



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

APPEAL NO. 46 'A' OF 2009

M'IMANYARA MBWIRIA.....1ST APPELLANT/APPLICANT

JUSTUS MWIRIGI MANYARA.....2ND APPELLANT/APPLICANT

GARRISON MBAABU MANYARA.....3RD APPELLANT/APPLICANT

ISAACK KIMONYE MANYARA.....4TH APPELLANT/APPLICANT

VERSUS

ESTHER NAITORESPONDENT

R U L I N G

This ruling is in respect of the application of 24..03.17 where orders sought are:-

- 1) That the Honourable Court be pleased to enlarge time within which the applicants may lodge and file a Notice of Appeal and subsequent appeal to the Court of Appeal out of time.
- 2) That the costs of this application be provided for.

The application is based on the grounds.

- 1) That judgment in this matter was delivered on 08/12/2014.
- 2) That the Appellants filed a Notice of Appeal on 19/12/2014.
- 3) That the Notice of Appeal was received in the registry on 19/12/2014 but could not be forwarded to the Deputy registrar as the Court file was said to be missing.
- 4) That all efforts by the Appellants to trace the Court file were futile until the matter came up for taxation of the Respondent's Bill of costs.
- 5) That the Appellants' effort to have the Deputy Registrar endorse the Notice of Appeal were summarily rejected.
- 6) That the Deputy Registrar's reasons for declining to endorse the Notice of Appeal were informed by a clear mistake on the part of the registrar.
- 7) That the Appellant have a strong case against the judgment of the court.

8) That the Appellants will be greatly prejudiced unless the order sought herein is granted.

The application is supported by the Affidavit of 2nd Applicant who (on behalf of the other 3 applicants) states that judgment in this matter was delivered on 08/12/2014 and the applicants gave instructions to their advocate to file a notice indicating their intention to appeal against the decision of the Court on 19/12/2014.

Applicants further aver that upon receipt of the Notice of Appeal in the civil registry of the High Court, the same could not be forwarded to the Deputy Registrar as is the requirement as the Court file was said to be missing until the time the Respondents bill of costs was to be assessed.

Applicants further state that on 09/12/2016 the Deputy Registrar declined to append her signature on the Notice of Appeal when it was presented to her with the mistaken remarks that the same had been filed on 19/12/2016 whereas in reality the same was received in civil registry on 19/12/2014.

Applicants contend that they are eager to proceed on appeal but that they would be greatly prejudiced if they are denied this opportunity.

On 11.05.15, directions were given for the application to be canvassed by way of Written Submission.

The basis upon which the application is made is that the Court file was missing and therefore, the applicant could not file their Notice of Appeal on time. The Respondent avers that this contention is not true.

I have perused the Court's records. I find that even Respondents counsel did write a letter to Deputy Registrar (filed on 04.08.16) whose content are as follows:-

“Note that since the Judgment herein was delivered on 08.12.14, the Court file got lost and even upon lodging our bill of costs on 23.03.16, the same cannot be filed for lack of Court file..”

Indeed Respondents only filed their bill of costs thereafter on 30.08.16. This buttresses the applicant's averments that the Court file was missing, and that their Notice of Appeal was ready on 19.12.14 but could not be acted upon as the Court file was missing.

I therefore find that the application has merits.

The application is allowed as follows.

- 1) The Notice of Appeal is to be filed and served within 7 days from date of delivery of this ruling.
- 2) No orders as to costs as it is the Court registry where file had gone missing.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 27TH DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet

Kithinji for Respondent present

Miss Nyaga for Applicant

Hon. L. N. MBUGUA

ELC JUDGE