



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: OMOLO, SHAH & O'KUBASU, JJ.A.  
CIVIL APPEAL NO. 268 OF 2000  
BETWEEN**

**INDUSTRIAL & COMMERCIAL DEVELOPMENT CORPORATION ..... APPELLANT**

**AND**

**SUM MODEL INDUSTRIES LIMITED ..... RESPONDENT**

**(An appeal from the judgment of the High Court of Kenya  
at Nairobi (Mboghli J) dated 16th February, 2000**

**in**

**H.C.C.C. NO. 3389 OF 1994)  
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**RULING OF THE COURT**

Mr K'Owade, in his usual frankness, concedes that the appeal was lodged out of time without leave. Mr K'Owade came into the picture much later and by the time he came in a certificate of delay had already been issued by a deputy registrar showing that proceedings and judgment had been available and had been issued to the advocate who had acted before Mr K'Owade came in. When Mr K'Owade came in, another certificate was issued to him. He readily concedes that certificate was issued in error and we agree with him that he was unaware of the existence of the earlier certificate. The appeal, however, is incompetent, it having been filed out of time and without the leave of the court. We allow the motion to strike out the appeal and we strike out the appeal with costs thereof and the costs of the motion to the applicant.

**Dated and delivered at Nairobi this 9th day of July, 2001.**

**R. S. C. OMOLO**

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**JUDGE OF APPEAL**

**A. B. SHAH**

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**JUDGE OF APPEAL**

**E. O. O'KUBASU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**