



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**MISCELLANEOUS APPLICATION NO. 333 of 2019**

**SAMUEL WANJOHI KINYANJUI.....1<sup>ST</sup> APPLICANT**

**NJOROGE KINYANJUI.....2<sup>ND</sup> APPLICANT**

**SAMUEL GATHEE MWANGI.....3<sup>RD</sup> APPLICANT**

**ISAAC KARANJA.....4<sup>TH</sup> APPLICANT**

**JACKSON NJOROGE.....5<sup>TH</sup> APPLICANT**

**VERSUS**

**JOHN NGURE GAIKO.....RESPONDENT**

**RULING**

1. The undisputed background to the motion dated 27<sup>th</sup> September, 2019, as can be gleaned from the sparse affidavit sworn by **Njoroge Kinyanjui** (2<sup>nd</sup> Applicant) and the replying affidavit of **John Ngure Gaiko** (the Respondent) is as follows. The Respondent had sued the 2<sup>nd</sup> Applicant and **Samuel Wanjohi Kinyanjui** (1<sup>st</sup> Applicant) initially in **Thika CMCC No. 841 of 2013**. The suit related to the land parcel described as **LR No. Ruiru/Ruiru East Block 2/3439** (hereafter the suit property).

2. Subsequently the plaint was amended to include **Samuel Gatheo Mwangi**, **Isaac Karanja** and **Jackson Njoroge** (the 3<sup>rd</sup> to 5<sup>th</sup> Applicants, respectively) as the 3<sup>rd</sup> to 5<sup>th</sup> Defendants. The matter proceeded exparte on 31<sup>st</sup> October, 2018 and judgment was delivered on 5<sup>th</sup> December 2018 requiring the Defendants to vacate the suit property.

3. A subsequent application to have the judgment set aside was refused and the Applicants filed the present application seeking leave to file an appeal out of time. The court having now reviewed the record of the parties' affidavits and annexures has concluded that at the heart of the dispute in the Lower Court suit was the ownership of the suit property, and that the application to appeal out of time ought to have been filed in the **Environment and Land Court (ELC)** at Thika. In the circumstances, this court cannot proceed to determine the application dated 27<sup>th</sup> September 2019 for want of jurisdiction.

4. The matter is accordingly transferred to the ELC Thika for hearing and determination. Proceedings taken before me on 17<sup>th</sup> June, 2020 when the application was argued are hereby set aside *suo motu*.

**DELIVERED AND SIGNED ELECTRONICALLY ON THIS 29<sup>TH</sup> DAY OF JULY 2021**

**C. MEOLI**

**JUDGE**

**In the presence of:**

**Ms Kanja for the Respondent**

**N/A for the Applicants**

**Kevin: Court Assistant**