



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT NAKURU**  
**MISC. APPLICATION NO. 114 OF 2015**  
**RICHARD K. LANGAT & 38 OTHERS.....PLAINTIFFS**  
**VERSUS**  
**RUKUTI OLE KORIATA & 4 OTHERS...DEFENDANTS**  
**RULING**

***(Application to file appeal out of time; application allowed).***

1. This is a miscellaneous application filed on 21 April 2015. It is said to be brought pursuant to the provisions of Sections 3A, 65, 79G of the Civil Procedure Act, and Order 40 Rule 1 of the Civil Procedure Rules. The principal order sought is one for leave to file appeal out of time. The applicants wish to appeal the ruling of the Honourable T.A Sitati (Ag Senior Resident Magistrate, Narok) dated 18 November 2014 made in Misc. Civil Application No. 20 of 2009. There is also a prayer for an interim injunction to stop the respondents from subdividing or transferring the land parcel Cis Mara/Ololulunga/156 which was in issue before the subordinate court.
2. In the supporting affidavit, the applicants have stated that the reason for the delay was because they had proceeded to file a fresh suit, Nakuru ELC No. 15 of 2015, but upon reconsideration, they have opted to file an appeal against the said ruling.
3. The application is opposed by the respondents. They have averred inter alia that the time given to appeal has lapsed. They have also raised other issues which I feel are substantive in nature and go to the appeal itself.
4. I have considered the matter alongside the submissions of counsel for the applicants and respondents. The applicable provision in an application of this nature is Section 79G of the Civil Procedure Act, which is drawn as follows :-

*Section 79 G : Time for filing appeals from subordinate courts*

*Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:*

*Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.*

5. It will be observed that from the above an appeal is to be filed within 30 days. The court however has discretion to admit the appeal out of time if the court is satisfied that there was good and sufficient reason for not filing the appeal in time. In our instance, the applicants have given the reason that they filed another suit to challenge the orders sought to be appealed from, and on reflection, they have opted to file an appeal. In the circumstances of this case, I am prepared to allow this as a good reason. I also observe that the delay is not inordinate given the circumstances.

6. I therefore give leave to the applicants to file their appeal and to file it out of time. The same be filed and served within 14 days from the date hereof.

7. On the prayers for injunction, I think the correct avenue is for the applicants to file a stay application after they have filed their appeal, which application can then be considered on merits as an application for stay pending appeal. For the avoidance of doubt, the interim orders granted pending hearing of this application have lapsed.

8. The applicants will however shoulder the costs of this application as they had the avenue to file the appeal within time in the first instance.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 19<sup>TH</sup> day of May, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr Kariuki for applicants

Ms. Mary Muigai for respondents.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**