



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

**AT EMBU**

**Misc Appli 103 of 2007**

**LABANSON MAINA MUTUGI.....APPELLANT**

**VERSUS**

**FRANCIS MWANGI MUTUGI.....1<sup>ST</sup> RESPONDENT**

**TERESIA WANJIRU MBURI.....2<sup>ND</sup> RESPONDENT**

**RULING**

Application dated 25/9/2007 seeks orders:-

1. Stay of proceedings in Kerugoya Civil Case No. 316 of 2005 pending determination of this application.
2. That court do grant the applicant leave to appeal against the court order made on 14/3/2007 in Kerugoya CC No. 316 of 2005 and
3. That court extend time with which to file an appeal against the order made on 14/3/2007 in that aforementioned case.

The application is brought under:

1. Section 3 A CPA which reserved the interest powers of court.
2. Section 79 G. of CPC Act which prescribes the time for filing an appeal.
3. Order 49 rule 5 CPC which deals with extension of time.

Regarding leave to appeal against orders covered by order 42 (2) shall in the first instance be made to the court making the order. The order intended to be appealed against is exhibited as "LMMI". A copy of the ruling is also exhibited in that ruling the trial Magistrate ordered that the applicant herein has no audience in court. That should have brought the proceedings to a halt! It will be seen that in the cited authority Hon. Justice Mwera simply adjourned the proceedings until the orders were obeyed. Also in that case the issue was of giving an undertaking as to damages.

It is my view that the order denying the Applicant audience before the court without giving him right to be heard is appealable. It was unjust to proceed without proper hearing. The lower court refused to grant

leave to appeal and it is clear in such a case the appellate court is entitled to consider an application for leave. Upon consideration, I hereby grant the leave. Appeal to be filed within the next 14 days. The costs of this application shall be in the cause.

Dated this 11<sup>th</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**11/2/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Ms Wairimu HB**

**Mrs Njeru HB**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**