



**Machua & another v Nduta (Civil Appeal 45 of 2019)
[2021] KECA 355 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 355 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 45 OF 2019
KI LAIBUTA, JA
DECEMBER 17, 2021**

BETWEEN

GRACE WAIRIMU MACHUA 1ST APPELLANT

ROSEMARY WAMAITHA KAMAU 2ND APPELLANT

AND

JACINTA NDUTA RESPONDENT

(Being an application to Substitute the 2nd Appellant in the appeal from the Judgment of the High Court of Kenya at Nairobi (Ougo, J) dated 9th November 2017 In HCCC NO. 2989 OF 2004)

RULING

1. Before me is a Notice of Motion dated 1st April 2021 made under Rule 88 of the *Court of Appeal Rules* in which the Applicants, David Rodney Green and Deborah Jane Green, seek leave to file a supplementary record of appeal from the judgment and decree of the Environment and Land Court of Kenya at Malindi (Hon. Lady Justice J. O. Olola) dated the 6th day of May 2020 in Malindi Environment and Land Court Civil Case No. 25 of 2018.
2. The application is supported by the annexed affidavit of Meenad Hassan, counsel for the applicants, sworn on 1st April 2021. It is made on 9 grounds set out on the face of the Motion and restated in the supporting affidavit.
3. Having read the applicants' Notice of Motion and the supporting affidavit, I find that—
 - (a) the record of appeal said to have been lodged on 9th December 2020 and the intended supplementary record of appeal are not on file and, in the circumstances, I am unable to ascertain compliance with Rule 87(1) of the Court of Appeal Rules;



- (b) there is nothing on record to show that the application before me has been served on the Respondents as required by Rule 92(3); and
- (c) in any event, an application under Rule 88 for leave to file a supplementary record of appeal ought to be made to the Deputy Registrar.

Order

- 4. The Applicants' Notice of Motion dated 1st April 2021 be listed before the Deputy Registrar for determination.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

