



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ng'etich & 5 others v Ng'etich & 3 others (Criminal Application  
E047 of 2024) [2025] KECA 744 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KECA 744 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CRIMINAL APPLICATION E047 OF 2024  
JM MATIVO, JA  
MAY 5, 2025  
[IN CHAMBERS]**

**BETWEEN**

**BENJAMIN KIRWA NG'ETICH ..... 1<sup>ST</sup> APPLICANT  
BENJAMIN KIRWA KOKO ..... 2<sup>ND</sup> APPLICANT  
JOSHUA KIMIBEI YEGO ..... 3<sup>RD</sup> APPLICANT  
JULIUS KEMEI ..... 4<sup>TH</sup> APPLICANT  
ROSSY JEPKOECH JAPHETH ..... 5<sup>TH</sup> APPLICANT  
CAROLINE JEPCHUMBA NG'ETICH ..... 6<sup>TH</sup> APPLICANT**

**AND**

**STANLEY KIPRUTO NG'ETICH ..... 1<sup>ST</sup> RESPONDENT  
MARY BARNG'ETUNY ..... 2<sup>ND</sup> RESPONDENT  
PETER TALLAM ..... 3<sup>RD</sup> RESPONDENT  
JOSEPH TALLAM ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application from the judgment of the Environment and Land Court at  
Kapsabet (M. N. Mwanyale, J.) dated 18th March 2022 in ELC Case No.23 of 2012)*

**RULING**

1. Vide an application dated 31<sup>st</sup> July 2024 under Rule 4, of the [Court of Appeal Rules](#) 2022, the applicant prays for extension of time within which to file and serve a notice of appeal and a letter bespeaking of certified typed proceedings against the Judgment issued on 25<sup>th</sup> September 2023 in



Kapsabet Environment and Land Court Case No. 23 of 2012 - *Stanley Kipruto Ng'etich v. Mary Barg'etuny, Peter Tallam, and Joseph Tallam.*

2. The application is premised on the grounds listed on the face of the application and the 1st applicant's supporting affidavit sworn on 31<sup>st</sup> July, 2024. The grounds in support of the application are that:-
  - (a) the 1<sup>st</sup> applicant was unaware of the Judgment and or proceedings before the ELC Kapsabet that led to cancellation of his title deed;
  - (b) the 1<sup>st</sup> applicant got to know of the proceedings in Kapsabet Environment & land Case No. 23 of 2021 on or about 10<sup>th</sup> July 2024 when he was called to testify as a witness in a case of malicious damage to property as brought by Joshua Kimibei Yego (the 3<sup>rd</sup> applicant herein) as against the 4<sup>th</sup> respondent;
  - (c) there has not been delay in bringing the instant application;
  - (d) the intended appeal is arguable with high chances of success and the applicants are desirable that the intended appeal should be heard on merit.
3. On 22<sup>nd</sup> April 2024 at 11.34 AM the Deputy Registrar of this Court sent out a hearing notice via e-mail informing counsel/the parties herein that the instant application would be heard by way of written submissions and there shall be no appearance of counsel in court or via video link. In that regard, the applicant and the respondent were reminded to comply with the Court's directions relating to service and filing of submissions before the hearing date.
4. Today, 5<sup>th</sup> May 2024 at 9.00 AM when the application came up for hearing before me, and as at the time of writing this ruling, the respondent had not filed a response to the instant application and none of the parties had complied with the Court's directions in the hearing notice. The directions were communicated to the parties' respective e-mails: [particulars withheld]@orblaw.co.ke]; [particulars withheld]@gmail.com]; [particulars withheld]@gmail.com].
5. Rule 58 (1) of the [Court of Appeal Rules](#) 2022 stipulates as follows:

“ If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing: Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the court shall consider the submissions.”
6. Pursuant to the above rule, and being duly satisfied that the parties were duly served as herein above stated, and despite being served, they have failed to comply with the Court's directions, I hereby dismiss the instant application in accordance with Rule 58 (1) of this [Court's Rules](#) for non-compliance with the directions of the Court issued on April 22, 2024.

**DATED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**J. MATIVO**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

*signed.*



**DEPUTY REGISTRAR.**

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