



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, AZANGALALA & KANTAI, JJA.)

CIVIL APPLICATION NO. 65 OF 2014

BETWEEN

FLORENCE NYABOKE MACHANI.....APPLICANT

AND

MOGERE AMOSIOMBUL.....1ST RESPONDENT

SIMON TENGERRI MOGERE.....2ND RESPONDENT

NELSON OMWENGA NYAKUDI.....3RD RESPONDENT

(Being an application for leave to appeal to the Supreme Court against the Judgment of the Court of Appeal (Onyango Otieno, Azangalala, and ole Kantai, JJA) delivered on 19th September, 2014

in

Civil Appeal No. 184 of 2011)

RULING OF THE COURT

1. Being aggrieved by the decision of this Court delivered on 19th September, 2014 in Civil Appeal No. 184 of 2011, Florence Nyaboke Machani (the applicant) wishes to appeal against it to the Supreme Court. She has therefore come back to this Court with a Notice of Motion dated 29th September, 2014 and brought under Article **163(4)(b)** of the Constitution of Kenya, 2010 for leave to appeal. The application is supported by the applicant's affidavit sworn on 29th September, 2014 and is based on two grounds. The first one is that the intended appeal involves a matter of general public importance in that the applicant wishes the Supreme Court to determine whether or not the Land Disputes Tribunal established under the repealed **Land Disputes Tribunal Act** (the Act) had jurisdiction to determine claims of title to land and if not what was the fate of its decision in such a claim and whether or not such decision can be nullified by a declaration. The applicant argued that that issue is of concern to many land owners across the country who are likely to be unlawfully deprived of their land rights. The second ground is that substantial miscarriage of justice will occur unless the intended appeal is heard.

2. Basing himself on the averments in the applicant's said affidavit in support of the application, Mr. Gichana, learned counsel for the applicant, submitted that in two separate claims filed before the Borabu

Land Disputes Tribunal (the Tribunal), the Tribunal ordered the transfer of a total of 50 acres to two brothers of the late Naftal Machani Amosi (the deceased) out of the deceased's piece of land situate at Kineni Settlement Scheme in Nyamira District and known as **Title No. Isoge/Kineni/Block 1/70** (the suit land) on the ground that they had resided on the land and assisted in repayment of its purchase loan. Counsel said that as the Tribunal had no jurisdiction to determine claims of land ownership, the applicant, who is the widow and legal representative of the deceased, filed a suit against the deceased's two brothers and sought a declaration that neither of them was entitled to any portion of the suit land.

3. The High Court dismissed that suit holding that the applicant should have challenged the Tribunal's decision by either an appeal under the Act or through a judicial review application. Her appeal to the Court of Appeal having been dismissed, she wishes to prefer a further appeal to the Supreme Court hence this application for certification. Counsel reiterated the applicant's contention that the issue of whether or not the Tribunals established under the repealed Land Disputes Tribunal Act had jurisdiction to determine claims of title to land is a land right which affects the general public. The other issue is whether a party aggrieved by the Tribunal's decision on such issue can challenge it by a declaration. He said the resolution by the Supreme Court of these issues will settle the law in that regard and guide not only the applicant but also the public at large. He therefore urged us to allow this application.

4. Mr. Abobo, learned counsel for the respondents, dismissed this application as unmeritorious. In his view, the decision the applicant wishes to appeal against is on settled law which does not require any further input by the Supreme Court. He therefore urged us to dismiss this application with costs.

5. We have considered the matter. Under Article **163(4)(b)** of the Constitution of Kenya, 2010, the criterion for certification to appeal to the Supreme Court is if the subject matter of the appeal is a matter of general public importance. In this case, with respect to counsel for the applicant, the issue of whether or not the Tribunals established under the Land Disputes Tribunal Act had jurisdiction to determine claims of land ownership is not a matter of general public importance as it is not only clear from **Section 3** of that Act but is also a matter that is the subject of numerous decisions of both the High Court and this Court some of which the applicant's counsel has himself cited to us in this application. So it is not a matter that the general public has interest in knowing. If the public has any such further interest, then, as the Supreme Court stated in **Peter Oduor Ngoge v. Hon. Francis Ole Kaparo & 5 Others- Supreme Court Petition No. 2 of 2012[2012] eKLR**,

"... the chain of courts in the constitutional set-up, running up to the Court of Appeal have the professional competence and proper safety designs, to resolve all matters turning on the technical complexity of the law; and only cardinal issues of law or of jurisprudential moment, will deserve the further input of the Supreme Court."

6. As we have said, both the High Court and this Court have conclusively resolved the issue and there is absolutely no need of any *"further input of the Supreme Court."* In the circumstances, we agree with counsel for the respondents that this application has no merit and we accordingly dismiss it with costs.

DATED and delivered at Kisumu this 25th day of February 2015.

D.K.MARAGA

.....

JUDGE OF APPEAL

F.AZANGALALA

.....

JUDGE OF APPEAL

S.ole KANTAI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR