



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC MISC. APPLICATION NO. 198 OF 2015**

**MARY NJERI NGUGI AND LUCY WAMBUI NGUGI**

**Suing as administrators of the Estate of**

**HARRISON NGUGI NGANGA (Deceased).....APPLICANTS/INTENDED APPELLANTS**

**=Versus=**

**JOEL KIMAMA NGANGA .....1<sup>ST</sup> RESPONDENT**

**FRANCIS MBUGUA MWIHIA .....2<sup>ND</sup> RESPONDENT**

**JAMES MWANGI GACHERU .....3<sup>RD</sup> RESPONDENT**

**LAND REGISTRAR THIKA.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 20<sup>th</sup> February 2017 brought under Section 95 of the Civil Procedure Act Cap 21, Laws of Kenya, Order 50 Rule 6 of the Civil Procedure Rules, Section 1A, 1B, 3A of the Civil procedure Act and all other enabling provisions of the law.

2. It seeks order:-

**a. That this Honourable Court be pleased to enlarge time for depositing security for costs of Kenya Shillings one million (Kshs, 1,000,000) to Ninety (90) days from the date hereof.**

**b. That in the alternative and without prejudice to order (a) above the court be pleased to review the costs payable as security to read Kenya Shilling Five Hundred Thousand (Kshs.500,000).**

**c. That the costs of this application be provided for.**

3. The grounds are on the face of the application and are set out in paragraph a to e

4. The application is supported by the affidavit of Mary Njeri Ngugi, the co-administrator of the Estate of Harrison Ngugi Ng'ang'a, sworn on the 20<sup>th</sup> February 2017.

5. The application is opposed. There is a replying affidavit by James Mwangi Gacheru, the 3<sup>rd</sup> respondent herein sworn on the 2<sup>nd</sup> March 2017.

6. On the 13<sup>th</sup> March 2017, the court directed that the application be disposed by way of written submissions.

7. I have gone through the court record and find that only the applicant filed written submissions.

8. It is the applicants' submission that the application has been filed without undue delay. The appeal will be rendered nugatory if these orders are not granted. This would consequently impede the applicant's right to access to justice as enshrined under Article 48 of the

Constitution of Kenya 2010. This honourable court has discretion to enlarge time in the interest of justice.

9. The court should be guided by Article 159 (2) (a) of the Constitution of Kenya 2010 which requires that the court be guided by the principle that justice be done to all irrespective of status. The 3<sup>rd</sup> respondent's opposition to the applicant's application is meant to prevent the applicants from having their appeal determined on merit. They have put forward the cases of **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others [2014] eKLR** and **Mohammed Bashir vs Shaukat Farooq Sheikh [2015] eKLR**.

10. I have considered the notice of motion and the affidavit in support. I have considered the replying affidavit and the written submissions of counsel, the issue for determination is whether this application is merited.

11. The ruling by Hon. L. J. Gitumbi is dated 20<sup>th</sup> January 2017. It is already two years since the said ruling. The applicants are yet to comply with the conditions for grant of stay of execution pending appeal.

12. I have considered the supporting affidavit of Mary Njeri Ngugi and I find no sufficient reasons to warrant this court to exercise discretion in her favour. The Applicants have not demonstrated to the court that they have taken any steps in filing the appeal and/or preparing the Record of Appeal with a view of having the appeal heard and determined expeditiously.

13. In conclusion, I find no merit in this application and the same is dismissed. I make no orders as to costs.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 7<sup>TH</sup> day of FEBRUARY 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Applicants

.....Advocate for the Respondents

.....Court Assistant