



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. 58 OF 2014 (UR 42/2014)

BETWEEN

DORSILLA AJWOGA APPLICANT

AND

- SAMSON ISAAC.....1ST RESPONDENT**
- ODHIAMBO OWUOR.....2ND RESPONDENT**
- DEDE OWUOR3RD RESPONDENT**
- BANDA OWUOR.....4TH RESPONDENT**
- LUKA AGUMBA OKODO.....5TH RESPONDENT**
- ANDITI OJWANG.....6TH RESPONDENT**
- JOSHUA ADA.....7TH RESPONDENT**
- ODINDO ORWA.....8TH RESPONDENT**
- OKUMU OKOD9TH RESPONDENT**

(Being an Application for extension of time to file Memorandum and Record of Appeal out of time in the intended Appeal from a Ruling of the High Court of Kenya at Kisumu (A.K Kaniaru, J.) dated 8th May, 2014

in

H.C.C. NO. 63 OF 1987)

RULING

1. I have before me a notice of motion dated 22nd July, 2014, in which Dorsilla Ajwoga (the applicant)

seeks leave of this Court to file out of time a notice of appeal against the ruling of the High Court (Kaniaru, J.) delivered on 8th May, 2014 in HCCC No. 63 of 1987. In that ruling, the learned Judge dismissed with costs an application by the applicant and 8 others in which they had sought orders that the decree arising from the judgment of the High Court given in the said case on 21st July, 1993 was statute barred and therefore incapable of execution. In that application they had also sought an order that having been in continuous, uninterrupted and open occupation of the piece of land known as **North Sakwa/Maranda/7** (the suit land), they had acquired title to it by adverse possession. The learned Judge dismissed both prayers of that application. The applicant wishes to appeal against that decision.

2. The applicant states in her application that after delivery of the said ruling on 8th May, 2014, she instructed her lawyers to appeal against it but due to inadvertence, the lawyers did not file the requisite notice of appeal until 20th June 2014. That was about 20 days outside the stipulated period. She therefore seeks leave of this Court to either deem that notice of appeal as having been filed with leave or to file a fresh notice of appeal out of time.

3. One of the criteria for the grant of such application is the demonstration that the intended appeal is arguable. When the matter came for hearing before me on 12th May, 2015, Mr. Yogo, learned counsel holding brief for Mr. Kihara for the applicant submitted that the applicant's intended appeal has overwhelming chances of success as the decree sought to be executed is more than 12 years old. Counsel further argued that the applicant is an old woman who does not understand the importance of filing the notice of appeal timeously hence the delay.

4. Opposing the application, Mr. Osino, the respondent, argued that this is one of the frivolous applications that the applicant and her group have brought to court in total abuse of the court process. He submitted that the applicant and her group have filed numerous but frivolous suits against his late father the latest being Civil Application No. 57 of 2014 for stay of execution which was dismissed by this Court on 13th November 2014 for non attendance. He said given the history of this matter, all these proceedings by the applicant and her group are meant to vex and frustrate him and his siblings. He urged me to peruse the ruling sought to be challenged and dismiss this application with costs.

5. A perusal of the ruling the applicant seeks to appeal against shows that the dispute between the parties has had a chequered history. The dispute started in 1966 over the ownership of the suit land. The applicant and her group have all along claimed 50 hectares of the suit land which is registered in the name of the respondents' late father Jackson Osino Oyoo (the late Osino). A chronology of the events in the dispute is elaborately set out in the judgment of this Court (Gicheru, Akiwumi & Tunoi, JJ.A) delivered on 22nd March, 1995 in Civil Appeal No. 41 of 1994. It is briefly as follows.

6. In 1966 Odhiambo Owuor, the 2nd respondent and two others entered the suit land which was occupied by the late Osino. The late Osino challenged that entry before a panel of 25 elders who ruled in his favour. The applicant and her group refused to vacate forcing the late Osino to go to the Third Class District Magistrate's Court at Bondo in 1967. On 14th January, 1969 that court ruled in favour of the late Osino. The applicant and her group's appeal to the Resident Magistrate's Court at Kisumu was dismissed on 18th July 1972. Their further appeal to the High Court was, on 22nd June, 1974, also dismissed.

7. During the land adjudication in the area, the applicant and her group filed an objection before the Land Adjudication Objection Board but the same was dismissed on 12th August 1975 and on 14th August 1986 the suit land comprising 60 hectares was eventually registered in the name of the late Osino..

8. Following the said dismissal of their appeal by the Resident Magistrate's Court in 1972, Odhiambo Owuor and others were evicted from the suit land in 1973. On 7th March, 1987, Owuor and eight others armed with crude weapons invaded the suit land. The late Osino sought police assistance in vain. That forced him to file HCCC No. 63 of 1987 in which he sought their eviction. The applicant

and her group apparently counter-claimed and sought a declaration that they had acquired title to the suit land by adverse possession. In a judgment delivered on 21st July 1993, after rehashing the history of the dispute, the late Justice Mango dismissed the counter-claim and granted an eviction order against Owuor and his group. That is what triggered Civil Appeal No. 41 of 1993 which Owuor and his group filed in this Court. That appeal, as I have stated, was, on 22nd March 1995, also dismissed.

9. Despite that decision, the applicant and her group refused to vacate the suit land forcing the legal representatives of the late Osino to apply for execution of the decree in HCCC No. 63 of 1987, the eviction of the applicant and her group. To counter t at application, the applicant and her group filed the said notice of motion in which they claimed that the decree the legal representatives of the late Osino were seeking to execute was statute barred. They once more also claimed in that application that they had acquired title to the suit of land by adverse possession. As stated Justice Kaniaru saw their stratagem, and dismissed that application with costs.

10. Given this history, even if I were to accept that the applicant's failure to file the notice of appeal in time was due to inadvertence on the part of her lawyers, it is clear that the applicant has no arguable appeal at all. Granting her the leave she seeks will therefore be an exercise in futility which will only serve to waste valuable court time. In the circumstances I find no merit in this application and I accordingly dismiss it with costs to the 1st respondent.

DATED and delivered this 19th day of May, 2015.

D.K.MARAGA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR