



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC MISC CASE NO. E001 OF 2020**

**JOSHUA KABURU KIMATHI.....1<sup>ST</sup> APPLICANT**

**SIMON GITONGA M'KIOME.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**EVANGELINE KANGWENE.....RESPONDENT**

**JUDGMENT**

1. Before me is a notice of motion brought pursuant to provisions of Section 1A & 1B, of the Civil Procedure Act and Order 50 Rule 6 & 51 Rule 1 of the Civil Procedure Rules seeking leave to file an appeal out of time against the Judgement of the Senior Resident Magistrate at Githongo Law Court dated 4.5.2020 in Githongo ELC suit No. 9 of 2017.

2. The applicant contends that the delay in filing the appeal was not intentional as they were supplied with a copy of the judgment on 18.9.2020.

3. The respondent has opposed the application vide the replying affidavit sworn on 9.10.2020. The respondent contends that the delay in filing the appeal has not been explained. She further states that the suit parcels number Abothuguchi/ Kariene/3707 and 3709 are trust properties held by her husband in trust for the other family members.

4. I have considered all the issues raised herein. **Section 79 (g) of the Civil Procedure Act** provides as follows;

**“every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:**

5. As stated by the respondent, extension of time is not a right of a party. It is an equitable remedy; See **Fahim Yasin Twaha vs Timamy Issa Abdalla & 2 Others [2015] eKLR.**

6. The delay of almost 4 months is quite inordinate. However, the court takes judicial notice that these are difficult times where a health pandemic appears to have disrupted many activities. I will thus give the applicant an opportunity to ventilate his case before the superior court. However, I decline to grant any stay of execution order at this stage. After all, this prayer is only manifested in the applicant’s affidavit but not in the body of the application.

7. In the final analysis, this court grants the applicants leave to file an appeal within 14 days from the date of delivery of this ruling.

The costs herein are awarded to the respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF DECEMBER, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Judgment was given via a notice dated 7.12.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court

**HON. LUCY N. MBUGUA**

**ELC JUDGE**



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