

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Maraga, CJ & P, Ibrahim, Ojwang, Wanjala, & Lenaola, SCJJ)

APPLICATION NO. 17 OF 2017

–BETWEEN–

PAUL MUNGAI KIMANI.....1ST APPLICANT
GEOFFREY MUCHIRI GACHANJA.....2ND APPLICANT
SAMUEL GAKOBO MBATIA.....3RD APPLICANT
MONICA WAIHERA MACHARIA.....4TH APPLICANT
BEN HADA KIMANI.....5TH APPLICANT
GRACE NJERI.....6TH APPLICANT
GEOFFREY MICHUKI THEURI.....7TH APPLICANT
JOHN WARUBURI NJOROGE.....8TH APPLICANT
EVAN MWANGI.....9TH APPLICANT
KIMANI KARANJA.....10TH APPLICANT
HENRY KIMANI.....11TH APPLICANT
IRUNGU MWANGI.....12TH APPLICANT
PHYLIS NJAMBI KANYORO.....13TH APPLICANT
MACHARIA MBUTHIA.....14TH APPLICANT
SERAH WANJIRU.....15TH APPLICANT
RAPHAEL NGUGI.....16TH APPLICANT
MARY WAMBUI NJENGA.....17TH APPLICANT
AGNES WANJIRU.....18TH APPLICANT
NELSON NDUNG’U MUNDIA.....19TH APPLICANT
JOSEPH MAINA THUITA.....20TH APPLICANT
JOHN GIKURU (On behalf of themselves and members of
KOROGOCHO OWNERS WELFARE ASSOCIATION).....21ST APPLICANT

–AND–

THE ATTORNEY GENERAL1ST RESPONDENT
PROVINCIAL COMMISSIONER NAIROBI AREA.....2ND RESPONDENT
THE COMMISSIONER OF LANDS.....3RD RESPONDENT

(Being an application for extension of time to file an appeal against the judgment and order of the Court of Appeal sitting in Nairobi (Koome, Azangalala & Kantai, JJA) delivered on 23rd September, 2016 in Nairobi Civil Appeal No. 173 of 2013)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated and filed on 17th August, 2017 for extension of time to file an appeal out of time against the judgment and order of the Court of Appeal in ***Nairobi Civil Appeal No. 173 of 2013*** and brought under the provisions of Rules 21 and 53 of the Supreme Court Rules, 2012; and

[2] UPON reading the Applicants’ affidavit sworn by IRUNGU MWANGI, the 12th Applicant herein on 16th August, 2017; and

[3] UPON considering the undated written submissions filed by the Applicants on 17th August, 2017 wherein they contend that the delay in filing the appeal was occasioned by inability or otherwise of the Court of Appeal in supplying them with certified copies of typed proceedings and judgment delivered on 23rd September, 2016 despite having applied for the same on 28th September, 2016 and the same received on 17th July, 2017; and

[4] UPON reading the Respondents’ written submissions dated 18th September, 2017 and filed on 19th September, 2017 wherein they contend that the Applicants

have not demonstrated to this Court what efforts they undertook to obtain the said certified copies of typed proceedings and judgment and that they were therefore not indolent; and

[5] **AND** having considered the Application, by a unanimous decision of this Bench, we opine as follows taking note of Section 23(2)(b) of the Supreme Court Act, 2011 and Rules 21 and 23 of the Supreme Court Rules, 2012;

- (a) The application satisfies the principles set out in the case of ***Hassan Nyanje Charo v Khatib Mwashetani & 3 Others*** SC Application No. 15 of 2014; [2014] eKLR where we stated thus;

“In the emerging jurisprudence, the concept of “timelines and timeliness” is generally upheld, as a vital ingredient in the quest for efficient and effective governance under the Constitution. However, even as we take due account of that context, we remain cognizant of the Court’s eternal mandate of responding appropriately to individual claims, as dictated by compelling considerations of justice..... As the sluggish motion of the judicial machinery enjoys no constitutional privilege, as against the specific guarantees of the Bill of Rights, the inevitable decision in this matter, is one that favours the suitor’s claim.”

- (b) Noting that it is the slow wheels of the Judiciary machinery that has occasioned the Applicants’ inability to file their Appeal on time, the delay of 8 months is not, in the circumstances, inordinate, given the

explanation proffered for the delay, that no appeal could properly be filed without the record of the Court of Appeal.

- (c) None of the Parties is to blame for the delay and so costs must abide the cause.

ORDERS

- (a) The Notice of Motion application dated 17th August, 2017 is hereby allowed and the time allowed to file an appeal out of time is hereby extended.*
- (b) The Applicants are hereby granted leave to file an appeal within 14 days from today's date; and*
- (c) Costs shall abide in the cause.*

[6] Orders accordingly.

DATED and DELIVERED at NAIROBI this 20th day of November, 2018

.....
D. K. MARAGA
CHIEF JUSTICE/PRESIDENT OF THE
THE SUPREME COURT

.....
M. K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

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

THE REGISTRAR
SUPREME COURT OF KENYA

