

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

**KOROGOCHO OWNERS WELFARE ASSOCIATION).....21<sup>ST</sup>  
APPLICANT**

**–AND–**

**THE ATTORNEY GENERAL .....1<sup>ST</sup> RESPONDENT  
PROVINCIAL COMMISSIONER NAIROBI AREA.....2<sup>ND</sup> RESPONDENT  
THE COMMISSIONER OF LANDS.....3<sup>RD</sup> RESPONDENT**

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*(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 23<sup>rd</sup> September, 2016 in Nairobi Civil Appeal No. 173 of 2013)*

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## **RULING OF THE COURT**

**[1] UPON** perusing the Notice of Motion application dated and filed on 17<sup>th</sup> 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 12<sup>th</sup> Applicant herein on 16<sup>th</sup> August, 2017; and

**[3] UPON** considering the undated written submissions filed by the Applicants on 17<sup>th</sup> 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 23<sup>rd</sup> September, 2016 despite having applied for the same on 28<sup>th</sup> September, 2016 and the same received on 17<sup>th</sup> July, 2017; and

[4] UPON reading the Respondents' written submissions dated 18<sup>th</sup> September, 2017 and filed on 19<sup>th</sup> 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 17<sup>th</sup> 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 20<sup>th</sup> day of November, 2018**

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

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

.....

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**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**