



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 991 of 2002

CLEMENT KUGURU MBUGUA PLAINTIFF

VERSUS

KAMAU NJUGUNA 1ST DEFENDANT

JAMES JOSEPH NJUGUNA 2ND DEFENDANT

KAWANGWARE FRIENDS CHURCH 3RD DEFENDANT

RULING

I: Background

1. Judgment was entered in favour of the plaintiff against the defendant herein on the 19 June 2007.
2. The original plaintiff judgment holder had sued for a claim in adverse possession. An injunction to restrain the defendants from interfering with the suit land was granted on 7 March 2003 (Rimita J) till the determination of the suit. A full trial was held between parties and concluded on 19 June 2007.
3. The defendant/applicant filed an application seeking leave to appeal against the judgment entered. Time to apply for leave to appeal out of time and stay of judgment and consequent orders.

II: Chamber summons 29 November 2007

4. The applicants abandoned the prayers for stay of judgment and consequential orders. The two prayers they now seek is for leave to appeal out of time and leave to thereafter appeal.
5. The applicants original 3rd defendants (the suit having been withdrawn against the 1st and 2nd defendants) stated that the 3rd defendant, a church had leadership wrangles. That subsequently they were unable to agree and or make a decision on how to move forward with this case. They gave instructions to their advocate late.
6. The applicants state they have an arguable appeal. According to them their main contention is that the plaintiff had claimed 229 feet of the initial suit land. The decree award gave the entire land of 0.435 hectares to the plaintiff. Thus only a portion should have been awarded by the court.

ii) In reply

7. The respondent objected to this application. It has been brought five months later, which is inordinate delay. The applicants only came alive when the decree was extracted and their advocate refused to approve the same. This application is meant to waste the courts time. The only ground raised is that touching the measurement of the suit land. That this application was an after thought by the applicants.

8. The issue of the size of the property was not in dispute and was not a matter to have been a ground of appeal.

III) Finding.

9. The only issue in dispute is that of the area in question to be awarded to the original plaintiff/respondent. The original defendant/applicant wish to proceed on appeal on this point. This application was opposed as the case law of:-

Galaxy Paints Co. Ltd

V

Falcon Guards Ltd (2000) 2 EA 385

(Gicheru, Shah, Bosire JJA)

held that the issues for determination should be from the pleading. The trial judge should only pronounce judgment on the issue arising from the pleading.

10. The portion or size of the property was not in issue and would agree with the advocate for the respondent.

11. The application before me is to extend time to appeal out of time. The defendants/applicant/judgment debtor concern a public interest that touches on a large body. I would accordingly grant only one prayer being leave to appeal out of time. That the appeal be filed within 14 days from todays date.

12. There will be costs to the plaintiff respondent decree holder.

DATED THIS 1ST DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

A. O Wandago instructed by Wandango & Co. Advocates for the defendant/applicant - present

D. Nyakundi instructed by Onyancha Nyakundi & Co. Advocates for the plaintiff/respondent - present