



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: D. K. MUSINGA, JA. (IN CHAMBERS))

CIVIL APPLICATION NO. 69 OF 2015

BETWEEN

NARESH KUMAR PATEL 1ST APPLICANT

DAXABEN NARESH KUMAR PATEL 2ND APPLICANT

NELESHKUMAR MULUBHAI PATEL 3RD APPLICANT

AND

LAND ACQUISITION & COMPENSATION

TRIBUNAL 1ST RESPONDENT

THE COMMISSIONER OF LANDS 2ND RESPONDENT

THE CHAIRMAN,

NATIONAL LAND COMMISSION 3RD RESPONDENT

(Application for leave to file appeal out of time from the decision of (Kibunja, J.) delivered on 28th October, 2015

in

ELC JR CASE NO. 8 OF 2013

(CONSOLIDATED WITH CIVIL APPLICATIONS NOS. 70/2015, 71/2015 & 72/2015)

RULING

1. This application for extension of time brought under **rule 4** of the **Court of Appeal Rules, 2010** is not opposed. The applicants sought leave of this Court to file an appeal out of time from the decision of **Kibunja, J.** in **ELC JR case No. 8 of 2013** delivered on 28th October, 2015.

2. The basis of the application is that since 22nd September, 2011, the applicants are the registered proprietors of a parcel of land known as **KISUMU/KASULE/439**, hereinafter referred to as “*the suit land*”.

3. The suit land was compulsorily acquired by the 2nd respondent between July, 2010 and February, 2011. That was before the applicants became the registered proprietors thereof. The applicants however wanted to challenge the process of acquisition of the suit land as well as the decision of the respondents in regard to the award (*compensation*) thereof.

4. The trial court dismissed the applicants’ application for orders of prohibition, certiorari and mandamus against the 1st and 2nd respondents, holding that since the applicants were not the registered proprietors of the suit land at the time of its compulsory acquisition, and not having lodged any claim for compensation, had no *locus standi* to challenge the process of its acquisition.

5. In their application for extension of time, the applicants demonstrated that the first applicant, who appears to be the prime mover of the application, was in India when the trial court delivered its impugned ruling. He returned to Kenya on 29th October, 2015 but was taken ill on 2nd November, 2015. He was therefore unable to go to the post office to collect his advocate’s letter informing him about the learned judge’s ruling. By the time he received the said letter, 15th November, 2015, the time for filing and serving a notice of appeal had already lapsed.

6. Considering the explanation proffered for the delay and that the respondents do not oppose the application, I hereby grant leave to the applicants to file and serve a notice of appeal out of time. The same shall be filed and served within fourteen **(14) days** from the date of delivery of this ruling. The memorandum and record of appeal should be filed and served within thirty (30) days from the date of filing the notice of appeal. Each party shall bear their own costs of the application.

7. This ruling and the orders with respect to grant of leave to appeal out of time shall apply *mutatis mutandis* in respect of similar applications in Civil Applications **No. 70 of 2015, 71 of 2015 and 72 of 2015**. The said applications are all premised on the affidavit of Naresh Kumar Patel, the first applicant herein, containing more or less the same depositions as in the affidavit he has filed in support of this application. The said applications were also unchallenged by the respondents.

DATED and Delivered at Kisumu this 11th day of October, 2016.

D. K. MUSINGA

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.