



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU JA (IN CHAMBERS))

CIVIL APPLICATION NO. 384 OF 2019

BETWEEN

TRUSTEES OF THE KENYA ASSEMBLIES OF GOD.....APPLICANT

AND

SURESG KUMAR SOFAT.....1ST RESPONDENT

SANIDA SOFFAT.....2ND RESPONDENT

COUNTY GOVERNMENT OF NAIROBI

(FORMER NAIROBI CITY COUNCIL).....3rd RESPONDENT

(Being an application for leave to extend time re-lodge the notice of appeal, ending the lodging and hearing of the intended appeal against the Ruling of the High Court of Kenya at Nairobi (P. Nyamweya, J.) delivered on 3rd March, 2014 and amended on 19th March, 2014

in

ELC. No. 402 of 2013)

RULING

[1] On the 18th December, 2019, a notice of motion dated 2nd December, 2019 filed by the applicant was placed before me under certificate of urgency for certification under rule 41 and 47 of the Court of Appeal rules. Apart from certification, the applicant sought leave to re-lodge its notice of appeal out of time, and also leave to file the record of appeal. The intended appeal is against the ruling of the High Court delivered on 3rd March, 2014 and amended on 19th March, 2014.

[2] According to the ruling dated 3rd March, 2014, which is attached to the affidavit sworn by **Rev. Fredrick M. Kibuga** in support of the motion, the High Court issued orders restraining the applicant and Nairobi City Council from trespassing on, transferring, constructing, developing and/or interfering with the respondents' peaceful possession of property identified as LR. No. 209/11251, and an order for the applicant to yield vacant possession of that property to the respondent within 60 days failing which eviction orders were to issue. [3] In the certificate of urgency, Counsel for the applicant, **Mr. Jaoko** urged that the applicant's motion should be heard on priority basis because eviction of the applicant from the suit property was eminent, and that the respondents are relying on a fake and forged title, which identifies the disputed property as LR. No. 209/11281 instead of its correct identity, which is IR. 181940/1, LR. 209/15383. [4] I declined to certify the motion as urgent and consequently, the applicant through a letter dated 7th February, 2020 requested for the matter to be placed before the Court under Rule 47(5) of the Court Rules for *inter parte* hearing on the issue of certification.

[5] The parties appeared before me on 2nd March, 2020. **Mr. Jaoko** reiterated that the applicant's motion is urgent because the respondents have been taking prospective buyers to the disputed property and there is danger that the suit property may be disposed of, and if the property goes into the hands of a third party, the intended appeal would be rendered nugatory. **Mr. Jaoko** further explains that the applicant had actually lodged a notice of appeal immediately after the ruling on 10th March, 2014 but the record of appeal was subsequently struck out for being incompetent. He therefore urged the court to give the applicant a chance by certifying the matter as urgent.

[6] Learned counsel **Mr. Gad Gathu** who appeared for the respondents urged the Court that there was no urgency in the matter as the record of appeal was struck out 3 years and 7 months ago and that the applicant has not demonstrated how the matter has suddenly become urgent.

Counsel urged the Court that there was an order issued by the High Court for eviction of the applicant from the disputed property, which is identified in the order as LR. 209/11281 and not the property identified in the title exhibited by the applicant. He therefore urged the Court not to certify the motion as urgent.

[7] In considering the issue of urgency, the applicant has to satisfy the Court of the matters that justifies the motion being heard on priority. The main issue that the applicant appears to rely on is the fact that the respondents may dispose of the suit property. While I do appreciate that this is a possibility, I note that the High Court ordered the eviction of the applicant about 6 years ago. The applicant's notice of appeal that was filed on 10th March, 2014 was struck out by this Court on 29th July, 2016. If there was urgency, anchored on fear of an eviction or sale, that urgency arose at that time. The court cannot now be urged 3½ years later that the matter is urgent when there is no evidence of the applicant having taken any action that would demonstrate such urgency.

[8] The upshot of the above is that I am not persuaded that there is any justification for giving this matter a priority hearing date. I therefore affirm my earlier order declining to certify the motion as urgent. The motion may be fixed for hearing in accordance with the Court diary.

Dated and delivered at Nairobi this 24th day of April, 2020.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original

Signed

DEPUTY REGISTRAR