



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**MISCELLANEOUS APPLICATION NO. 29 OF 2019**

**DESMOND MUTUMA MWITI.....1<sup>ST</sup> APPLICANT/INTENDED APPLICANT**

**ASHFORD MWITI.....2<sup>ND</sup> APPLICANT/INTENDED APPELLANT**

**VERSUS**

**DUNCAN MUTHOMI..... RESPONDENT**

**RULING**

1. Vide the application dated 2.7.2019, applicant prays that he be granted leave to appeal out of time against the judgment delivered on 3.4.2019 by Hon. J. Irura in Nkubu ELC no. 32 of 2018. The grounds in support of the application are set out in the body of the application and in the supporting affidavit.

2. Applicant avers that on 20.1.2019, they were given directions that judgment would be delivered on 20.3.2019 but on this latter date, the said judgment was deferred to 15.5.2019. However on 15.5.2019, applicant learnt that the judgment was delivered on 3.4.2019 without his notice and in absence of all parties where by his case was dismissed.

3. I have perused the decision delivered on 3.4.2019 and at the tail end, the record reads as follows:

**“Ruling read and delivered in open court in the absence of the parties..... 3.4.2019”.**

4. This court does not have the full record of the lower court. However going by the record so far available, I do find that the application is merited.

5. The application dated 2.7.2019 is allowed on condition that the memorandum of appeal is filed within 14 days from the date of delivery of this ruling failure to which the orders granted herein shall lapse. No orders as to costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 9<sup>TH</sup> DAY OF OCTOBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Ms. Matei holding brief for Kaumbi for applicant

Muriithi holding brief for Muriira for respondent

Respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**