



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Civil Appli 40 of 2007**

**PETER ANDAYI & ISAAH ANGANGA.....PLAINTIFFS**

**VERSUS**

**JOSEPH KIBUNJA & SIMBA COLT MOTORS.....DEFENDANTS**

**RULING**

By way of this Notice of Motion dated 25<sup>th</sup> January 2007 and expressed to be brought under Section 3A and 79 G of the Civil procedure Act and Order L Rule 1 of the Civil Procedure Rules the Applicants seek leave to file appeal out of time against the judgment and decree of the learned principal Magistrate delivered on 25<sup>th</sup> may 2006 in CMCC NO. 10527 OF 2003.

The application is supported by an affidavit sworn by Livingstone Maina Ombete, counsel for the applicants on 25<sup>th</sup> January 2007 in which he avers that the judgment was delivered on 25<sup>th</sup> May 2006 and he received instructions to appeal against the judgment and decree of the learned Principal Magistrate on 10<sup>th</sup> July 2006; that he promptly applied for a certified copy of the proceedings and judgment on 10<sup>th</sup> July 2006 and by then the 30 days in which an appeal can be lodged had expired; that he had not personally been in court when the judgment was delivered; that he received a copy of the proceedings and judgment on 22<sup>nd</sup> January 2007; that there is no inordinate delay and Applicants have an arguable appeal.

The Respondent was served but he did not file any papers in opposition to the application. The application is unopposed.

I will exercise my discretion in favour of the applicants and allow the motion as prayed.

The Applicants shall lodge their appeals within 14 days hereof.

Dated and delivered at Nairobi this 30<sup>th</sup> day of May 2007.

**J.L.A. OSIEMO**

**JUDGE**