



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

**Misc Civil Appli 189 of 2006**

**JEREMIAH NYAGA RUFUS.....APPLICANT**

**VERSUS**

**JOSEPH MWANIKI MUCHIRA.....RESPONDENT**

**RULING**

Being Notice of Motion dated 21/12/2006 the applicant seeks leave to file appeal out of time against order of subordinate court in *Kerugoya Senior Resident Magistrate Civil Case No. 380 of 2003* made on 10/4/2006. The application is supported by affidavit explaining the delay. The draft memorandum of appeal is exhibited and there is a certificate of delay showing there was pressure of work in court typing pool and that the copies were ready by 30/11/2006.

I have perused in Replying Affidavit paragraph 4 therefore argues on the matter the lower court was finalized paragraph refers to Section 27 of Civil Procedure Act. There are matters to be raised in the appeal. The allegation that there is no automatic right of appeal from the types of orders it is proposed to appeal is a several allegation with no support.

Upon considering submissions by both sides and convinced that the application should be allowed. The delay complained of is not excessive in the circumstances of this matter. Orders are granted as prayed. The proposed appeal to be filed within the next 14 days c.

Costs to the Respondent.

Dated this 24<sup>th</sup> July, 2007.

**J. N. KHAMINWA**

**JUDGE**

**24/7/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Munene HB for Mr. Chomba**

**Ruling read in open court.**

**J. N. KHAMINWA**

**JUDGE**