



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW CASE NO. 14 OF 2012**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPEAL FOR ORDERS OF JUDICIAL REVIEW IN NATURE OF CERTIORARI BY EX-PARTE BERNARD MWONGELA IN THE MATTER OF MINUTES NO. TP&M 68/2011 IN RESPECT OF PLOT NO. 51 MIATHENE WITHIN COUNTY COUNCIL OF NYAMBENE, MERU COUNTY GOVERNMENT.

REPUBLIC .....APPLICANT

VERSUS

MERU COUNTY GOVERNMENT.....RESPONDENT

AND

BERNARD MWONGELA.....EX-PARTE APPLICANT

**RULING**

1. The Notice of Motion dated 17th July, 2017 seeks the following orders:-

(1) That the application be certified urgent and it be heard on priority basis.

(2) That the interested party/applicant be granted extension of time within which to file a notice of appeal out of time.

(3) That costs of the application be in the intended appeal.

2. The Application is based on the grounds that:-

i. That judgment was delivered against the Interested Party/Applicant on 20.06.2017 and on the same date, it promptly instructed its counsel. Ms. Nyaga to file a notice of appeal and pursue it.

ii. That the said Counsel informed the Interested Party/Applicant officials that they had 28 days to initiate the process of appeal and pursue it henceforth.

iii. That by 17.07.17 when the Interested Party's /Applicant's official visited their former advocates office to check on the progress of the appeal, no action had been taken in the matter.

iv. That on the same 17.07.17 the present advocates were instructed to start the appeal process and they moved with utmost promptitudeness so to do.

v. That this matter is very sensitive in that it concerns the Interested Party's/Applicant's plot.

vi. That mistakes of an advocate should not be visited upon an innocent litigant.

3. Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

(1) That she is the Chairlady of the Interested Party/Applicant hence competent to swear this affidavit.

(2) That on 20.06.17, Judgment was delivered herein against the interested party/applicant.

(3) That on the same date the Applicant and the other officials of the Interested party/applicant duly instructed they then Counsel, Ms. Nyaga, Advocate to file a notice of appeal and pursue the appeal.

(4) That Ms. Nyaga , Advocate advised them that they had 28 days to file a notice of appeal and they went home happy, believing that she would expeditiously commence the appeal process.

(5) That when they went to their former Advocates's office to check the progress on 17.07.17, They were shocked to realize that no action had been taken in the matter to start the appeal process.

(6) That on the same 17.07.2017, They instructed their present advocate who advised them that they had 14 days to file the said notice and that they were late by about 2 weeks (including weekends) in filing the same.

(7) That our present Advocates then prepared the relevant consent to take over the conduct of this matter on our behalf, a copy of which is hereto annexed and marked "AKGKI".

(8) That she most humbly implores the Honourable Court to exercise it's absolute unfettered discretion to grant the interested party /applicant leave or extension of time to file a notice of appeal out of time.

(9) That may the mistake of their former advocate not be visited upon the Interested party/applicant.

(10) That this matter is very sensitive. It is over the interested party's/applicant plot at Miathene Market.

(11) That the other parties shall not be prejudiced since they will have the right to be in the appeal.

4. I find that there is no inordinate or in excusable delay in this matter. Applicant has given a plausible account of why the Notice of Appeal was not filed on time

5. The application is allowed. The Notice to be filed and served within 7 days.

**DELIVERED, DATED AND SIGNED AT MERU THIS 28th DAY OF JULY, 2017**

**IN THE PRESENCE OF:**

C:A Janet

Carlpeters Mbaabu for Applicant

**HON. L. N. MBUGUA**

**ELC JUDGE**