



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**M'Mbijiwe & 2 others v Iriga (Civil Application 119 of 2020)
[2022] KECA 67 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 67 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 119 OF 2020
S OLE KANTAI, JA
FEBRUARY 4, 2022**

BETWEEN

LUCY KIRUMBA M'MBIJIWE 1ST APPLICANT

BETH MUTHONI RUKARUIA 2ND APPLICANT

M'RUKARIA M'TURUCHIU 3RD APPLICANT

AND

ALLOYSIOUS IRIGA RESPONDENT

(Being an application for extension of time to file and serve record of appeal from the judgment of Environment & Land Court of Kenya at Meru (Cherono, J.) dated 14th June, 2018 in ELC Case No. 33'B' of 1997)

RULING

1. In the motion brought under Rule 4 of this Court's Rules and Sections 3A and 3B of the *Appellate Jurisdiction Act*, I am asked to extend time within which to file and serve record of appeal out of time against the judgment and orders of the Environment & Land Court in Meru ELC Case 32'B'/1997 (Cherono, J).
2. In grounds in support of the motion and in an affidavit of M'Rukaria M'Turuchiu (the 3rd applicant), it is said that the applicants (they are 3) have a good appeal with high chances of success; that the record of appeal is ready for filing; that failure to prepare and file record of appeal in good time was occasioned by factors beyond their control. The affidavit in support expounds on those grounds stating that after judgment was delivered on 14th June, 2018, a notice of appeal against the said judgment was lodged on 26th June, 2018 but the advocates on record failed to apply for certified proceedings and judgment and when the applicants realized that error they appointed new advocates. The new lawyer applied for certified proceedings on 5th February, 2019 but fees payable was not assessed until 22nd November, 2019 as the court file was not traced. Then Covid 19 pandemic came and the applicants were unable



to obtain the decree and the certificate of delay in time and they only obtained the same on or about 5th October, 2020. The applicants were unable to file a notice of appeal because the court registry was not accessible.

3. There was no replying affidavit when I considered the motion. I have considered the motion, the affidavit in support and various documents in support. I note in the judgment intended to be appealed, there are findings of irregular transfer of land and certain orders are made by the learned trial Judge.
4. A notice of appeal was lodged on 26th June, 2018 which was within time as judgment was delivered on 14th June, 2018. The applicants have explained in detail reasons why they were not able to file a record of appeal, a record which they now say is ready for filing.
5. I note that there are substantial grounds taken in the draft memorandum of appeal. The applicants have satisfied me and I am prepared to exercise my discretion in their favour. Let record of appeal be lodged within twenty-one (21) days of today.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.

S. ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

