



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gachenga & 6 others v Kimuhu & 7 others (Environment & Land Miscellaneous Case E001 of 2025) [2025] KEELC 3322 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3322 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2025**

**JM KAMAU, J**

**MARCH 27, 2025**

**BETWEEN**

**MICHAEL KARIUKI GACHENGA ..... 1<sup>ST</sup> APPLICANT**  
**PENNIHAH WAGIO NGURE ..... 2<sup>ND</sup> APPLICANT**  
**DAVID KIBUNJA KAGAI ..... 3<sup>RD</sup> APPLICANT**  
**MARGARET WAIRIMU GACHENGA ..... 4<sup>TH</sup> APPLICANT**  
**DAMARIS NYAMBURA KIMUHU ..... 5<sup>TH</sup> APPLICANT**  
**DORCAS WANJIRU MUTITU ..... 6<sup>TH</sup> APPLICANT**  
**MARY WAMBUI KAGAI ..... 7<sup>TH</sup> APPLICANT**

**AND**

**NAOMI WANGUI KIMUHU ..... 1<sup>ST</sup> RESPONDENT**  
**PETER GACHENGA KIMUHU ..... 2<sup>ND</sup> RESPONDENT**  
**SAMUEL KIMIRI KIMUHU ..... 3<sup>RD</sup> RESPONDENT**  
**PHYLIS NJERI KIMUHU ..... 4<sup>TH</sup> RESPONDENT**  
**SIMON GATHIGE KIMUHU ..... 5<sup>TH</sup> RESPONDENT**  
**SAMSON NJOROGE KIMUHU ..... 6<sup>TH</sup> RESPONDENT**  
**HARUN KIBUNJA KIMUHU ..... 7<sup>TH</sup> RESPONDENT**  
**SUSAN MWITHAGA KIUNJA ..... 8<sup>TH</sup> RESPONDENT**



## RULING

1. The Applicants have moved this court in the Application dated 7/10/2024 for orders that:

The intended Appellants be allowed to file an Appeal against the Judgment of the Honourable Chief Magistrate H. O. Barasa delivered on 2/9/2024 in Engineer Law Courts ELC No. E004 of 2023 between the intended Appellants herein and the Respondent on the other hand out of time by the court granting an extension of time.
2. The Applicants' Advocate while admitting that the mistake was his since he mistook the date when the Judgment was delivered as 9/9/2024 instead of the actual dated 2/9/2024 and was therefore late in filing the Appeal he is quick to plead that the delay is not inordinate and that there would be no prejudice occasioned to the Respondents if the orders of extension were granted. He also undertakes to pay any costs directed by the court and that the Record of Appeal is ready. He finally asserts that the Appeal has high chances of success.
3. On her part, the 1<sup>st</sup> Respondent on behalf of the Respondents and with their authority, who are her children, swore Replying Affidavit on 28/1/2025 in which she says that the 22 Titles out of L.R. No. Nyandarua/Njabini/267 the subject matter of the suit in PMCC No. Misc. ELC E004 of 2023 at Engineer, that is, have already cancelled pursuit to the Decree of the said court and that the Applicants were to blame for the delay in filing the Appeal.
4. I will not dwell on the issue of whether the intended Appeal according to the proposed Memorandum of Appeal has any chances of success. The Respondents have not said that the same is .....pg.2... of a sham. A decision on whether it has chances of success or at all is at a later date. I would not want to poison my mind as to the weight of the Memorandum of Appeal at this juncture since there are high probabilities that I will hear the Appeal and even if not, whatever Judge will hear it, the Record of this Ruling will still be there. I will spare the energy for that important day.
5. What concurs the court at this juncture is whether the delay was justified and whether it was inordinate.
6. The court has been told that the Appellants' Advocate was not very keen while taking down his notes. He was able to tell that the Judgment handed over by the court was against his clients and that there was need to appeal and ever sat down with the Applicants for instructions to Appeal and went ahead to draw the Memorandum of Appeal. Unfortunately, as he says on oath, Mr. Wahome, in his own words, carelessly wrote on his file that he was in court 7 days in the future together with the Respondents' Advocates and the court. This had the unfortunate consequences of bringing back the timelines for filing the Appeal. But Mr. Wahome is as known as everybody else. We shall pardon him for going ahead of all of us. However, it is not true to say that such leave if quoted will not prejudice the Respondents. Certainly, it will become the Respondents were assured that there would be no appeal. Psychologically they are upset. Whereas I agree with the Applicants that the delay was not so inordinate and therefore allow this Applicant, the Application was vigorously opposed. I, therefore, Order that the intended Appellants are allowed leave of 14 days within which to file the intended Appeal. As a condition to this leave, the Applicants will pay the sum of Kshs.12,000/= to the Respondents' Advocates before filing the intended Appeal in default of which the leave will automatically lapse.

These are the rules of the court.

**RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 27<sup>TH</sup> DAY OF MARCH., 2025.**



**MUGO KAMAU**

**JUDGE**

In the Presence of:-

Court Assistant: Eric.

Mr Wahome..... for the Applicant

Ms Njoroge..... for the Respondent

