



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NYERI**

**CIVIL APPLICATION 179 OF 2007 (NYR 9/2007)**

**NANYUKI MUNICIPAL COUNCIL ..... APPLICANT**

**AND**

**EPHANTUS KIRUHI KIHUNI ..... RESPONDENT**

**(Application for leave to amend a notice of appeal in an intended appeal  
from a judgment of the High Court of Kenya at Nyeri (Khamoni, J) dated  
16<sup>th</sup> March, 2006 In H.C.C.C No. 63 of 1997)**

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**R U L I N G**

The applicant craves leave to amend its notice of appeal lodged in the superior court on 21<sup>st</sup> March, 2006 in respect of Nyeri H.C.C.C No. 63 of 1997 by substituting the second word “**Appeal**” in line 3 of the Notice of Appeal with the word “**Case**”.

I must say that this is one of the most rare applications to be filed in this Court, because Notices of Appeal being the most basic and elementary documents in an appeal are normally termed; and indeed, deemed primary documents which are not amenable to amendment.

In most cases this Court does not permit amendment of a notice of appeal.

The most obvious step that should have commended itself upon the applicant was to seek leave to withdraw the erroneous notice of appeal or to have it struck out and seek leave to lodge a fresh and correct one. I reject this application and I order that it be dismissed with costs to the respondent which I assess at **Shs. 1,000/=**.

**Dated and delivered at Nyeri this 2<sup>nd</sup> day of November, 2007.**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**