



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: TUNOI, O’KUBASU, JJ.A & ONYANGO OTIENO, AG. J.A)

CIVIL APPLICATION NO. NAI. 306 OF 2003

1. DOROTHY NDERI

2. EDWARD NDERI MARINEAPPLICANTS

AND

K.N. NG’ANG’A & Co. ADVOCATES.....RESPONDENT

(Appeal from the Ruling of the High Court of Kenya at Nairobi (Ondeyo, J.) dated 6.11.2003

in

H.C.C.C. NO. 494 OF 2001)

RULING OF THE COURT

This is an application under rule 5(2)(b) of the Court of Appeal Rules for orders, inter alia,;

1. That this Honourable Court be pleased to restrain the respondent, its agents and/or servants by way of an injunction from alienating, selling, transferring and/or interfering with property known as L.R. No. 209/7484 Nairobi pending the hearing and determination of the intended appeal.

2. That the respondent be condemned to pay the costs herein.

The genesis of the application presented before us is the legal fees emanating from the Probate and Administration Cause No. 212 of 1996. Though the total fees payable by the applicants to the respondent had been agreed upon and consent orders entered into on 5th May, 2003, as to how the applicants would liquidate them the applicants have subsequently mounted a spirited effort to either set aside the consent order or to partially vary the orders which had been freely entered into in the superior court. The record shows that several applications to stall payment have been lodged in one way or the other in the superior court.

This application being one of them was lodged in Court on 12th November, 2003. However, on 14th November, 2003, the applicants entered into another Agreement with the respondent agreeing, inter alia, to: -

1. Postpone the auction date of L.R. Many ani 209/7484, Nairobi on the following conditions: -

- i) The Administrators (applicants) pay Shs. 2,500,000/= being part payment of the decretal amount.*
- ii) To pay Shs.280,000/= in respect of auctioneer's charges.*
- iii) The balance of shs.2,500,000/= to be paid on or before 27th November, 2003.*

In view of this compromise, can it be said in earnest that the applicants have shown, prima facie, that they have serious questions of law for submissions to the Court on the hearing of their intended appeal? We do not think so. Further, having listened to and considered the applicants' legal or seemingly legal contentions we feel constrained to conclude that their intended appeal will, indeed, be frivolous.

In the circumstances, this application is without merit and is ordered dismissed with costs. As this application has been dismissed, past interim orders granted by this Court are set aside.

Dated and delivered at Nairobi this 12th day of March, 2004.

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O'KUBASU

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

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AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR