



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kabiru & 3 others v Njau (Civil Application E080 of 2024)  
[2024] KECA 979 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 979 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E080 OF 2024**

**SG KAIRU, JA**

**JULY 26, 2024**

**BETWEEN**

**ANNE WANGUI KABIRU ..... 1<sup>ST</sup> APPLICANT**

**MARION WANJIKU KABIRU ..... 2<sup>ND</sup> APPLICANT**

**GEORGE KARIUKI KABIRU ..... 3<sup>RD</sup> APPLICANT**

**JAMES MUIRURI KABIRU ..... 4<sup>TH</sup> APPLICANT**

**AND**

**KARIUKI NJAU ..... RESPONDENT**

*(Application for extension of time to file a Notice of Appeal and Record of Appeal in an intended appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (Okong'o, J.) dated 18th April 2023 in ELC Appeal No. 93 of 2019)*

**RULING**

1. On 1<sup>st</sup> March 2024, I refused to certify as urgent, the applicants' application dated 22<sup>nd</sup> February 2024 seeking leave of the Court to file and serve a notice of appeal and the Memorandum and Record of Appeal in respect of a judgment of the ELC delivered on 18<sup>th</sup> April 2023 out of time. Four months after I declined to do so, the advocates for the applicants wrote a letter dated 1<sup>st</sup> July 2024 to the Deputy Registrar of the Court requesting for a hearing inter partes under Rule 49(5) of the [Court of Appeal Rules](#). The matter was accordingly fixed for inter partes hearing before me on 15<sup>th</sup> July 2024 when learned counsel Mr. Njeru appeared for the applicants. There was no appearance for the respondent despite notice of hearing having been served.
2. Having re-considered the contents of the Certificate of Urgency by David Njeru Nyaga and his affidavit in support of urgency sworn on 22<sup>nd</sup> February 2024, as well as the submissions by Mr. Njeru, I am still not persuaded that sufficient grounds have been made out to justify the fast tracking of the application.



As Odunga, J.A. recently stated in *Kenya Medical Supplies Agency vs. Revital Health Care (EPZ) Limited and 2 others*, Civil Appeal No. 65 of 2016, urgency arises when an event occurs which requires contemporaneous resolution, the absence of which would cause extreme prejudice. In this case the decision of the ELC the subject of the intended appeal was rendered over a year ago, and the present application was not made until February 2024.

3. I direct that the application be fixed for hearing in the normal course.

4. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY, 2024.**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR.**

