



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, WARSAME & J. MOHAMMED, J.J.A)

CIVIL APPLICATION NO. SUP 12 OF 2020

BETWEEN

PETER KAMONDIA NJUGUNA.....APPLICANT

AND

PAUL NGA'NG'A GACHIE.....RESPONDENT

(Being an application for leave to appeal to the Supreme Court of Kenya at Nairobi from a decision of the Court of Appeal (Ouko (P), Kiage & Murgor, J.J.A) delivered on 19th June 2020.

in

Civil Appeal No. 274 of 2011)

RULING OF THE COURT

[1] On 19th June, 2020 this Court (Ouko (P), Kiage & Murgor, J.J.A) delivered a judgment in which they dismissed an appeal that had been lodged by the applicant, Peter Kamondia Njuguna against the judgment of the High Court (Ang'awa, J) delivered in favour of the respondent Paul Ng'ang'a Gachie. The applicant who is aggrieved by the judgment of this Court has now moved the Court for orders, inter alia, for stay of execution of the judgment of the Court, and for the Court to grant leave to the applicant to appeal to the Supreme Court against that judgment.

[2] The application is based on the grounds that a substantial miscarriage of justice is likely to occur if the ownership of Kiambaa/Kanunga 486 (the suit property), that is subject of the litigation is not determined, and that there has been a substantial miscarriage of justice against the applicant who was condemned unheard by the panel of elders whose decision has been upheld by the two courts below.

[3] In accordance with the Court of Appeal Covid-19 regulations, the application was heard by way of written submissions that were duly filed by both parties. For the applicant, it is submitted that the panel of elders condemned him without giving him an opportunity to be heard. He disputes the finding that the suit property was ancestral land and claims to have purchased it from one **Peter Meethi**. He faults the Kiambu Resident Magistrate's Court for adopting the decision of the elders, and maintains that he was prejudiced due to lack of legal representation and his lack of legal knowledge. He argues that there was a miscarriage of justice because the dispute was not a boundary dispute but one of ownership of the suit property.

[4] The applicant identifies issues for determination in his intended appeal to include: whether a panel of elders can be allowed to make determination of ownership of a registered land; whether there will be a great miscarriage of justice against the applicant if the justice system is manipulated by some people to take other people's property by force; and whether a party should be condemned unheard by any judicial or quasi-judicial body and subsequently be denied the right of ownership of his property. The applicant therefore urges the Court to grant him leave to appeal to the Supreme Court to correct the legal manipulations that have denied him his rightful ownership of the suit property.

[5] In his submissions, the respondent urged, that contrary to the applicant's current position, that is, attacking the award made by the elders, the dispute in the two previous courts below concerned the setting aside of the ruling of the District Land Registrar Kiambu that was delivered on 12th April 2007, and that the applicant is misleading the Court that the initial proceedings were about the ownership of the suit property when the ruling concerned a boundary dispute between the parties. In addition, it is submitted that the respondent had already sold her share of the suit property and the land has changed ownership twice thereafter. The respondent therefore urges the Court to dismiss the applicant's motion.

[6] In response to the respondent’s submissions, the applicant has filed further submissions in which he reiterates that the suit is a classic case of a botched up litigation process calculated to deny a litigant his rightful ownership over registered property. The applicant concedes that the green card indicates that his sister sold the land to one Joe Nyoike Elijah, but finds it curious that the buyer was able to charge the title deed as security for a loan on the same day of the transfer.

[7] Under **Article 163(4)** of the Constitution, appeals 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.”

[8] It is apparent from the judgment of this Court that the applicant intends to appeal against, that the dispute between the applicant and the respondent originated from a dispute involving the suit property. In his appeal to this Court, the applicant was aggrieved by the judgment of the High Court contending that the court failed to appreciate that the genesis of the claim was a boundary dispute involving LR No. Kiambaa/Kanunga/788 and Kiambaa/Kanunga/789. Whatever the case, it is clear that the dispute between the applicant and the respondent does not fall within **Article 163(4)(a)** of the Constitution as it does not involve interpretation or application of the Constitution and the applicant is not therefore entitled to an appeal as of right.

[9] As regards **Article 163(4)(b)** of the Constitution, the question is whether the applicant has satisfied this Court that his matter is one of general public importance to justify certification. In **Town Council Of Awendo v Nelson Oduor Onyango & 13 others [2015] eKLR** the Supreme Court gave guidance in dealing with **Article 163(4)(b)** as follows:

“i. for an intended appeal to be certified as one involving a “matter of general public importance,” the intending appellant is to 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 is to 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 is/are to 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.”

[10] The applicant has identified the issues for determination in his intended appeal as follows:

(i) Can a panel of elders be allowed to make determination of ownership of a registered land?

(ii) Will there not be a great miscarriage of justice against (sic) to the applicant if the justice system can be manipulated by some people to take by force other people’s property?

(iii) Should a party be condemned unheard by any judicial or quasi-judicial body and subsequently be denied the right of ownership of his landed property?

[11] None of these issues can be said to be a matter of general public importance nor do they transcend the interest of the parties in the dispute that was before the Court. We appreciate that the applicant may be dissatisfied with the outcome of the appeal. However, he has not satisfied this Court that his appeal falls within Article 163(4)(b) of the Constitution to warrant certification by this Court for him to be granted leave to appeal to the Supreme Court. In the circumstances, we find no merit in this application. It is dismissed with costs.

Dated and delivered at Nairobi this 6th day of November, 2020.

HANNAH OKWENGU

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JUDGE OF APPEAL

M. WARSAME

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR