



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

**CIVIL CASE 4647 OF 1989**

**GODFREY MWANGI GITAU.....PLAINTIFF**

**VERSUS**

**AMOS GICHUKI NGONJOH.....DEFENDANT**

**RULING**

Before me is a Notice of Motion dated 5<sup>th</sup> July 2005 and expressed to be brought under Order L Rule 1, Order XLII (3) of the Civil Procedure Rules and Section 75 of the Civil Procedure Act in which the Defendant seeks orders for extension of time within which to lodge an application for leave to appeal against the ruling of the court dated 18<sup>th</sup> April 2002 (Alouch J) and that the costs of this application be provided for.

The application is based on the grounds that – the Applicant’s counsel on record misread the rule and overlooked making an oral/informal application at the time the order was made or formerly within the stipulated time thereafter; that the slip was not pointed out to counsel until at the hearing of the stay application in the Court of Appeal on 30<sup>th</sup> June 2005; that the Applicant has offered security as required under the stay order and the Respondent is not likely to suffer any prejudice and that the application has been made without undue delay since the discovery of the slip as above. The application is also supported by an affidavit sworn by Clarence Otieno on 5<sup>th</sup> July 2005.

The application is opposed by the Plaintiff who has filed a replying affidavit in which he avers that the Defendant’s Notice of Motion dated 15<sup>th</sup> December 2006 was signed by G.K. Meenye who did not have a current practicing certificate at the time he signed the application; that on 28<sup>th</sup> September 2005 she wrote to the Law Society of Kenya inquiring whether Mr. G.K. Meenye held a practicing certificate as at 5<sup>th</sup> July 2005 or at all; that the Law Society of Kenya through the Secretary Mr. G.M. Kagoro wrote back vide a letter dated 3<sup>rd</sup> October 2005 confirming that Mr. G.K. Meenye Advocate did not hold a practicing certificate and supplied her with a list of the Advocates who held practicing certificates as at 15<sup>th</sup> June 2005 which did not include the said Advocates name; that in light of the foregoing the Applicants’ application dated 5<sup>th</sup> July 2005 having been signed by counsel who did not hold a valid practicing certificate is therefore incompetent, bad in law and incurably defective and the same should be struck out with costs; that there is therefore no competent application before the court for hearing and determination.

This was not denied by counsel either by affidavit evidence or in his submission. That being the position, even without going into the other merits of this application, the Applicant’s Notice of Motion dated 5<sup>th</sup> July 2005 having been signed by an unqualified person is incompetent and the same is therefore dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 14<sup>th</sup> day of June 2007.

**J.L.A. OSIEMO**

**JUDGE**

