



REPUBLIC OF KENYA



**Mbote & another v Mbuthia & 2 others (Civil Application  
56 of 2019) [2021] KECA 200 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 200 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 56 OF 2019  
DK MUSINGA, JA  
NOVEMBER 5, 2021**

**BETWEEN**

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

**ABRAHAM MUKURU MBOTE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GLADYS WANJERI MBUTHIA ..... 1<sup>ST</sup> RESPONDENT**

**BETH WAMBUI MBUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**MUKURU MBUTHIA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for extension of time to file an appeal out of time  
against the Judgment of the Environment and Land Court at Muranga  
(Kemei, J.) delivered on 18th March 2019 in E.L.C. Appeal No. 16 of 2018.)*

**RULING**

1. The applicants' notice of motion dated 10th April 2019 and brought under rule 4 of this Court's Rules seeks leave to file an appeal out of time from the orders of Kemei, J. dated 18th March 2019 in ELC Appeal No. 16 of 2018 at Muranga.
2. The application is premised on the ground that the learned judge summarily dismissed the appeal in the absence of the parties but the applicants were notified of the dismissal well after the period of lodging an appeal had lapsed.
3. In their affidavit in support of the application, the applicants states that the learned judge dismissed the appeal on 13th February 2019 but the notice of dismissal was served upon their advocates on 27th March 2019.



4. The applicants believe that the learned judge erred in law by refusing to admit the appeal to hearing, thus summarily dismissing the same, and believe that the intended appeal has good chances of success.
5. The application is not opposed. I have perused the record of appeal and verified the averments made by the applicants. In the circumstances, the applicants cannot be faulted for the delay in instituting an appeal. Consequently, I allow the application and direct that the notice of appeal be filed and served within fourteen (14) days from the date of delivery of this ruling and the record of appeal be filed and served within thirty (30) days from the date of service of the notice of appeal.

**DATED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2021.**

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

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

