



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

**Misc Civil 49 of 2006**

**CHARLES NYAGA PHILIPH.....PLAINTIFF**

**VERSUS**

**BERNARD GACHOKI MUKONO.....DEFENDANT**

**RULING**

The applicant filed a plaint in Resident Magistrate's court at Gichugu. The cause of action was injuries caused by assault committed on the applicant on 10.3.2000.

The plaint was filed on 2/2/2004. This was 3 years and 11 months after the incident. The Trial Magistrate found that the suit was barred under Limitation of Actions Act. The Trial Magistrate also found that the applicant had failed to prove the case against the Respondent and therefore dismissed the same. The applicant did not file an appeal against the Judgment of the Trial Court. Instead he has filed this application under Order VI A rule 3 (1) and 8 CPC. He has not shown why he was delayed in filing the suit within the prescribed time of 3 years. The Respondent has filed a Replying Affidavit opposing the application. He points out that the said case was dismissed on 18/5/2001 and this application was not filed until 17/5/2006. This is inordinate delay which is not explained.

Upon perusing this application and the record, I find that the applicant has delayed this application and has not explained the delay in filing suit and this application. I see no merit in the application the same is dismissed with costs.

Dated this 1<sup>st</sup> February, 2007.

**J. N. KHAMINWA**

**JUDGE.**

**1/2/2007**

**Khaminwa – Judge**

**Njue – Court Clerk**

**Bernard Defendant – present**

**Ruling read in open court.**

**J. N. KHAMINWA**

**JUDGE.**