



objection was served earlier on the firm of Menezes & Co. to which Mr. Olando belongs. However, Mr. Olando argued that hearing the preliminary objection would be an exercise in futility because the appeal has not been admitted. Mr. Waswa also agreed that the appeal has not been admitted. I have now perused at the court record. I confirm that the appeal has not been admitted. I came across a note by my sister Lady Justice Wanjiru Karanja which forms part of the record addressed to the registry. The note confirms that the order for admission made on 17/06/2007 by the judge was erroneously made due to an oversight on part of the registry. That order was of course invalid because there was an application pending the one dated 27/11/2007 for leave to appeal out of time. The application has not been prosecuted to date.

For that reason, I agree with Mr. Olando that it would be futile to proceed with the preliminary objection dated 15/7/2007 before the appeal is admitted. It appears the Appellant is not keen to prosecute the said application filed three years ago. In normal circumstances, it would be expected that the Appellant would be quite enthusiastic to have his application heard in order to have the appeal deemed properly filed in the event that the application is successful. The preliminary objection will not add any value to this intended appeal and will not be heard. The intended Appellant should prosecute his application dated 27/11/2007 or withdraw it if he has lost interest.

**F. N. MUCHEMI**  
**JUDGE**

Ruling dated and delivered on the 22<sup>nd</sup> day of July 2010 in the presence of Mr. Waswa for the Applicant.

**F. N. MUCHEMI**  
**JUDGE**