



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. 10 OF 2018 (UR 9/2018)

BETWEEN

LUCY WANGARI NGUGI 1ST APPLICANT

JERRY WESTGATE LIMITED..... 2ND APPLICANT

AND

CATHERINE NJERI ANGOTE

(Suing as the administratrix of The estate of Samuel Angote Babu) RESPONDENT

(Being an application under Rule 5(2)(b) of the Court of Appeal Rules for an injunction and/or stay of proceedings pending the hearing and determination of an appeal against the ruling and order of the High Court (Gacheru J.) delivered on 6th October, 2017) in

E.L.C No. 201 of 2017)

RULING ON URGENCY

(Rule 47(5) of the Rules of the Court)

1. On 23rd January 2018, the applicants lodged in the registry of this Court, under certificate of urgency, a notice of motion dated 19th January 2018 seeking an order, under Rule 5(2)(b) of the Rules of the Court, to stay proceedings in *Thika ELC Case No. 201 of 2017 Catherine Njeri Angote v Lucy Wangari Ngugi & Jerry Westgate Ltd* pending the hearing and determination of an intended appeal from a ruling of that court given on 6th October 2017 declining to set aside earlier proceedings in that suit allegedly conducted in the absence of the applicants advocates.
2. Pursuant to Rule 47(2) of the Rules of the Court, that application together with the certificate of urgency and the supporting affidavit were placed before me on 5th February 2018. I declined to certify the same as urgent.
3. Following my refusal to certify the application as urgent, the applicants' advocate, by a letter dated 6th February 2018 addressed to the Registrar of the Court, requested for an *inter partes* hearing on the question of urgency. A hearing was accordingly scheduled before me on 12th March 2018 when Mr. Philip Nyachoti, learned counsel, appeared for the applicants. There was no appearance on behalf of the respondents despite being served with notice of the hearing on the question of urgency.
4. Mr. Nyachoti, urged that in the course of the impugned ex parte proceedings conducted before the lower court, a controversial title deed in relation to the suit property L.R No.4953/2413 was produced and admitted in evidence to the detriment of the applicants; that it is critical that the decision of the lower court refusing to set aside the ex parte proceedings be reviewed by this Court on appeal before further proceedings in the lower court; that the trial before the lower court is scheduled to go ahead on 24th April 2018; that should that happen, the disputed title will be upheld by the trial court in which event the applicants' cause will be lost.
5. I have taken on board the representations by Mr. Nyachoti on the basis of which I have reluctantly reconsidered my earlier decision declining to certify the application as urgent. I accordingly direct, that applicants' application dated 19th January 2018 shall be fixed for hearing on basis of priority. I make no orders as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of March, 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