



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: GITHINJI, OKWENGU & J. MOHAMMED JJA)

CIVIL APPLICATION NO. 13 OF 2016

BETWEEN

GEOFFREY WAMBANDA WANDAMBUSI.....1ST APPLICANT

MARGARET NALIAKA WAMBANDA.....2ND APPLICANT

(Personal representatives of the estate of;

WAMBANDA KHWATENGE WANDAMBUSI

AND

ATTORNEY GENERAL FOR AND ON BEHALF

OF THE COMMISSIONER FOR LANDS.....1ST RESPONDENT

THE CLERK BUNGOMA COUNTY COUNCIL....2ND RESPONDENT

MOHAMED NOOR AHMED

(NOW DECEASED).....3RD RESPONDENT

BUNGOMA MUNICIPAL COUNCIL.....4TH RESPONDENT

(An application for certification by the Court of Appeal that a matter of general public importance is involved in the applicants' intended appeal to the Supreme Court against the Judgment of the Court of Appeal delivered at Eldoret (Musinga, Gatembu & Murgor JJA) dated 29th October, 2015

in

Civil Appeal No. 118 of 2007)

RULING OF THE COURT

Background:

1. The matter before the Court is an application dated 8th February 2016 brought pursuant to Article 163(4)(b) of the Constitution seeking leave to file an appeal to the Supreme Court against the Judgment of this Court delivered on 29th October, 2015.

2. The background to this application is that Wambanda Khwatenje Wandambusi (deceased), filed suit against the respondents, claiming to be the legal owner of land parcel No. E. Bukusu/S. Kanduyi/1062 (the suit property). The deceased pleaded that the property was compulsorily and unjustly acquired by Bungoma County Council without full compensation. The 1st and 2nd applicants herein are the personal representatives of the estate of Wambanda Khwatenje Wandambusi.

3. The suit property was thereafter subdivided into two parcels: East Bukusu/South Kanduyi/6666 and East Bukusu/South Kanduyi/6668. Parcel Number 6666 was subsequently transferred to the 3rd respondent, who is now deceased; and Parcel Number 6668 registered in the names of the 2nd and/or 4th respondents. The 1st applicant on his own behalf and that of the 2nd applicant sought reinstatement of the parcels of land to their original number and registration of title in their favour.

4. In her considered judgment, Karanja, J. (as she then was) having set out and analysed the evidence was not convinced that the deceased had established any rights recognised in law over the suit property. Aggrieved, the applicants filed an appeal to this Court. On 29th October 2015, this Court delivered judgment in Civil Appeal 118 of 2007 dismissing the appeal for lack of merit having found nothing to indicate that the learned Judge had erred in her judgment.

5. Aggrieved by that decision, the applicants wish to prefer an appeal to the Supreme Court on the grounds *inter alia* that the intended appeal raises matters of general public importance as the suit property is public land.

Submissions by Counsel:

6. When the application came before this Court, all the parties were represented by learned counsel: Mr. I. J Onyinkwa represented the applicants; Mr. P. Kuria state counsel appeared for the 1st respondent; and Mr. E. Musumba appeared for the 2nd respondent.

7. Counsel for the applicants expounded on the grounds supporting the application submitting that the matter involved public land and is therefore of public importance; that additional evidence which had been adduced into the record by consent was not considered by the appellate court in coming to its decision, and that the certified copy of the Court of Appeal's judgment included Murgor, JA. who was not part of the bench which heard the appeal. Counsel urged the Court to allow the application.

8. Mr. Kuria for the 1st respondent opposed the application, and submitted that the applicants had failed to establish that a matter of general public importance had been violated or that their grounds were sufficient to justify invoking the jurisdiction of the Supreme Court. Counsel argued that the applicants should have written a letter to the Court seeking redress and rectification of any perceived errors rather than seek to invoke the jurisdiction of the Supreme Court.

9. Mr. Musumba for the 2nd respondent similarly opposed the application. Counsel contended that the issues raised by the applicants had not transcended the circumstances of the applicants' particular case, sufficient to have audience before the Supreme Court. Counsel urged the court to dismiss the appeal with costs.

Determination:

10. We have considered the motion, the submissions by counsel, the authorities cited and the law. Article 163 (4) (b) of the Constitution provides that;-

“163 (4) Appeals shall 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).”

11. It is trite law that for a matter to be certified for appeal to the Supreme Court, under Article 163(4)(b) of the Constitution the matter involved must be one of general public importance. The principles governing what constitutes matters of ‘*general public importance*’ were set out by the Supreme Court in **Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione [2013] eKLR** as follows:

(i) for a case to be certified as one involving a matter of general public importance, the intending appellant must 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 must 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 must 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;

(vii) determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.” [Emphasis added].

12. The applicants have not filed a draft memorandum of appeal to indicate the issues that they intend to raise in the intended appeal. From the grounds raised in the motion and the affidavit in support, we glean that the main issue relied on by the applicants is that their appeal raises a matter of general public importance.

13. In order for the applicants to satisfy the court that a matter of general public importance is involved in the intended appeal, the matter must be one that meets the circumstances set out in the **Hermanus Phillipus Steyn** case as set out above.

14. We have carefully considered the issues intended to be raised by the applicants and weighed them against the tests outlined above. In order to appreciate the dispute, we have considered the applicants’ claim as raised in the High Court. The deceased’s claim related to the suit property, that is East Bukusu/S. Kanduyi/1062. The deceased claimed that he was the beneficial owner of the suit property, which was illegally registered in the name of the 2nd respondent, and later irregularly compulsorily acquired without compensation being paid to the deceased. The suit property was later sub-divided to East Bukusu/South Kanduyi/6666 and 6668.

15. The deceased's prayers in the plaint as reflected in paragraph 16 and 17 were therefore as follows;-

“16. The plaintiff's claim therefore against the defendants jointly and severally is for orders for a Declaration that sub-division, transfer and allotment of land Parcel East Bukusu/South Kanduyi/1062 into land parcels Nos. East Bukusu/South Kanduyi/6666 and 6668 was null and void and the same be nullified and that the said parcel of land be reinstated to its original number and be registered in the names of the plaintiff herein and eviction orders to be issued against all the defendants.

17. That in the alternative to the prayers sought above, if in the event that the Government is desirous to acquire the said parcel of land under compulsory acquisition, then the plaintiff be compensated fully and promptly in accordance with the current markets rates.”

16. The applicants' contention is that the matter qualifies to be a matter of general public importance because the subject of the intended appeal is public land, the subject property having been compulsorily acquired. We do not agree. The issue to be canvassed on appeal as evident from the deceased's claim in the High Court relates to a dispute involving private interests of the deceased. In its judgment the High Court found that the deceased did not establish any rights recognised in law over the suit property.

17. In the Judgment delivered on 29th October, 2015, this Court upheld the Judgment of the High Court noting that the deceased did not prove that the registration of the 2nd respondent as proprietor of the suit property was illegal. It is therefore apparent to us that the issues intended to be raised by the applicant in the appeal relate to the special circumstances of the deceased's claim and will not have any significant bearing on public interests.

18. The application does not therefore meet the threshold of being a matter of general public importance. We therefore find that the applicants have not established a case to justify certification of the intended appeal as involving a matter of general public importance.

19. The upshot is that we find no merit in this application and accordingly decline to certify the applicants' intended appeal as raising a matter of general public importance. Accordingly, this application is dismissed with costs to the respondents.

Dated and delivered at Eldoret this 16th Day of November, 2017

E. M. GITHINJI

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JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

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DEPUTY REGISTRAR