



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MUSINGA, GATEMBU & MURGOR, JJ.A.)

CIVIL APPLICATION NO. 62 OF 2015

BETWEEN

RICHARD BULUMA WEDODO DECEASED

COSMAS ANANZAS BULUMA 2ND APPELLANT/APPLICANT

AND

ESAU NAMULANDA FIRST RESPONDENT

BENARD OKWARA BALONGO SECOND RESPONDENT

(Application seeking for leave to appeal against the whole judgment of (Musinga, Gatembu & Murgor, JJ.A.) at Kisumu, prefers an appeal in Supreme Court of Kenya)

in

CIVIL APPEAL NO. 18 OF 2013

RULING OF THE COURT

1. On 6th November, 2015 this Court delivered a judgment in **Civil Appeal No. 18 of 2013**, between **Cosmas Buluma** and **Esau Namulanda & Benard Okwara Balongo**. The appeal was from the ruling of **Kibunja, J.** in HCCA No. 6 of 1997 (Busia).
2. In the appeal before the High Court, the applicant was seeking a review of the Court's decree dated 31st May, 1998. Rejecting the application for review, the High Court held, *inter alia*, that the order that sought to be reviewed was made on 21st May, 1998 and the application for review was filed almost 9 years thereafter.
3. The applicant was not satisfied with the said ruling and preferred an appeal to this Court. Upon a full consideration of the appeal, this Court agreed with Kibunja, J. that the application for review had not satisfied the provisions of **section 80** of the **Civil Procedure Act** and **Order XLIV rules 1 & 2** of the **Civil Procedure Rules** and dismissed the appeal.
4. The applicant has returned to this Court, this time seeking leave to file an appeal to the Supreme Court

of Kenya against this Court’s judgment aforesaid. The application is brought under **Article 163 (4) (b)** of the **Constitution** although the applicant, who is acting in person, has cited it as **section 163**.

5. The main thrust of the application is that this Court’s judgment dealt with only one issue in dispute and left some others unresolved.

6. In his oral submissions, the applicant told the Court that the genesis of the dispute between his family and the respondents was a boundary dispute. The applicant and his late father filed a case against the respondent in a Resident Magistrate’s Court. The trial magistrate accompanied by the District Surveyor, visited the land and established the boundary. The respondents appealed against that determination and the High Court ordered that the matter be transferred to the District Land Disputes Tribunal, which upheld the boundary that had been established. The decision of the Tribunal was adopted as the judgment of the court.

7. The applicant’s complaint is that all through, the dispute was decided in his favour, but he had not been awarded costs of the various proceedings. Yet when he lost the appeal before this Court he was ordered to bear the costs of the appeal.

8. The respondents, through their learned counsel, **Mr. Emukule**, opposed the application. Counsel submitted that the applicant had not demonstrated that the intended appeal raised any matter of general public importance in terms of **Article 163 (4) (b)** of the **Constitution of Kenya, 2010**.

9. We agree with Mr. Emukule. In **HERMANUS PHILIPUS STEYN V GIOVANNI GNECCHI RUSCONE [2012] eKLR**, this Court set out the factors to be considered in determining what constitutes a matter of public importance. The Court held:

“The importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have a more general significance. Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law and that it is for the common good that such law should be clarified so as to enable the courts to administer that law, not only in the case at hand, but also in such cases in future. It is not enough to show that a difficult question of law arose. It must be an important question of law”.

10. The Supreme Court adopted the above proposition in **HERMANUS PHILLIPUS STEYN V GIOVANNI GNECCHI - RUSCONE [2013] eKLR**.

11. The applicant herein has not satisfied any of the requirements set out here above.

12. We find this application lacking in merit and dismiss it with costs to the respondents.

DATED and Delivered at Kisumu this 16th day of December, 2016.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR