



REPUBLIC OF KENYA



**Patel v Lagat (Civil Application E046 of 2021) [2022] KECA 509 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KECA 509 (KLR)

**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT KISUMU**  
**CIVIL APPLICATION E046 OF 2021**  
**PO KIAGE, M NGUGI & F TUIYOTT, JJA**  
**APRIL 28, 2022**

**BETWEEN**

**MUKESH KUMAR KANTILAL PATEL ..... APPLICANT**

**AND**

**CHARLES LAGAT ..... RESPONDENT**

*(Being an application for stay of execution of the judgment and Decree of this Court (Asike -Makhandia, P.O Kiage and Otieno – Odek JJA) dated 3rd October, 2019 in Kisumu CACA Number 105 of 2018 and an application for certification that a matter of general public importance is involved for purposes of an appeal to the Supreme Court from the said judgment and an application for extension of time to file an appeal to the Supreme Court from the said judgment)*

**RULING**

1. In his application dated 23<sup>rd</sup> March 2021, the applicant seeks three substantive orders from this Court. First, that the Court issues an order of stay of the judgment of this Court delivered on 3<sup>rd</sup> October 2019; secondly, that this Court certifies the matter as fit for appeal to the Supreme Court from the said decision and grants the applicant leave to file an appeal to the said Court; and thirdly, that this Court extends time within which to file an appeal to the Supreme Court from the said decision.
2. The application is brought under Article 163(4) of the *Constitution*, sections 3A and 3B of the *Appellate Jurisdiction Act*, Rules 1(2), 5(2)(b), 4,41, 42 and 43 of the *Court of Appeal Rules*. It is premised on the grounds, inter alia, that in the judgment delivered on 3<sup>rd</sup> October 2019, this Court allowed the respondent's appeal in its entirety. In so doing, it granted him vacant possession of the suit premises, namely Sotik/ Township /667; it found that the appellant was entitled to mesne profits; and that the respondent was entitled to unpaid rent for 36 months with effect from July 2011 at Kshs 50,000. That the applicant intended to appeal and had filed a notice of appeal to the Supreme Court



on 17<sup>th</sup> October 2019. It is asserted that the judgment was completely unfair, and that the intended appeal involves a matter of general public importance.

3. The respondent opposed the application through an affidavit sworn on 4<sup>th</sup> January, 2022. He deposes that the applicant has filed numerous applications in a bid to frustrate him and deny him justice; that in an application under Article 163(4) of the *Constitution, for any matter to lie on appeal to the Supreme Court, it must be one involving the interpretation or application of the Constitution*, or one that raises an issue of general public importance; and that the suit between the parties in this matter involves a dispute over a private property between two individuals and does not therefore raise any issues of general public importance.
4. At the hearing of the application, Mr. Ouma appeared for the applicant and relied on the written submissions dated 10<sup>th</sup> December 2021. It is submitted on the applicant's behalf that he has an arguable appeal as the effect of the impugned judgment was to declare that the applicant, who has prior title to the suit property, be deprived of his ownership rights over the said parcel of land in favor of the respondent. The respondent had not sought, in his suit, to have the applicant's title revoked but that this Court had proceeded to grant the prayers sought without addressing its mind to the fact that the applicant still holds a valid title document to the suit property and that ordering vacant possession of the suit property in favour of the respondent does not necessarily invalidate the applicant's title. The applicant asserts that the intended appeal involves a matter of general public importance.
5. The respondent filed written submissions dated 28<sup>th</sup> January, 2022 which were highlighted by his Counsel, Ms. Muchiri. The respondent submits that the application is res judicata: the applicant had filed an application dated 11<sup>th</sup> January, 2021 seeking orders of review and stay of execution of the judgment issued on 3<sup>rd</sup> October, 2019. The application had been dismissed on 19<sup>th</sup> March, 2021 prompting the filing of the instant application which seeks similar orders of stay pending appeal. Regarding the threshold for appeals to the Supreme Court, the respondent submits that the suit between the parties involved a private property between two individuals. It cannot therefore be interpreted as being of public interest.
6. We have considered the application, the response thereto, and the submissions of the parties, and we believe that there are three issues for determination. First, whether this Court has jurisdiction to grant orders of stay of execution pending appeal to the Supreme Court; secondly, whether this Court has jurisdiction to extend time to file an appeal to the Supreme Court; and thirdly, whether the applicant has satisfied the criteria for certification of a matter as befitting an appeal to the Supreme Court under Article 163(4).
7. First, the issue of stay pending appeal to the Supreme Court is easily disposed of. The applicant has premised this limb of his application on Rule 5(2)(b) of this Court's Rules. We need not enter into an elaborate analysis of its provisions and requirements which were set out in the case of *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR, save to say that it has no application to the present case, dealing as it does with appeals from the High Court and Courts of equal status to this Court.
8. The applicant has applied for extension of time to file an appeal to the Supreme Court, and has Rule 4 of the Court of Appeal Rules, which grants to this Court the power to extend time to file appeals to this Court. There is no power granted to this Court under the Rules to extend time to file an appeal to the Supreme Court.
9. The core issue before us, however, is whether the application satisfies the requires of Article 163(4) of the *Constitution*. This Article provides as follows:

(4) Appeals shall lie from the Court of Appeal to the Supreme Court-



- (a) as of right in any case involving the interpretation or application of this Constitution; and
- (b) in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved subject to clause (5).

10. The applicant has argued that his application raises an issue of general public importance. In his grounds in support of his application, he identifies these as being:

“whether, as a general rule, a court has no jurisdiction to issue consequential orders after making findings on the pleadings and prayers as pleaded by the parties where such consequential orders are necessary for the ends of justice’ and ‘whether a court handling an ordinary civil suit but in respect of which there is a direct contest over which party has a lawful claim to property cannot invoke the jurisdiction in article 23 of the Constitution of Kenya 2010 and grant appropriate reliefs.”

11. In its decision in *Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscone* [2013] eKLR, the Supreme Court held as follows:

“(58) ...Before this Court, “a matter of general public importance” warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: its impacts and consequences are substantial, broad-based, transcending the litigation-interests of the parties, and bearing upon the public interest. As the categories constituting the public interest are not closed, the burden falls on the intending appellant to demonstrate that the matter in question carries specific elements of real public interest and concern.” (Emphasis added)

12. In *Kenya Plantation and Agricultural Workers Union v Kenya Export Floriculture, Horticulture and allied Workers’ Union (Kefhau) represented by Its Promoters David Benedict Omulama & 9 others* [2018] eKLR this Court held as follows:

“The principles set out in *Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscone...* to determine whether a matter is of general public importance included;

- i. For a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;
- ii. where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest
- iii. such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;
- iv. where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme



Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;

- v. mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163(4) (b) of the Constitution;
- vi. the intending applicant has an obligation to identify and concisely set out the specific elements of general public importance which he or she attributes to the matter for which certification is sought;
- vii. determination of facts in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”

13. We have set out earlier in this ruling the issues that the applicant avers he wishes to raise before the Supreme Court. While an attempt has been made to couch them in language that gives them the guise of matters that rise beyond the private dispute between the applicant and the respondent, they remain what they are: ordinary mundane issues arising out of a private dispute over ownership of a property. They do not transcend the litigation interests of the parties, nor do they raise any issues of public importance.

14. In the circumstances, it is our finding that the present application is without merit, and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF APRIL, 2022.**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

