



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT EMRU**

**ELC APPEAL 8 OF 2019**

**WILSON KIMTAL.....1<sup>ST</sup> APPELLANT**  
**JULIUS MBURUNGA M'RIMBERIA MWIRI.....2<sup>ND</sup> APPELLANT**  
**MWINIRA.....3<sup>RD</sup> APPELLANT**  
**LEKAUS GGALLORO.....4<sup>TH</sup> APPELLANT**

**VERSUS**

**JANE NKATHA KITHINJI (Suing as legal representative of the estate of**

**JAPHET KITHINJI MWIREBUA – Deceased.....1<sup>ST</sup> RESPONDENT**  
**ISAAC KINOTI MARETE.....2<sup>ND</sup> RESPONDENT**  
**CHARITY MBEGEGU SAMSON.....3<sup>RD</sup> RESPONDENT**  
**ISABELLA KIBURIO SAMSON.....4<sup>TH</sup> RESPONDENT**  
**DAVID MEME A. M'IMANYARA.....5<sup>TH</sup> RESPONDENT**  
**RODA KAGWIRIA KITHINJI .....6<sup>TH</sup> RESPONDENT**

**RULING**

1. Vide the notice of motion dated 26.6.2020, the applicant seeks orders that the court be pleased to set aside/vacate the orders of 18.2.2020, 3.12.2019 and 30.10.2019 and reinstate the Appeal for hearing on merits and also reinstate all the earlier orders.
2. The grounds in support of the application are that the applicant and his advocate *were* not aware of the hearing date of 18.2.2020 due to mistakes committed by the court registry clerk who had indicated to them that the matter was scheduled on 19.2.2020. When applicant appeared in court on 19.2.2020, he found the matter not listed.
3. It is also averred that there is another case going on in ELC court involving the suit land where the respondent's registration is being challenged and there was another one where the registration has been set aside and the adjudication process was to begin again in Ruiru/Rwarera Adjudication section.
4. The applicant's counsel contends that their firm was late in filing the record of appeal in time because they had obtained a decree from the lower court one week before the hearing on 3.12.2020 and due to pressure of work they had not completed preparing the record of appeal. They were also not aware of the time frames the court had issued.
5. Finally, it is averred that the applicant has been in the suit land for over 50 years, that the land is worth over 30 million and that this application has been filed timeously.
6. The application has been opposed via the replying affidavit of the respondents advocate. Therein, it is contended that they were served

with an application dated 10.12.2019 which indicated that the same would proceed for hearing on 19.2.2020. On 19.12.2020 they appeared for hearing and they were reliably informed that the application was to be heard on 18.2.2020 and had been dismissed for want of prosecution. He contended that the applicants deliberately misled them by indicating the wrong date on the face of the application.

7. The respondent argues that it is trite law that a case belongs to a litigant and not his counsel and that the applicants had not shown any steps they took to ensure that their counsel was diligent in the conduct of their matter and it is not enough for the applicant to blame their advocate's clerk and the judiciary staff. It is also contended by the respondents that there is an inordinate delay in the filing of this application which has not been explained satisfactorily.

8. It is further contended that the applicants have blatantly disregarded court's directions on numerous occasions, particularly the failure to file the record of appeal.

9. I have carefully considered all the issues raised herein. The appeal was dismissed on 3.12.2019. Thereafter, an application was filed dated 10.12.2019 seeking orders of reinstatement of the suit. The said application was presented to me in chambers on 11.12.2019 under a certificate of urgency, whereby I gave directions for the same to be heard on 18.2.2020. Come 18.2.2020 and there was no appearance for any party hence the application was dismissed.

10. The respondent's counsel does state that the application served upon them dated 10.12.2019 bore the date of hearing as 19.2.2020, only to learn that the application had actually been scheduled on 18.2.2020 when it was dismissed.

11. The applicants blame the court registry for this error, but they have not pointed out as to how the error actually occurred, i.e; who gave them the wrong date at the registry.

12. Nevertheless, I will give the applicants the benefits of doubts. This court therefore allows the reinstatement of the application dated 10.12.2019 while all other prayers in the application of 26.6.2020 are disallowed. The applicant shall bear the costs of this application. The application of 10.12.2019 is to be heard on priority basis on 17.11.2020.

**DATED, SIGNED AND DELIVERED AT MERU THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 1.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**