

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 622 OF 2007

CECILIA WANJIRU KIMWERE.....APPLICANT

VERSUS

HONOURABLE ATTORNEY GENERAL1ST RESPONDENT

JOHN GATHARA WACHUKA2ND RESPONDENT

RULING

The appellant by way of notice of motion dated 24th March, 2014 seeks leave to appeal the decision of this court made on 8th March, 2013 and if such leave is granted, then leave be granted to file the intended appeal out of time. There is also a prayer that there be a stay of execution of the ruling and order of this court issued on 8th March, 2013.

The record as set out in the application shows that the appellant had filed an application dated 28th May, 2013 seeking leave to appeal the decision of the court delivered on 8th March, 2013. That application was however struck out as the appellant had omitted to seek leave to appeal that decision. There is an averment by the appellant that she had been taken ill and was therefore not aware when the ruling was delivered, and came to learn of the same after the time for lodging an appeal had lapsed.

The application is opposed and counsel for the 2nd respondent filed grounds of opposition. The thrust of the 2nd respondent's case is that the application is misconceived, incompetent and bad in law. Further, the appeal before the High Court from the Chief Land Registrar's decision on resurvey of the subject plots and the High Court decision is final.

That being the case, there is no law that provides that the Court of Appeal has jurisdiction to hear and determine a 2nd appeal from the High Court relating to boundary disputes that had been determined by the Land Registrar under the now repealed Registered Land Act. In any case, the order given by the High Court does not prejudice the appellant and no substantial loss has been shown.

Finally, the appellant does not have an arguable appeal with any chance of success and she has not annexed any memorandum of appeal. In addition to the grounds of opposition the 2nd respondent filed a replying affidavit.

This is a land dispute and whether or not a second appeal lies is not for me to determine at this stage. I believe however that the appellant should be given a chance to canvass whatever grounds she may have if she is dissatisfied with the order of the High Court.

Accordingly, leave is hereby granted to the appellant to appeal the decision of this court made on 8th March, 2013. Further the said appeal shall be filed within 30 days from the date of this ruling. There shall be a stay of execution of the ruling of this court made on 8th March, 2013 until the appeal is determined. The costs shall be in the appeal.

Dated, signed and delivered at Nairobi this 6th Day of April, 2017.

A. MBOGHOLI MSAGHA

JUDGE