96 annexed to the replying affidavit of Mr. Siganga shows clearly that it was lodged with the registrar of the superior court as required by rule 74(1) of the Rules of this Court of 20.5.96.

The decision against which the appellants wished to appeal was given by Wambilyangah J, on 13.5.96. There is no room for any doubt that the notice was lodged within 14 days as provided by rule 74(2) of the Rules of this court. We think, with respect, that Mr. Ombijah is wrong in thinking that the operative date was 28.5.96, when the Notice of Appeal reached the registry of this Court in terms of rule 75 of the Rules of this Court. There is no merit in this application and we order it dismissed with costs to the appellants (respondents in this motion)

**Dated and delivered at Kisumu this 26th day of November, 1998.**

**J. E. GICHERU**

**JUDGE OF APPEAL**

**R. O. KWACH**

**JUDGE OF APPEAL**

**E. OWUOR**

**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR.**