



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI 337 OF 2013 (UR 248/2013)

BETWEEN

GITHARA CHUCHU & 473 OTHERS APPLICANTS

AND

KENYA PLANTERS CO-OPERATIVE UNION LIMITED..... RESPONDENT

(Being an application for the dismissal of the Notice of Appeal dated the 22nd February 2006, and the Notice of Appeal dated 24th July 2006, pursuant to the order of this Honourable Court in Civil Application No. Nai 109 of 2008 dated 20th September 2013, extending time within which the Respondent must file and serve the record of appeal against the Orders of the High Court of Kenya at Nairobi (J. B. Ojwang, J) dated 17th February and 12th day of July, 2006

in

HIGH COURT CIVIL CASE NO. 3619 OF 1983)

RULING

1. On 18th December 2013, the applicants presented the Notice of Motion dated 17th December 2013 seeking orders for dismissal of the respondent' notices of appeal dated 22nd February 2006 and 24th July 2006 and seeking further orders to set aside orders granted by this Court on 20th September 2013 granting a stay of execution of the orders of the High Court given on 12th July 2006.
2. The applicants Notice of Motion dated 17th December 2013, certificate of urgency and affidavit supporting certificate of urgency were placed before me on 19th December 2013 for direction under Rule 47 of the Rules of this Court. I refused to certify the application as urgent. The applicants thereafter applied for an inter parties hearing under Rule 47(5) of the Rules of this Court.
3. On 18th February 2014, Mr. Frank Nabutete learned counsel for the applicants and Mr. Q. Ochieng learned counsel for the respondent appeared before me for the inter parties hearing on the question of urgency.

4. Mr. Nabutete submitted that the notice of motion application dated 17/12/2013, being an application for dismissal of the Notice of Appeal dated 22/2/2006 and 24/7/2007 by the Respondent, should be certified as urgent in view of the fact that the dispute has been the subject matter of litigation for over thirty years and that the objective of expeditious disposal of cases as set out under S. 3A and 3B Appellate Jurisdiction Act Cap 9, Laws of Kenya has been negated to the detriment of the applicants.
5. Mr. Ochieng opposed the application submitting that age of a dispute is not a special circumstance to warrant it being certified as urgent. He argued that for the application to be certified as urgent the applicant had to show more than just the age of the case as a determining factor. Mr. Ochieng stated that the delay in filing the appeal is occasioned by the delay in receipt of the proceedings from the High Court.
6. I have considered the submissions by learned counsel. It is regrettable that a matter should take so many years in the courts before resolution. Whereas that is a relevant consideration, I am not by that factor alone persuaded that the applicants' application should jump the queue. I accordingly refuse to certify the application as urgent and direct that the same be fixed for hearing in the registry in the normal cause.

Dated and delivered at Nairobi this 14th day of March, 2014.

S. GATEMBU KAIRU

.....

JUDGE OF APPEAL

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

REGISTRAR

ewm