



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

MISCELLANEOUS APPLICATION NO. E002 OF 2021

WILFRED MURUNGI MBOROKI.....	1 ST APPLICANT
MARETE MWANGANDIA.....	2 ND APPLICANT
JULIUS KINYUA MWIANDI.....	3 RD APPLICANT
M'RUCHA NGARUNI.....	4 TH APPLICANT
ALEX KABURIA NKABUNE.....	5 TH APPLICANT
FRANCIS KIMATHI CHABARI.....	6 TH APPLICANT
TAZAN MBAABU.....	7 TH APPLICANT
FRANCIS MWITI MPUTHIA.....	8 TH APPLICANT
ISAACK KIAMBI CHABARI.....	9 TH APPLICANT
FINDESIO GICHUNGE M'TUGI.....	10 TH APPLICANT
SAMWEL KAARIA M'MUGA.....	11 TH APPLICANT
ANAISIA KATHAMBI CHABARI.....	12 TH APPLICANT
DORIS GATIRIA.....	13 TH APPLICANT
M'BASTI NYAGA NTATUA.....	14 TH APPLICANT
MUTUA MUGAMBI M'REWA.....	15 TH APPLICANT
JUSTIN GIKUNDI MPUTHIA.....	16 TH APPLICANT
GIBSON MPUTHIA MUTINDWA.....	17 TH APPLICANT
VERSUS	
MUTUA MUGAMBI M'REWA.....	1 ST RESPONDENT
DIRECTOR LAND ADJUDICATION ANDMSETTLEMENT SCHEME.....	2 ND RESPONDENT
ATTORNEY GENERAL.....	3 RD RESPONDENT

RULING

1. This application is dated **27th January, 2021** and it states that it has been brought to court under section 3 and 3A of the Civil Procedure Act. It seeks the following orders:-

1. **The** honourable court be pleased to hear this application on priority basis.
2. **The** honourable court be pleased to grant leave to the applicant to file appeal out of time.
3. **Costs** be provided for.

2. The application has the following grounds:

- A. The ruling was done in applicants absence.
- B. It was difficult to secure proceedings due to Covid 19 challenges.
- C. The ruling was made on an error that this matter was challenging the Ministers result whereas the case is based on fraud. Therefore the applicants have a good appeal.
- D. If the application is not allowed the applicant`s grievances will forever be shut out from the corridors of justice and will therefore suffer irreparable loss and damages.
- E. No party will be prejudiced by extension of time.

3. The application is supported by the affidavit of **ALEX KABURIA NKABUNE**, the 5th applicant which states as follows:

I, **ALEX KABURIA NKABUNE** of P.O BOX CHUKA, do make oath and states as follows:-

1. That I am one of the applicants herein and thus competent to swear this affidavit.
2. That I have the blessings of my co-applicants to swear this affidavit on their behalf.
3. That we filed this suit because our land had been grabbed fraudulently by the 1st respondent in collusion with the 2nd respondent(**annexed is a copy of the plaint marked A.K `1`**).
4. That upon discovery of the fraud we filed this suit.
5. That the titles have been issued and the land is now registered.
6. That our lawyer has advised us you can only challenge a first registration on ground of fraud and that what we have done.
7. That however when the respondent raised a preliminary point of law that the Ministers decision is final the court agreed with him and as such allowed it.
8. That our case was not based on the adjudication as the process had ended a fact which the court did not put into consideration before making the erroneous finding.(**annexed is the ruling marked AK `2`**).
9. That indeed we have a strong appeal worthy being heard.
10. That however we did not appeal in time as we were not aware that the ruling was read on 14/10/2020.
11. That the ruling clearly indicates the respondents were absent.
12. That our lawyer has informed us that he didn't attend because he thought due to Covid 19 challenge was to delivered online.
13. That we are eager to be heard on merit as we believe we have a strong case against the respondents.(**annexed is a draft appeal marked A.K `3`**).
14. That if we are not allowed to appeal we shall suffer irreparable loss and damages as our grievances shall forever be shut out of the corridors of justice.
15. That the respondents will not be prejudiced in any way even if the application is allowed.
16. That the delay in seeking for leave is not inordinate.

17. That all what is deponed herein above is true to the best of my knowledge belief and understanding.

4. When the application, which was filed under a certificate of urgency, came to court on **1st February, 2021**, the applicants and/or their advocate were not in court.

5. Mr. Kiongo, Senior Litigation Counsel, asked the court to dismiss the application. He noted that the applicants and their advocate were not in court to canvass their application. He told the court that the impugned ruling which upheld the 1st defendant's Preliminary Objection was delivered on **14th October, 2020**, over **3 months** before this application was filed. He told the court that the applicants, except for saying that their advocate was, during delivery of the impugned ruling, not in court because he expected a ruling to be delivered online because of **Covid – 19 concerns**, did not give a satisfactory explanation regarding why they did not appeal on time.

6. I agree with Mr. Kiongo who represents the 2nd and 3rd respondents, that the applicants have not proffered a satisfactory explanation as to why time for filing an intended appeal should be extended. If indeed their advocate did not come to court on the day the ruling was delivered because **"he thought due to Covid 19 challenge"** the ruling was to be delivered online, this is the more reason the applicants and their advocate should have come to the court registry to inquire about developments in their case. They were aware of the date the ruling was to be delivered.

7. In the circumstances, I issue the following orders:

a. This application is hereby dismissed.

b. No costs are awarded.

Delivered in open court at Chuka this **3rd day of February, 2021** in the presence of:

CA: Ndegwa

M/s Ambani h/b Kimathi Kiara for the Applicant

HON. JUSTICE (Dr.) P. M. NJOROGE,

ELC JUDGE.