



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GATEMBU J.A (IN CHAMBERS))

CIVIL APPLICATION SUP. 2 OF 2018 (UR 2/2018)

BETWEEN

JIK.....1ST APPLICANT

MSJI.....2ND APPLICANT

AND

IQBAL TRANSPORTERS LIMITED.....1ST RESPONDENT

BANK OF BARODA (K) LIMITED.....2ND RESPONDENT

(Being an Application for leave to appeal to the Supreme Court and for a certificate that a matter of general public importance is involved in the appeal against the judgment of the Court of Appeal at Nairobi (Musinga, Kiage & Murgor JJ.A) delivered on 19th January, 2018

in

CIVIL APPEAL NO. 255 of 2016)

RULING

1. On 7th February 2018, I declined to certify as urgent the applicants' application dated 5th February 2018 seeking leave of the Court under Article 163(4)(b) of the Constitution to appeal, to the Supreme Court, against the judgment of this Court delivered on 19th January 2018 in Civil Appeal No. 255 of 2016.
2. In that judgment, this Court upheld a ruling of the High Court (Ochieng J.) declining to issue a redemption order for the 2nd respondent to discharge and release to the applicants the title document over the property known as Maisonette No. 6 on L.R. No. [Particulars Withheld] that was charged to the 2nd respondent to secure banking facilities.
3. Following my refusal to certify the application as urgent, the applicants' advocates, by a letter dated 9th February 2018 addressed to the Deputy Registrar of the Court, requested for an *inter partes* hearing on the question of urgency. A hearing was accordingly scheduled before me on 19th February 2018 when learned counsel Mr. L. M. Njenga held brief for Mr. King'ara for the applicants while Mrs. Kiriba held brief for Mr. Fraser for the 2nd respondent.
4. According to Mr. Njenga the applicants' application is urgent and should be heard by the Court on basis of priority because the suit property, the subject of the charge, is the applicants' matrimonial home and the same is in danger of being sold in exercise of the 2nd respondents statutory power of sale. In that event, counsel argued, the intended appeal to the Supreme Court will not serve any useful purpose. Counsel urged that the intended appeal seeks to raise matters of public importance, key of which is the interpretation of the law as regards the *in duplum* rule introduced to Kenya by the Banking (Amendment Act) No. 9 of 2006.
5. On her part, Mrs. Kiriba submitted that there is no reason to fast track the hearing of applicants' application. To start with, she pointed out, the application was not served on her firm until 16th February 2018 although it was filed on 6th February 2018. Furthermore, counsel pointed out, the applicants have not filed a notice of appeal against the decision of this Court in accordance with the demands of Rules 31 and 32(1)

of the Supreme Court Rules if indeed they are seriously intent on seeking leave to appeal to the Supreme Court.

6. In any event, Mrs. Kiriba submitted, there is no immediate threat of the property being put up for sale as the lengthy procedural steps prescribed under the Land Act have yet to be put in place before the power of sale can become exercisable.

7. I have considered the matter. In the certificate of urgency as well as the affidavit in support of urgency, Peter Gichuki King'ara has stated that "*there is a real and imminent threat*" of the applicants being evicted from the suit property and being rendered destitute with the result that the intended appeal to the Supreme Court will be rendered nugatory and a mere academic exercise. There is, however, no material placed before me to support that statement or to show that the 2nd respondent has since delivery of the judgment by this Court on 19th January 2018 taken steps with a view to selling the charged property.

8. I am therefore not persuaded that the applicants have made out a case to justify the fast tracking of the Notice of Motion dated 5th February 2018 and hereby decline to certify the same as urgent. The same will fixed for hearing at the registry in the normal cause.

9. I make no orders as to costs.

Dated and delivered at Nairobi this 23rd day of February, 2018.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR