

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu, DCJ & V-P, Ibrahim, Wanjala, Njoki and Lenaola, SCJJ)

APPLICATION NO.24 OF 2019

—BETWEEN—

**LANGATA DEVELOPMENT CO LTD APPLICANT/INTENDED
APPELLANT**

—AND—

MARGARET ESTHER DAMES & JOHN ANDREW DAMES

O/B MARY WAIRIMU DAMES RESPONDENTS

*(An Application for Review of the Ruling on Certification of Leave to Appeal
Judgement & Order of Court of Appeal at Nairobi in **Civil Appeal No 283
of 2016 (Ouko (P), Kiage and Murgor JJA)**)*

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 31st July 2019 by Langáta Development Company Limited pursuant to Articles 163(4)(b), 159, and 40 of the Constitution of Kenya, 2010. Section 15 of the Supreme Court Act, 2011, Regulation 24. 26 and 53 of the Supreme Court Regulations, 2012, where they seek ***leave to have the Notice of Appeal lodged be deemed to have been lodged within time***, as well as, ***certification as a matter of general public importance*** in respect of an anticipated appeal arising from the judgment of the Court of Appeal delivered on the 26th of February 2019; and

- [2] **UPON** reading the Affidavit of Mr. Eliud A Kariuki sworn on the 31st of July 2019, as well as a further Affidavit dated 13th of March 2020, in support of their application; and
- [3] **UPON** perusing the grounds adduced by the Applicants as well as their submissions dated 13th March 2019, filed on the same day and further submission filed on the 4th of June 2020, in which they urge that their matter raises issues of general public importance in line with the criteria laid down in the Case of *Hermanus Phillipus Steyn vs Giovanni Gnechi Ruscone, Supreme Court Application No 4 of 2012*; that Rule 53 of the Supreme Court Rules gives this Court the jurisdiction to extend time, and that Article 163(5) of the Constitution of Kenya; and that Section 24(2) of the Supreme Court Rules do give this court jurisdiction to review a ruling of the Court of Appeal on the issue of certification.
- [4] **UPON** considering the Respondent's Grounds of Opposition and their Replying Affidavits filed on the 3rd of March 2019 together with written submissions, where they argue that the Supreme Court does not have jurisdiction to review the decision of the Court of Appeal; that there is no Notice of Appeal on record and in the absence of one, the Application before the Court is incompetent, incurably defective and ought to be struck out; that the issues in the intended appeal do not transcend the private interest of the Applicant who allegedly illegally grabbed the Respondents land, and that third parties are at liberty to purchase their respective plots from the estate of the Respondent on a willing seller-willing buyer basis; and
- [5] **HAVING** considered the Application, and noting that the Applicant has not satisfactorily explained the *inordinate* delay to warrant exercise of this Court's discretion to enlarge time, we do *decline* to allow the application for leave to file a Notice of Appeal.

[6] Having reached this conclusion then, the application for certification has no legs to stand on and we do not find it necessary to consider it.

[7] For reasons aforesaid, we now make the following orders:

- i. *The Notice of Motion dated 31st July 2019 is disallowed.*
- ii. *The Applicant shall bear the costs of the application.*

DATED and DELIVERED at NAIROBI this 4th day of September, 2020

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
M. K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
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