



IN THE COURT OF APPEAL

AT NYERI

(CORAM: MUSINGA, SICHALE & KANTAI, J.J.A.)

CIVIL APPLICATION NO. SUP. 3 OF 2017 (UR 1/2017)

BETWEEN

FREDRICK WACHIRA NDEGWA (SUBS. (DCD) NDEGWA WACHIRA.....APPLICANT

AND

ATTORNEY GENERAL FOR LAND REGISTRAR, NYERI.....1ST RESPONDENT

BEUTAH KANYORA MUTHUI.....2ND RESPONDENT

(An Application for leave to appeal against Order of the Court of Appeal (G.B.M. Kariuki, Sichale & Kantai, J.J.A.) dated 20th September, 2017 in Civil Appeal No. 90 of 2016)

RULING OF THE COURT

On 20th September, 2017 this court dismissed an appeal being Civil Appeal No. 90 of 2016 brought by the applicant, **Fredrick Wachira Ndegwa** (*substituting Ndegwa Wachira – deceased*) after having found his appeal to have no merit. That appeal related to findings of the High Court which had found the suit by the applicant to be *res judicata*, all issues raised in the High Court suit having been determined by various courts. We observed in that judgment, amongst other things, that it had taken the applicant over 30 years in various courts in various litigation and that the issues the applicant had raised up to the stage of that appeal appeared to defy the doctrine of finality of litigation. We set out in full in that judgment the various suits that had been filed in the Magistrate’s Courts, in the High Court and in this Court.

We are now asked by a Notice of Motion said to be brought under **rule 21** of the **Supreme Court Rules 2011** to allow the applicant to appeal to the Supreme Court. We are also asked to issue orders to restrain the 1st respondent, the **Attorney General**, sued on behalf of the **Land Registrar, Nyeri**, from lifting restriction and prohibition placed on a parcel of land **Tetu/Unjiru/891**. Various grounds are set out in support of the motion and in a supporting affidavit of the applicant which details various ills the applicant believes he has suffered either at the hands of the various courts or at the hands of the 1st respondent or the 2nd respondent, **Beautah Kanyora Muthui**.

As we have stated, the High Court after analyzing the matters brought to its attention found the applicant’s suit to be caught by the doctrine of *res judicata* and struck it out. We analyzed the matter in the said **Civil Appeal No. 90 of 2016** and agreed with the High Court that the appeal filed at the High Court dealt with matters that already had been dealt with in other courts and finally determined.

When the application came up for hearing before us on 16th January, 2018 the applicant appeared in person as did the 2nd respondent. The 1st respondent was not present but we allowed the motion to proceed because the 1st respondent had been duly served with a hearing notice for that day but there was no representation. The applicant informed us that it was 39 years since he had started litigating in various courts in respect of the stated parcel of land. According to him, the original suit was not heard and determined on its merits and the appeal which he filed had been dismissed unfairly. According to him, the subject land had been transferred to the 2nd respondent in or about 1993 when his case had not been heard or determined on the merits. In addition, that an award of a tribunal had been adopted as a judgment of the court without his full participation. For all that, he would like to go to the Supreme Court for a final stab at a right which he has been denied for those so many years.

The 2nd respondent in opposing the application informed us that he bought the land many years ago; that a dispute arose and the same was referred to a tribunal by consent of the lawyers for the parties and, that a resultant award was adopted by the court as a judgment. Further, that the applicant had filed many cases none of which had succeeded and finally, that he the 2nd respondent has been in possession of the land for over 20 years.

By **Article 163 (4)** of the *Constitution of Kenya 2010*, appeals shall lie to the Supreme Court from this court:

“(a) ...

(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).”

This court has recently had occasion to consider the concept “*matter of general public importance*” meriting certification for a final appeal to the Supreme Court. These cases were *Greenfields Investments Limited vs Baber Alibhai Mawji, Civil Application No. Sup. 5 of 2012* and *Koinange Investment and Development Limited vs Robert Nelson Ng’ethe, Civil Application No. Sup 15 of 2012*. In *Greenfields Limited* (supra) we stated:

“It would be a perversion of the law as... unambiguously spelt out in the Constitution, were certifications to become fare for ordinary cases no matter how complex, that have for ages been concluded with finality in this Court. This is part of the rationale for the requirements that certification be first sought in this Court”.

In the second case *Koinange Investment & Development Limited* (supra) we said in respect of the said principle governing certification of appeals to the Supreme Court:

“There is a distinction between leave to appeal to this Court from the High Court and from this court to the Supreme Court ... the requirement for certification under Article 163 (4) (b) is a genuine filtering process to ensure that only appeals with elements of general public importance reach the Supreme Court, as the role of the Supreme Court, as was observed in *R vs Secretary of State ex parte Eastway* [2001] 1All ER 27 at p. 33 para (b) – per Lord Bingham, cannot be relegated to deal with correction of errors in the application of settled law, even where such are shown to exist. This point was expounded by the Supreme Court itself in *Peter Odour Ngoge vs Hon Francis ole Kaparo & 5 Others*, Supreme Court Petition No. 2 of 2012...”.

As we have stated after a review of the matter before the High Court and the various other courts and tribunals that had dealt with the dispute raised by the applicant, the issue of land sold to the 2nd respondent had been litigated and findings made by the Magistrate’s Court, a tribunal dealing with land issues, the High Court and even this Court in an earlier Civil Appeal that had been filed by the applicant against the respondents.

The dispute between the applicant and the 2nd respondent revolved around ownership of private property being land and final determination having been made through the various litigations in various courts which the applicant himself reminds us has taken him 39 years must come to an end as there must be finality of litigation. The dispute that revolved around a parcel of land which was sold to the 2nd respondent was heard by competent courts and tribunals and final determinations made. There is no issue of general public importance shown to us on the material placed before us. The issue is a simple one involving ownership of a private parcel of land and the applicant must realize that he has remained in the courts for far too long. This has sapped his energy and must have cost him considerable sums of money and this must finally stop. As we stated in the Civil Appeal No. 90 of 2016:

“The applicant feels aggrieved on issues that have finally been determined and the law will not allow or countenance his actions which amount to an abuse of the process of the court. The applicant has been moving from one court to another and back again and this cannot be allowed to continue. He has been trying hoping something gives. He has refused to let it go. It is now 39 years since the dispute was lodged in our court system. It has been heard and finally determined and found to be res judicata. The appellant has always crafted a way of introducing the dispute back to court. This has vexed the respondents no doubt, coupled with attendant costs and time expended. We are not inclined to sanction this state of affairs now or in the future....”

Having considered the motion and the record we did not find any matter of any general public importance that would entitle the applicant to approach the Supreme Court.

The motion fails and we dismiss it with costs to the 2nd respondent. The 1st respondent is not entitled to costs as he did not attend the hearing though served with a hearing notice.

Dated and delivered at Nyeri this 21st day of February, 2018.

D. K. MUSINGA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR