

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI
Civil Appeal 136 of 2003**

AMOS MWATHI APPLICANT
VERSUS
KAHUNGURA KIBUGU 1ST RESPONDENT
KIKUYU TOWN COUNCIL 2ND RESPONDENT

RULING

This is an application under Order 49 Rule 5 and Order 41 Rule 1 for leave to file appeal out of time, and for reinstatement of the appeal filed on 14th March, 2003 which was summarily dismissed by an Order of the High Court under Section 79 B Civil Procedure Act on 19th January, 2004.

I am unable to consider and determine this application as it appears that it is incompetently before this Court. Upon a perusal of this file, I have noticed that there has been a change of advocates representing the Appellant/Applicant, after Judgment was passed in the lower court. The new Advocate, Mr Omotii has not complied with Order 3 Rule 9 A, and has not sought leave of this Court to come on record. Accordingly, and for that reason alone, I am unable to consider the application now before me, as it is incompetently before the Court. The same is, therefore, struck out with costs to the Respondent.

Dated and delivered at Nairobi this 15th day of March, 2005.

**ALNASHIR VISRAM
JUDGE**