



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndirangu & 3 others v Kariuki (Civil Appeal (Application)  
E552 of 2021) [2022] KECA 392 (KLR) (4 March 2022) (Ruling)**

Neutral citation: [2022] KECA 392 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E552 OF 2021**

**DK MUSINGA, JA**

**MARCH 4, 2022**

**BETWEEN**

**JOSEPH MWANGI NDIRANGU ..... 1<sup>ST</sup> APPLICANT**

**ELISIPHA WANGARI NDIRANGU ..... 2<sup>ND</sup> APPLICANT**

**MWANGI KARIEBU ..... 3<sup>RD</sup> APPLICANT**

**EVANSON WAWERU GACHOYA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**RAPHAEL MURIGI KARIUKI ..... RESPONDENT**

*(An application for extension of time to allow the appellant to file memorandum of appeal out of time against the Judgment of the Environment and Land Court at Murang'a (J. G. Kemei, J.) delivered on 22nd July 2019 in E.L.C Cause No. 312 of 2017)*

**RULING**

1. The applicants' Notice of Motion dated 8th August 2021 seeks extension of time to file a memorandum of appeal, following delivery of the judgment in Murang'a ELC No. 312 of 2017 on 14th January 2021. The applicants filed a notice of appeal on 18th January 2021 and applied for certified copies of the proceedings and judgment.
2. The applicants further state that due to restriction of movement imposed by the government as a mitigative measure to curb spread of Covid-19 pandemic, they were unable to travel to Nairobi to file the memorandum of appeal since they are not tech savvy. The applicants believe that their intended appeal has good chances of success and have annexed to their application a draft memorandum of appeal. Lastly, they aver that the respondent shall not be prejudiced if their application is granted.
3. The respondent opposes the application. He states, inter alia, that his advocate informed him that the proceedings and judgment were already typed as at the date of delivery of the impugned judgment; that



the notice of appeal had not been served; that he has already executed the trial court's judgment and the applicants are no longer in possession of the disputed parcel of land; that the eviction was carried out on 19th May 2021 and therefore the application has been overtaken by events.

4. I have considered the application for extension of time; the applicants' affidavit and the reply thereto. Whereas under rule 4 of this Court's Rules I have discretion to extend time, such discretion must be exercised judicially. The applicants have not annexed to their affidavit a copy of the letter vide which they sought a certified copy of the judgment and the proceedings and neither have they adduced any evidence of payment for the proceedings.
5. Secondly, the applicants have not stated when they received the documents they had applied for, and neither have they shown that they were incapable of causing the memorandum of appeal to be electronically filed in time. And thirdly, as at the date of filing the application for extension of time, the applicants had lawfully been evicted from the disputed parcels of land. It is therefore doubtful if the intended appeal has any chances of success.
6. For all these reasons, I find this application wanting in merit and dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MARCH, 2022.**

**D. K. MUSINGA, (P)**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

