



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MAKHANDIA, KIAGE & OTIENO-ODEK, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. 80 OF 2017

BETWEEN

FREDRICK ODHIAMBO MADOTE.....APPELLANT/APPLICANT

AND

INSTEEL LIMITED.....RESPONDENT

(Appeal from the judgment and decree of the Employment and Labour Relations Court at Kisumu (Wasilwa, J.)

dated 26th November, 2014

in

CIVIL SUIT NO.141 OF 2013)

RULING OF THE COURT

By the Notice of Motion dated 21st August, 2017, the applicant **Fredrick Madote**, applies that the appeal herein be struck out for having been filed out of time.

It is not denied by the respondent that the appeal was indeed filed out of time even though some feeble attempt has been made to explain that default.

Mr. Amule, learned counsel holding brief for **Mr. Siganga** concedes, as he had to, that the manner for regularizing such defaults and delays is by filing an application for extension of time, but no such application was made.

Given that inevitable concession, and the record being quite clear that the appeal was filed hopelessly out of time, the same is clearly incompetent and we agree with **Mr. Otieno**, learned counsel for the applicant that the same is for striking out.

It is accordingly struck out with costs to the applicant in the application who is the respondent in this appeal.

Made at Kisumu this 29th day of April, 2019

M. A. MAKHANDIA

.....

JUDGE OF APPEAL

P. KIAGE

.....

JUDGE OF APPEAL

OTIENO-ODEK

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.