



Case Number:	Civil Appeal 147 of 2001
Date Delivered:	15 Jun 2006
Case Class:	Civil
Court:	High Court at Nyeri
Case Action:	-
Judge:	John Micheal Khamoni
Citation:	LUCY WANJUGUNA NDEGWA & 2 others v MAKI COMMERCIAL AGENCIES & another [2006] eKLR
Advocates:	Mr.K.Wachira for the appellant; Mr.W.Gikonyo for the respondent
Case Summary:	[RULING] Appeal -where the appeal is filed out of time-competency of the appeal
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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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 NDEGWAAPPELLANTS

Versus

1. MAKI COMMERCIAL AGENCIES.....1st RESPONDENT

2. CHARLES GITHINJI MUTURI2ND 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 4th October, 2001. The appeal was filed on 21st November, 2001. It ought to have been filed within thirty days after the date 4th October, 2001, and therefore the filing of that appeal on 21st 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 22nd October, 2001, it is not correct for the Appellant to argue that the date, 21st November, 2001, when that certificate was written and signed was the date on which the proceedings were supplied. As at the date 22nd 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 21st 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 15th day of June, 2006.

J. M. KHAMONI

JUDGE



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