



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC APPEAL NO. 42 OF 2019**

**M'MUGWIKI M'RUGONGO ..... APPELLANT**

**VERSUS**

**THE SETTLEMENT FUND TRUSTEE ..... 1<sup>ST</sup> RESPONDENT**

**PETER N. KIRIGUA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 19.8.2019 seeks the following orders:

*(a) That this honourable court be pleased to allow the firm of MMboos Mutunga & Co Advocates and firm of Charles Kariuki & Kiome Advocates to come on record on behalf of the appellant/applicant herein in place of the firm of Mokuia Obiria & associates advocates.*

*(b) That the applicant be granted leave of court to lodge an appeal, file and serve the memorandum of appeal in respect of the judgment in Meru Chief Magistrate civil case No. 11 of 2009 delivered on 23<sup>rd</sup> January 2019 out of time and/or there be an extension of time for filing and service of the appeal.*

*(c) That the honourable court be pleased to admit the memorandum of appeal filed on 12<sup>th</sup> February 2019 and the record of appeal filed on 14<sup>th</sup> June 2019.*

*(d) That the cost of this application be provided.*

2. The grounds in support of the application are that:

*i. The appellant filed a memorandum of appeal within the specified time.*

*ii. The applicant has noticed that it is necessary for the applicant to formally change the advocate who acted for him at lower court.*

*iii. That during the filing of the memorandum and the record of appeal, the current advocates erroneously failed to put a consent or application to come on record upon entry of lower court judgment.*

*iv. That the mistake of failing to file the application for leave to come on record on behalf of the applicant was occasioned by the current advocate on record.*

*v. That it is in the best interest of justice that the appellant/applicant is allowed to regularize his appeal so that it can be determined on merits.*

*vi. That the applicant's appeal has merits with high chances of success.*

*vii. That the orders sought shall not prejudice the respondents.*

3. The application is also supported by the supporting affidavit of Mutunga Muriithi.

4. The application has been opposed by the 2<sup>nd</sup> respondent who avers that the appellant/applicant was aware that the application seeking leave to file an appeal out of time ought to be heard by this court in the first instance before the appeal was filed and equally, the consent

from the outgoing advocate ought to have been availed first. He therefore contends that the appeal and record of Appeal were filed out of time.

5. I have considered all the issues raised herein. In particular, I have taken into consideration that the applicant has been vigilant and has even gone to great lengths to have the Record of Appeal prepared. The respondent has not demonstrated in which way he stands to suffer if the application is allowed.

6. In the circumstances, I allow the application in the following terms:

**1) The firm of Mmbos Mutunga advocates and Charles Kariuki and Kiome advocates are hereby allowed to come on record for the appellant in place of Mokuia Obiria Advocates.**

**2) The time for filing an appeal is hereby extended whereby the memorandum of appeal filed on 12.2.2019 is deemed to have been properly filed.**

**3) The record of appeal filed on 14.6.2019 is also admitted herein.**

**4) The costs herein shall abide the outcome of the appeal.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 27<sup>TH</sup> NOVEMBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Mutegi holding brief for Aketch for 2<sup>nd</sup> respondent

Ondieki holding brief for Kiome for appellant also Ouma holding brief for Mutunga for appellant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**