



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Civil Appeal 39 of 2006**

**NICASIO NJUE KABUTHI.....APPELLANT**

**VERSUS**

**BELILIANA NJURA NJERU.....1<sup>ST</sup> RESPONDENT**

**EDITH RWAMBA.....2<sup>ND</sup> RESPONDENT**

**RULING**

The application dated 23/8/2007 seeks orders for leave to file record of appeal out of time. On ground that the appeal was admitted on 20/6/2007 and court gave 21 days to file record of appeal. The delay in filing the record was occasioned by advocates confusion. The application is opposed on the ground that the appeal was not filed in time. I may point out that the record shows the reason of appeal was filed on 26/6/2006 but it was not admitted until 20/6/2007. Another ground is that there has been inordinate delay in pursuing this matter.

Upon consideration of the above it is clear the admission of appeal is crucial before a party can proceed further in his appeal. This step seem to have been omitted by court. Therefore the proceedings must start from 20/6/2007 when admission was ordered. From what the Respondent says he is not likely to be prejudiced by the extension of the time since he has enjoyed the fruits of his Judgment already. I accept the explanation given for delay as reasonable. I allow the application and order the Applicant to file the record within the next 7 days from today.

Costs in the appeal.

Dated this 18<sup>th</sup> January, 2008.

**J. N. KHAMINWA**

**JUDGE**

**18/1/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Kathungu HB**

**Ms Wairimu HB**

**J. N. KHAMINWA**

**JUDGE**