



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 136 of 2003**

**AMOS MWATHI ..... APPLICANT**

**VERSUS**

**KAHUNGURA KIBUGU ..... 1<sup>ST</sup> RESPONDENT**

**KIKUYU TOWN COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

This is an application for leave to file Appeal out of time. When Counsels appeared before this Court on 7<sup>th</sup> February, 2007, they asked that I rely on submissions made previously (on 21<sup>st</sup> February, 2005) before me, to write my Ruling. At that time, the same application was struck out for failure to comply with 0.3 R.9A of the Civil Procedure Rules. Since then, the application has been reinstated by consent.

In the affidavit supporting the application, the Applicant attributes the delay to a mistake on the part of his previous advocate, who did not inform him of the summary dismissal of his suit in the Lower Court. The suit was dismissed on 31<sup>st</sup> October, 2002, and the Memorandum of Appeal was filed on 14<sup>th</sup> March, 2003. The delay is only five months, has been well explained, and the facts have not been controverted. There is indeed no Replying Affidavit.

**Accordingly, I allow the application dated 17<sup>th</sup> January, 2005. Costs shall be in cause.**

Dated and delivered at Nairobi this 7<sup>th</sup> day of March, 2007.

**ALNASHIR VISRAM**

**JUDGE**