



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Civil Appeal 147 of 2001**

**1. LUCY WANJUGUNA NDEGWA**

**2. LILIAN NYAWIRA NDEGWA**

**3. PETER KAMAU NDEGWA .....APPELLANTS**

**Versus**

**1. MAKI COMMERCIAL AGENCIES.....1<sup>st</sup> RESPONDENT**

**2. CHARLES GITHINJI MUTURI .....2<sup>ND</sup> RESPONDENT**

**RULING**

As I was beginning to hear appeal in this matter, Mr. Wahome Gikonyo, counsel for the Respondent, raised a preliminary objection pointing out that the appeal is incompetent for having been filed out of time. Mr. Kebuka Wachira, counsel for the Appellant did not agree. After hearing their respective submissions in the light of the documents filed, I hold that the position, briefly, is as follows.

The appeal is against the ruling and order delivered on 4<sup>th</sup> October, 2001. The appeal was filed on 21<sup>st</sup> November, 2001. It ought to have been filed within thirty days after the date 4<sup>th</sup> October, 2001, and therefore the filing of that appeal on 21<sup>st</sup> November, 2001 was outside thirty days allowed.

A certificate of delay from a court is only a piece of evidence to be placed before the court hearing an application for extension of time. It follows that with or without a certificate of delay a party wishing to file an appeal out of time must seek leave of the court.

Further, since the certificate of delay the Appellant is relying upon clearly states that the proceedings were supplied on 22<sup>nd</sup> October, 2001, it is not correct for the Appellant to argue that the date, 21<sup>st</sup> November, 2001, when that certificate was written and signed was the date on which the proceedings were supplied. As at the date 22<sup>nd</sup> October, 2001 when the proceedings were supplied, the time within which to appeal had not run out. But when the appeal was filed later on 21<sup>st</sup> November, 2001, that was clearly out of time and the Appellant ought to have obtained leave of the court to file the appeal. Since he did not have that leave, I must agree with what Mr. Wahome Gikonyo is saying that the Appellants' appeal in this matter is incompetent. The preliminary objection is therefore upheld and the appellant's appeal is hereby dismissed with costs to the respondent.

Dated this 15<sup>th</sup> day of June, 2006.

**J. M. KHAMONI**

JUDGE



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