Karanja v Mugi (Civil Application E009 of 2024)
[2025] KECA 1792 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KECA 1792 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPLICATION E009 OF 2024

MA WARSAME, JM MATIVO & GV ODUNGA, JJA

OCTOBER 31, 2025

BETWEEN

SAMUEL PETER GITAU KARANJA ..... APPLICANT

AND

HANNA NJERI MUGI ..... RESPONDENT

(Being an application for certification and leave to appeal to the Supreme Court from the Judgment of the Court of Appeal at Nakuru (F. Ochieng, L. Achode and W. Korir JJA) dated 22nd September 2023 in Civil Appeal No. 200 of 2018 in an appeal against the Judgment of the High Court of Kenya at Nakuru (J.N. Mulwa, J) delivered on the 15th May 2018 in HCCC No. 101 of 2002)

RULING

1. On 22nd September 2023, this Court (Ochieng, Achode & Korir, JJA) delivered a judgement in Nakuru Civil Appeal No. 200 of 2018. The appeal was lodged by the applicant, Samuel Peter Gitau Karanja, against the judgment and decree of the High Court at Nakuru (J. N. Mulwa, J.) delivered on 15th May 2018 in HCCC No. 101 of 2002. The High Court dismissed the applicant's case against Joseph Kimuhu Githengere (the deceased), who passed away during the trial. In the suit, the applicant sought to be declared as the owner of the property known as Dundori/Lanet/5/17"A" (also referred to as Plot 71). Following the death of the deceased, the respondent, Hannah Njeri Mugi, his wife and the administratrix of the deceased's estate took over the conduct of the proceedings on behalf of the estate.

2. Upon hearing the matter, the trial court found in favour of the respondent noting: that the suit property was allotted to Michael Waweru who then sold it to the deceased; and that the deceased could not be declared a trespasser, having acquired the plot as a bona fide purchase for value from Michael Waweru who was the original allottee of the plot, and therefore the legal owner of the said plot.

3. The appellant being dissatisfied with the judgment of the trial court lodged the appeal to this Court raising several grounds of appeal

4. In the Judgement, this Court found: that the original allottee of the suit property was one S. M. Gichua; that there was an agreement between Gichua and Michael Waweru regarding the exchange of their plots in their respective companies which transaction took place way before the 1981 probe committee was put in place; that there was cogent evidence that plot No. 71 was balloted and allocated in 1974 and was passed to Michael Waweru in 1977; that there was no evidence to support the claim by the appellant that the probe committee was vested with the power to invalidate balloting of plots and dispose of them hence the appellant's assertion that it was through that means that he acquired the said plot rested on quick sand; that from the evidence on record and the exhibits, it was unlikely that the appellant was the bona fide allottee of the suit property since he could not have secured that allotment when the bona fide interest of the S. M. Gichua which was passed on to Michael Waweru had not been legally extinguished; that it was that interest that Michael Waweru subsequently transmitted to the deceased husband of the respondent; and that it was also evident that a subsequent probe committee established in 1987 confirmed the lineage of the respondent's ownership of the plot.

5. The Court therefore found that the learned Judge properly rendered herself on the evidence and arrived at a conclusion backed by evidence that Michael Waweru who sold the plot to the deceased, Joseph Kimuhu Githengere, had bona fide interest in the suit property. Having arrived at that conclusion, and there being no challenge as to the sale agreement between Michael Waweru and the deceased, the Court held that the respondent had a legally recognizable right to the suit property and as the deceased had acquired beneficial interest over plot No. 71. The appellant's claim of trespass by the respondent was found to be without merit. The appeal was thus dismissed with costs to the respondent.

6. The applicant is aggrieved by the said decision and intends to appeal to the Supreme Court. It accordingly lodged an application dated 20th December 2023 in this Court, in which it seeks "that the matter should be certified to be of great public interest as it relates to the interpretation and application of pertinent constitutional provision being Article 162(2) and the demarcation of the jurisdiction of the Environment and Lands Court"; that "it shall be in the interests of justice for the Supreme Court to hear and determine the proposed appeal herein since a substantial miscarriage of justice may occur to the Appellant unless the appeal is heard"; and that "this Honourable Court be pleased to grant the Applicant/intended Appellant leave to file the Notice of Appeal out of time". It was also sought that the costs of the application abide the outcome of the intended appeal.

7. The application was supported by an affidavit sworn by the applicant on 20th December 2023 in which it was averred: that this matter is of great public interest as it relates to the interpretation and application of a pertinent constitutional provision, being Article 162(2), and the demarcation of the jurisdiction of the Environment and Land Court; that matters of land ownership are of great public interest and affect the entire population and hence it is important that the Supreme Court of Kenya gets a chance to demarcate the jurisdiction of the Environment and Land Court as well as interpret the rights of public interest litigators to access court in light of Article 48 of *the Constitution*; and that he was the first allottee in 1982 after the findings and decision of the 1981 probe committee but despite the strong evidence in support of his case, the trial Court found in favour of the respondent.

8. The applicant submits: that while the Trial Court was the High Court, it was acting in purview of the ELC Court by dint of the Practice Directions in the Gazette Notice No. 5178 of July 2014; that the trial court did not have the mandate/jurisdiction to determine the scope of the Probe Committee's role; that he has demonstrated that both the trial court and this Court erred by upholding the trial court's judgment that the probe committee acted ultra vires yet it was not sitting as the ELC Court

thus the need for the Supreme Court's interpretation of Article 162(2) of *the Constitution*; that by descending into the conflict, the trial court failed to conclusively determine the rights of the parties as presented and delved into the realm of speculation, thus the verdict reached was a serious miscarriage of justice which was unfortunately overlooked by this Court; and that the decision by this Court will set a bad precedent specifically with regard to the mandate of the ELC Court, hence the need for the interpretation of Article 162(2) of *the Constitution* on the determination of the jurisdiction of the Environment and Land Court.

9. On behalf of the respondent, it was submitted: that the issue of jurisdiction was never raised either before the trial court or before this Court in order to warrant consideration at this stage; that the applicant is attempting to relitigate the appeal by introducing fresh grounds; that the dispute does not raise any points that would amount to public interest but rather it is a dispute between two people; that the application is merely motivated by the fact that the applicant is not satisfied with the decision of this Court; that the mere mention of Article 162(2) of *the Constitution* is not a basis to move to the Supreme Court; that there is nothing breath- taking about the said Article that this Court has not dealt with in its appellate jurisdiction; and that the application does not meet the set threshold, lacks merit and should be dismissed with costs.

10. In support of her submissions, the respondent cited the case of Karanja v Ndirangu & Another [2021] KECA 57 for the proposition that litigation must come to an end.

11. The application was heard on this Court's virtual platform on 8th July 2025 when learned counsel Mr. Kahiga appeared for the applicant, while learned counsel, Ms Wangari, appeared for the respondent. Learned counsel relied on their written submissions which they briefly highlighted. We have considered the same.

12. The application is brought pursuant to the provisions of Article 163(4) of *the Constitution* which provides that appeals shall lie from the Court of Appeal to the Supreme Court as of right in any case involving the interpretation or application of *the Constitution*; and in any other case where the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved.

13. The issue for determination in this application therefore is whether the intended appeal to the Supreme Court raises a matter of general public importance. The Supreme Court set the parameters/principles governing the determination of a matter as one of general public importance in the case of Hermanus Phillipus Steyn v Giovanni Gnecchi-Ruscone (2013) eKLR as follows:

    i. "for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is on the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;

    ii. where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;

    iii. such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;

    iv. where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;

v. mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163 (4)(b) of *the Constitution*;

vi. the intending applicant has an obligation to identify and concisely set out the specific elements of "general public importance" which he or she attributes to the matter for which certification is sought;

vii. determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court."

14. The application as framed contends that the applicant's case disclosed a matter of "great public interest". Great public interest is not one of the grounds for certification of a matter and grant of leave to appeal to the Supreme Court. What an applicant is required to prove is that the case involves a matter of general public importance. That said, it is clear that the only issue of law that the applicant intends to take to the Supreme Court is an issue regarding the jurisdiction of the Environment and Land Court. From the application and submissions, it is not clear to us what is the exact point of jurisdiction the applicant intends to argue. A perusal of the judgement of the trial court, the grounds of appeal to this Court and the judgement of the Court does not reveal that jurisdiction of the Environment and Land Court was in issue right through. It is clear that the applicant intends to take up that issue for the first time on appeal contrary to the guidelines set out in Hermanus Phillipus Steyn v Giovanni Gnecchi-Ruscone (supra).

15. It is clear to us that the dispute was purely a land dispute between the applicant and the deceased. We are not satisfied that the determination of the issues in contention transcend the circumstances of this case, and has a significant bearing on public interest. It was purely a question of who, between the applicant and deceased, was rightfully entitled to the suit property. The public has no interest in that determination. In our view, what the applicant is trying to do is to have a third bite at the cherry by making a worthless journey to the doors of the Supreme Court which we reject.

16. The Supreme Court's guidance is that matters of general public importance are those that inter alia, raise a substantial point of law, or occasion a state of uncertainty in the law or arise from contradictory precedents, or will affect a considerable number of persons in general, or as litigants. In arriving at our determination, we must be careful not to wade into the merits of the intended appeal to the Supreme Court as was appreciated by this Court in Mwambeja Ranching Company Ltd & another v Kenya National Capital Corporation [2023] KECA 660 (KLR) where it was held that:

> "This Court has the duty to ensure that the case does not involve a mere question of law, but a substantial question of law. Hence, an applicant must satisfy this test to assume jurisdiction under Article 164 (4) of *the Constitution*. (See Supreme Court of India in Chunila v Mehta & Sons Ltd v Century SPG & Manufacturing Co Ltd 1962 AIR 1314, 1962 SCR Supl. (3) 549).
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> 71. To qualify as a question of law arising from the case, there must have been a foundation laid in the pleadings, the question should emerge from the findings of facts arrived at by the court so as to make it necessary to determine that question of law and arrive at a just and proper decision. If the question is settled by the highest court, or if the general principles to be applied in determining the question are well settled, and there remains the question as to

the application of those principles, or that the plea raised is palpably absurd, the question ought not to be viewed as a substantial question of law."

17. The other issues identified by the applicant are factual issues and, as held in Hermanus Phillipus Steyn v Giovanni Gnecchi-Ruscone (supra), determinations of facts in contest between parties are not, by themselves, a basis for granting certification for an appeal to the Supreme Court.

18. In the premises, we find no merit in this application which we hereby dismiss with costs to the respondent.

19. It is so ordered.

DATED AND DELIVERED AT NAKURU THIS 31ST DAY OCTOBER, OF 2025

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

G. V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR