



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

**Misc Appli 133 of 2006**

**FRANCIS KARANI KINYUA.....APPLICANT**

**VERSUS**

**MOSES NGUNU MBOGO.....RESPONDENT**

**RULING**

Application dated 28/9/2006 seeks leave to file appeal out of time brought under Order 49 rule 5.

On the ground that Judgment to be appealed from was delivered on 24/8/2006 a certificate of delay dated 14/9/2006 was issued by the lower court and there is good chances of success on appeal. The Respondent opposes the application on the ground that no judgment was delivered on 24/8/2006 but the record shows that it was delivered on 14/7/2006. The record shows that there was an error because the request for proceedings was dated 14/7/2006 and the certificate of delay is dated 13/9/2006 confirming that the proceedings were ready on 25/8/2006. Therefore there is delay from that date to 11/9/2006 for issue of certificate which was dated 13/9/2006 in total the delay is of 50 days.

I have considered the submissions and affidavits filed by both parties, I note that this is an issue of succession. The provisions of Succession Act Cap 160 empowers the High Court to hear appeals in disputes in succession cases. I do exercise my discretion and notwithstanding there is delay of a period of 50 days, the issues involved are serious.

I allow application and grant extension of time. The applicant shall have 14 days with which to file proposed appeal.

Costs to the respondent.

Dated this 2<sup>nd</sup> July, 2007.

**J. N. KHAMINWA**

**JUDGE**

**2/7/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Francis Karani present in person**

**Moses Ngunu present in person**

**Ruling Read in open court.**

**J. N. KHAMINWA**

**JUDGE**