



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CONSTITUTIONAL PETITION NO 3 OF 2013**

**1. PROF. MAINA WA KINYATI**

**2. THE MAU MAU RESEARCH CENTRE.....PETITIONERS**

**VERSUS**

**1. MURANG'A COUNTY COUNCIL**

**2. NATIONAL MUSEUMS OF KENYA**

**3. THE MINISTER FOR CULTURE AND**

**NATIONAL HERITAGE**

**4. THE ATTORNEY GENERAL.....RESPONDENTS**

**R U L I N G**

**1.** By a ruling dated 11<sup>th</sup> and delivered on 12<sup>th</sup> February 2016, this court struck out the petition in this matter with costs, mainly because of the Petitioners' flagrant disobedience of the court's orders and directions aimed at expedient disposal of the petition. Nearly nine (9) months later the Petitioners filed **notice of motion dated 25/10/2016** seeking two main orders, to wit, leave to appeal against the order, and leave to appeal out of time against the order. This ruling concerns that application.

**2.** The application is premised upon the grounds –

(i) That the Petitioners were not present during delivery of the ruling due to the fact that the same was delivered on notice placed in the court bulletin board, the judge having been on his annual leave when the ruling was initially reserved for delivery.

(ii) That there is no automatic right of appeal as the order was made in exercise of the court's inherent powers.

(iii) That it is in the interests of justice that the leaves sought be granted.

**3.** The application is opposed by the 2<sup>nd</sup> Respondent.

**4.** I have read the supporting and opposing affidavits and perused the court record. I have also considered the submissions of the learned counsels appearing.

5. The excuse for the long delay in applying, apart from the ruling being delivered upon notice that did not reach the Petitioners or their advocates, is that initially they did not know that they required leave of the court to appeal. The following facts however, emerge from the supporting affidavit sworn by the 1<sup>st</sup> Petitioner –

(a) On 07/03/2016 the Petitioners learnt of delivery of the ruling on 12/02/2016.

(b) More than 2 months later on 17/05/2016 the Petitioners filed an application for leave to appeal out of time.

(c) On 30/08/2016 when that application came up for hearing the Petitioners learnt that they required the leave of the court to appeal. So, the application for leave to appeal out of time was withdrawn in order to file a proper application.

(d) More than 2 months later the present application was filed.

6. The above facts merely confirm the Petitioners' dilatory attitude towards their own litigation that led to the striking out of their petition in the first place. Why did it take more than two months to file the initial application after learning that the petition had been struck out? Why did it take another more than two months to file the present application after learning that leave of the court to appeal was required? There is no explanation offered at all in the supporting affidavit for this cumulative delay of more than four months.

7. Bearing in mind the kind of conduct on the part of the Petitioners that led to the striking out of their petition (blatant disobedience of court orders and directions), the Petitioners are clearly undeserving of this court's discretion.

8. I find no merit in the notice of motion dated 25/10/2016. The same is dismissed with costs to the 2<sup>nd</sup> Respondent. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 14<sup>TH</sup> DAY OF DECEMBER 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 15<sup>TH</sup> DAY OF DECEMBER 2017**