



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

**ELC APPEAL NO. 19 OF 2017**

**MUTHURI M'RINYIRU.....APPELLANT**

**VERSUS**

**GEOFFREY GITONGA M'RINYIRU.....1<sup>ST</sup> RESPONDENT**

**MARANGU M'RINYIRU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. The Appellant herein filed the memorandum of appeal on 11:08:17. Thereafter, he also filed an application dated 13.11.17 under a Certificate of Urgency
2. The Application was presented before me as 20:11:17 where the Court gave directions that the application be heard on 05.12.17 and service to be affected.
3. On 05:12:17, Mr. Kioga appeared for the Respondent and he informed the Court that he has also filed an appeal in respect of the same decision and the case is No. 21 of 2017.
4. He also averred that, he had not filed a Replying Affidavit to the Appellants application arguing that the appeal has not been admitted.
5. Citing order 42 r (11), Mr. Kioga averred that the crucial steps set out there in were not followed. The Counsel also urged the Court to make reference to rule 12 and 13.
6. Mr. Kaimba for Appellant avers that he is not aware of the appeal No. 21 of 2017. He avers that the present appeal was filed and served long before suit No. 21/17 was filed. He also avers that it is the Court which gave directions.
7. It is not disputed that the appeal herein has not been admitted. The process of admission is captured under order 42 rule 11 of the Civil Procedure rules.
8. I find that the process of admission of an appeal is one that heavily relies on the internal mechanisms of the court. That is why in practice it is the Deputy Registry in a High Court Station who presents the file before a Judge for admission or otherwise. A perusal of this file reveals that this is indeed what has happened as the Deputy Registrar apparently submitted the file before me for admission on 20:11:17. Perhaps this issue was overshadowed by the Certificate which was presented before me on 20:11:17. The record of appeal is not in the file and hence, the appeal is not yet ready for admission.
9. The bottom line is that the issue of admission is in my view a procedural technicality which should not

hinder the quest for substantive justice.

10. In **Abdirahman Abdi vs Saofi Petroleum Products Ltd Vs 6 others [2011] e KLR Civil application No. 173/10 NBI**, where the Court was dealing with an issue of striking out a Notice of Appeal, it was held that:-

**“The overriding objective in Civil Litigation is a policy issue which the Court invokes to obviate hardship, expense, delay and to focus on substantive justice”.**

11. I also make reference to provisions of article 159(2) (d) to the effect that:-

**“Justice shall be administered without undue regard to procedural technicalities...”**

12. The Court will therefore proceed to hear and determine the application.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13<sup>th</sup> DAY OF DECEMBER, 2017**

**IN THE PRESENCE OF:-**

**Court Assistant:** Janet

Mr. Kariuki for Applicant/Appellant present

Ashaba H/B for Kioga for Respondent present

**HON. L. N. MBUGUA**

**ELC JUDGE**