



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

**AT NYERI**

**MISC CIV APPLI 59 OF 2004**

**KARURI ALIAS KIURA NGUITUI.....APPELLANT**

*Versus*

**WANGARWE GATUGI.....RESPONDENT**

**RULING**

The Notice of Motion dated 21<sup>st</sup> April is brought by Karuri Elias Kiura Nguitui. The same is brought under *Order XLIX Rule 5* of the Civil Procedure Rules. The Notice of Motion seeks an order of the court to extend time for the Applicant to appeal against the ruling of Kerugoya PM LDT NO. 18 of 1988. The application was argued fully before me and in opposition the Respondent filed grounds of opposition. In respect of ground no. 2 the Respondent indicated that the application is incompetent for failing to state the grounds upon which it is based. The Respondent argued that to so fail to state was in contravention of *Order L Rule 3* of the Civil Procedure Rules. That order provides as follows:

***“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”***

Looking at the Notice of Motion it is correct to state that it fails to state the grounds upon which it is based. That ground which was raised by the Respondent in the court’s mind ought to have been raised as a preliminary objection. It is after all a point of law which if raised, would do away with the application.

I have considered this matter and I am of the view that the interest of justice require that the court considers that objection without delving into the other issues raised before me. The reason I choose to take this course is because in the court’s mind the applicant is entitled to be given a chance to bring to court an application that complies with the rules. To otherwise rule on the various issues raised would make such a subsequent application *res judicata*. I am therefore of the view that the just way to deal with this matter is that the application should be struck out with costs to the Respondent with leave being granted to the Applicant to file another application. The same is struck out for being in contravention of O. L Rule 3. Those then are the orders of this court.

***Dated and delivered at Nyeri this 6<sup>th</sup> day of July 2007.***

**MARY KASANGO**

**JUDGE**