



REPUBLIC OF KENYA



KENYA LAW
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**Irungu v Mbaria & another (Civil Application 8 of 2015)
[2017] KESC 24 (KLR) (23 March 2017) (Ruling)**

Enock Irungu v Benson Irungu Mbaria & another [2017] eKLR

Neutral citation: [2017] KESC 24 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 8 OF 2015
JB OJWANG & N NDUNGU, SCJJ
MARCH 23, 2017**

BETWEEN

ENOCK IRUNGU APPLICANT

AND

BENSON IRUNGU MBARIA 1ST RESPONDENT

MUCHANGI NDUATI NGINGO 2ND RESPONDENT

(An application to strike out the notice of appeal in the intended appeal against the Judgement of the Court of Appeal delivered on 25th March 2015, under Rules 37 of the Supreme Court Rules, 2012))

RULING

1. Upon perusing the application dated 25th June 2015 and filed on the same day for the striking out of the notice of appeal filed in the Supreme Court on 31st March, 2015; and
2. Upon reading the affidavit of Livingstone Maina Ombete sworn on the 25th day of March 2017; and
3. Upon considering the written submissions on record for the applicant and the respondent, in which the applicant contends that the respondents filed their notice of appeal on March 31, 2015 but since then they have not filed their petition of appeal, and the 30-day-period prescribed by the Supreme Court Rules has expired. The respondents contend that they were unable to obtain the complete certified copies of the proceedings and Judgement of the Court of Appeal within the prescribed time. They aver that they had lodged an application in the Court of Appeal seeking leave to appeal to this Court, and for leave to appeal out of time, which application is still pending before the Court of Appeal.



4. Having considered the application, we make the following Orders under section 23(2) of the *Supreme Court Act*, 2011 and rules 31 & 37 of the *Supreme Court Rules, 2012*:

ORDERS	REASONS
We allow the application with costs to the applicant	The respondents have failed to provide sufficient grounds for their failure to file their appeal within the prescribed time, and up to date no appeal has been filed. The lack of complete certified copies of proceedings is not a sufficient reason, in view of Rule 33(5) which provides that the Supreme Court may allow a party to omit a document from the record of appeal, upon application, and in view of Rule 33(6), which states that a party may file additional documents within 15 days of filing without the leave of Court.

DATED and DELIVERED at NAIROBI this 23rd day of March, 2017.

.....

J. B. OJWANG S. N. NDUNGU

JUSTICE OF THE SUPREME COURT

COURT

I certify that this is a

true copy of the original

REGISTRAR

SUPREME COURT OF KENYA.

