Omwoyo v Kemoni & another (Application 4 of 2017)
[2018] KESC 44 (KLR) (11 May 2018) (Ruling)

Geoffrey Mangera Omwoyo v Yobencia Kemunto Kemoni & another [2018] eKLR

Neutral citation: [2018] KESC 44 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

APPLICATION 4 OF 2017

PM MWILU, DCJ & V-P, JB OJWANG, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

MAY 11, 2018

BETWEEN

GEOFFREY MANGERA OMWOYO ..... APPLICANT

AND

YOBENCIA KEMUNTO KEMONI ..... 1ST RESPONDENT

MARGARET NYAITONDI GWOMA ..... 2ND RESPONDENT

(Being an application for leave/certificate to appeal to the Supreme Court that a point of general public importance is involved and it requires an advisory opinion from the judgment of the Court of Appeal at Kisumu (Maraga (as he then was) Musinga and Gatembu JJA) in Civil Appeal No.20 of 2014)

Supreme court declines to grant leave to file appeal on ground that the issues in the application were not of general public importance

The application was for leave to file an appeal to the Supreme Court on the matter being of general public importance. The application was dismissed.

Reported by Felix Okiri

Jurisdiction *- appellate jurisdiction-appellate jurisdiction of the Supreme Court- leave to institute appeal – grounds for leave – whether the Supreme Court could grant leave to appeal on ground that the appeal raised points of law of general public importance.*

Brief facts

The case was an application for leave to file an appeal against the judgment of the Court of Appeal in Kisumu dated March 4, 2016. The Applicant contended that there were four points of law of general public importance that required intervention of the Supreme Court.

The Respondents opposed the application on grounds that all issues relating to the claim had been fully resolved by the High Court and the Court of Appeal and there was nothing outstanding that required the

further input of the Supreme Court; that the matter did not raise cardinal issues of law which required the Supreme Court to address; the application for leave/ certification had already been competently heard and determined; and that the proposed/intended appeal did not involve matters of general public importance and the application was merely meant to prolong litigation and delay the finalization of the matter.

Issues

i. Whether the Supreme Court could grant leave to appeal on ground that the appeal raised points of law of general public importance.

Held

1. The application did not satisfy the principles laid down in the case of Hermanus *Phillipus Steyn v Giovanni Gnecchi- Ruscone* Supreme Court application No. 4 of 2012 for certifying a matter as one of general public importance.
2. The Applicant had not demonstrated how the Court of Appeal in Kisumu Civil Application No.24 of 2016 erred in its decision declining to certify the matter as that of general public importance to warrant the review by the Supreme Court.

Application dismissed.

Orders

i. *The Notice of Motion Application dated February 24, 2017 was dismissed with costs.*

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

(1) Upon perusing the Notice of Motion application dated 16th February, 2017 and filed on 24th February, 2017, for leave to be granted to the applicant to file an appeal to this Honourable court against the judgment of the Court of Appeal in Kisumu dated 4th March 2016; and

(2) Upon reading the grounds on the face of the application, the applicant's affidavit sworn on 16th February, 2017, the 2nd respondent's replying affidavit sworn on her own behalf and on behalf of the 1st respondent and filed on 4th April 2017; and

(3) Upon considering the written submissions on record for the applicant and the list of authorities wherein, the applicant contends that there are four points of law of general public importance that require intervention of the Supreme Court to wit; who is responsible for the creation of titles of land and what the legal effect of such creation are; what rights remain with the transferor of land after transfer of a parcel of land; what procedure is to be followed in nullification and cancellation of title and what remedies are available to the parties in a transaction of land. He argues that if parties can be free to question the validity of actions by vendors especially when they are long gone then this will lead to a multiplicity of suits especially with the diminishing resource of land and questioning the validity of title would lead to insecurity of title and title deeds as valid legal documents; and

(4) Upon considering the written submissions on record for the respondents and the list of authorities wherein, the respondents oppose the application on grounds that all issues relating to the claim have been fully resolved by the High Court and the Court of Appeal and there is nothing outstanding that requires the further input of the Supreme Court; that the matter does not raise cardinal issues of law to

require the Supreme Court to address the same; the application for leave/ certification has already been competently heard and determined; the proposed/intended appeal does not involve matters of general public importance and the application is merely meant to prolong litigation and delay the finalization of the matter;

(5) And having considered the application, by a unanimous decision of this Bench, we make the following Orders under Section 23(2)(b) of the Supreme Court Act, and Rule 24(5) of the Supreme Court Rules, 2012(as amended).

Orders	Reasons
1. The Notice of Motion Application dated 24th February, 2017 is hereby dismissed with costs.	1. The application does not satisfy the principles laid down in the case of Hermanus Phillipus Steyn v Giovanni Gnecchi- Ruscone Supreme Court application No. 4 of 2012 for certifying a matter as one of general public importance. 2. The applicant has not demonstrated how the Court of Appeal in Kisumu Civil Application No.24 of 2016 (D.K. Musinga, S. Gatembu Kairu & A.K. Murgor JJA) dated 16th December 2016 erred in its decision declining to certify the matter as that of general public importance to warrant the review by the Supreme Court.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY 2018.

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P.M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

N. S. NJOKI

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA