

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: W. KARANJA, GATEMBU & ACHODE, JJ.A.)**

**CIVIL APPLICATION NO. NAI E025 OF 2025**

**BETWEEN**

**ERNEST OMWENGA (SUED ON HIS OWN BEHALF AS  
CHAIRMAN OF AMANI SELF HELP GROUP.....1<sup>ST</sup> APPLICANT**  
**PETER KINYUA.....2<sup>ND</sup> APPLICANT**  
**ABEL OYARO.....3<sup>RD</sup>**  
**APPLICANT PROTAS MANDELA.....**  
**.....4<sup>TH</sup> APPLICANT JOHN**  
**NGIGE.....5<sup>TH</sup> APPLICANT**  
**CHARLES AKUNGA.....6<sup>TH</sup>**  
**APPLICANT SAMUEL MOTURI.....**  
**.....7<sup>TH</sup> APPLICANT EVANS**  
**OBIERO.....8<sup>TH</sup> APPLICANT**  
**FRANCIS NDIRANGU.....9<sup>TH</sup>**  
**APPLICANT PETER**  
**KIOKO.....10<sup>TH</sup> APPLICANT**  
**STEHEN KIBUNJA.....11<sup>TH</sup>**  
**APPLICANT MARY**  
**WAMBUI.....12<sup>TH</sup> APPLICANT**  
**LUCY NJERI.....13<sup>TH</sup>**  
**APPLICANT**

**AND**

**CHARLES MUNENE GATIMU.....1<sup>ST</sup> RESPONDENT**  
**KAREGI CATHERINE KAMANJA.....2<sup>ND</sup>**  
**RESPONDENT**

*(Being an application for leave to appeal to the supreme court against  
the judgment and order of this Court (**Asike-Makhandia, Murgor &  
Ole Kantai, JJ.A.**) dated 20<sup>th</sup> December, 2024*

*in*

***Civil Appeal No. E892 of 2023)***

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**RULING OF THE COURT**

1. By a plaint filed at the Environment and Land Court (ELC) in Nairobi by Charles Munene Gatimu and Karegi Catherine Kamanja

(the 1<sup>st</sup> and 2<sup>nd</sup> respondents) against the 13 applicants led by Ernest Omwenga (Chairman of Amani Self Help Group), the respondents claimed that they were the registered owners of a parcel of land known

as L.R. No. 209/11970 situate in Dandora in Nairobi (the suit land); that the applicants with others unknown to the respondents had invaded and occupied the suit land in 2007 and 2008 after breaking a barbed wire perimeter fence and deprived the respondents of the use of the suit land; that all efforts to have the appellants vacate the land had been in vain and the respondents prayed that the court orders the appellants to vacate the suit land “...grant vacant possession to the plaintiffs and in default eviction to issue ...” There was also a prayer for mesne profits from January, 2008 and costs of the suit.

2. The suit was heard and by a judgment dated 21<sup>st</sup> September 2023, the ELC (Oguttu Mboya, J.) ordered that the applicants handover vacant possession of the suit property to the respondents within 120 days from the date of judgment in default eviction to issue; an order of permanent injunction was issued to restrain the applicants from dealing in any way with the suit land; the prayer for mesne profits was declined; the counterclaim was dismissed and costs were awarded to the respondents.
3. Aggrieved by the said decision, the applicants appealed to this Court vide **Nairobi Civil Appeal No. E892 of 2023** essentially faulting the trial court by stating that the learned Judge erred in law and fact: when he gave judgment in favour of the respondents; when the 2<sup>nd</sup> respondent had not lodged a witness

statement; that the 2<sup>nd</sup>

respondent should have attended Court and testified; for not making a finding on how title to the suit land had been acquired by the respondents; that the Judge erred by not issuing notices to show cause for court attendance to some witnesses who would have showed how the suit land was acquired; that there was inconsistency between the Letter of Allotment which had 3 names and the title which had 2 names; that the respondents had not proved change of user of the suit land from industrial use to residential; and, finally, that the Judge acted unfairly towards the appellants.

4. By a judgment dated 20<sup>th</sup> December 2024, this Court (Asike-Makhandia, Murgor & Kantai, JJ.A.) dismissed the applicants appeal for being devoid of merit.
5. The applicants are now before this Court, this time with an application dated 15<sup>th</sup> January 2025 brought under **Articles 159(1), 2(a), (d), (e) and 163(4)(b) and 5 of the Constitution, section 3(a), 15, 16 and 21 of the Supreme Court Rules, Section 3B of the Appellate Jurisdiction Act and Rules 1(2), 40, 41, 42, 43 and 47 of the Court of Appeal Rules, 2022**, beseeching this Court to certify that his intended appeal involves a matter of general public importance and grant him leave to appeal to the Supreme Court.

6. The grounds in support of the application are that land issues are highly sensitive, emotive and sentimental matters of public

importance, and parties should be allowed to ventilate their grievances before the Apex Court. They also claim that the impugned judgment did not address the due process followed by the respondents in acquiring the certificate of Title for L.R No. 209/1970 and that both the applicants and respondents have competing interests and claims to public land which transited to L.R. No. 209/11970.

7. The 1<sup>st</sup> respondent opposed the application through his replying affidavit dated 3<sup>rd</sup> February 2025. The gist of the affidavit is that the application lacks merit; that the same does not raise any matters of public importance for hearing at the Supreme Court; that the issues raise no gap or grey areas for hearing by the Supreme Court; that the application does not meet the test for certification; and that the impugned judgment has not created inconsistencies in the law.
8. During the virtual hearing of the application on 10<sup>th</sup> March 2025, there was no appearance for the applicants, despite service of the hearing notice on their counsel on record. They had, nonetheless, filed submissions dated 24<sup>th</sup> February 2024, which the Court has considered. Learned counsel, Mr. Maosa appeared for the 1<sup>st</sup> respondent while Mr. Were appeared for the 2<sup>nd</sup> respondent. Mr. Were had not filed any submissions and relied on the 1<sup>st</sup> respondent's submissions. Both counsel adopted the 1<sup>st</sup>

respondent's submissions

and urged the Court to dismiss the application as the matter did not qualify to be escalated to the Supreme Court.

- 9.** In their written submissions dated 24<sup>th</sup> February 2025, the applicants submitted that it is incumbent for the Court to determine whether due process was followed in the acquisition of the suit land, which was public land, wherein two letters of allotment were issued by the Commissioner of Lands to the applicants and the respondents. Reliance was placed on

**Kenfreight (E.A) Limited -vs- Benson K.**

**Nguti [2019] eKLR** on the Supreme Court findings in matters relating

to general public interest.

- 10.** We were urged to allow the application.

- 11.** The 1<sup>st</sup> respondent opposed the motion through submissions by his counsel dated 6<sup>th</sup> March 2025. Learned counsel asserted that the application does not meet the threshold for certification for the reason that no issues are framed by the applicants for determination by the Supreme Court. It was, further submitted that the cases of **Hermanus Phillipus Steyn Stein -vs-**

**Giovanni Gnecchi - Ruscone**

**[2013] eKLR** and **Malcolm Bell -vs Daniel Toroitich Moi & Another**

**[2013] eKLR** discussed in detail and established the principles of

what is to be considered as matters of general public importance.  
It is contended that the applicants have failed to meet the  
threshold laid

down by the Court when it comes to matters of general public importance.

12. We are urged to dismiss the application with costs.
13. We have considered the application, the submissions by both parties and the case law cited. The sole issue for determination is whether the applicants have demonstrated that their case involves a matter of general public importance to merit certification by this Court to appeal to the Supreme Court under **Article 163(4)(b)** of the **Constitution**.
14. Under the said **Article**, appeals lie from the Court of Appeal to the Supreme Court under the following circumstances:
  - (a) as of right in any case involving the interpretation or application of the Constitution; and
  - (b) in any other case in which the Supreme Court or the Court of Appeal certifies that a matter of general public importance is involved.
- 15.** The Supreme Court and this Court have consistently held that in applications for certification under **Article 163(4)(b)** of the **Constitution**, only exceptional cases, which raise cardinal issues of law or of jurisprudential moment will deserve the attention of the Supreme Court. (See **Peter Oduor Ngoge -vs- Hon. Francis Ole**

**Kaparo & 5 Others, SC Petition No. 2 of 2012 [2012] eKLR**  
and

**Koinange Investment and Development Company Limited - vs- Ian**

**Kahiu Ngethe & 3 Others (Being sued as the personal representatives of the Estate of Robert Nelson Ngethe (Deceased))**

**[2019] eKLR.**

16. The rationale for the above approach is that the Supreme Court was never intended to serve as an additional tier for all and sundry appeals from this Court. Conversely, the requirement for certification was intended to serve as a filtering process to ensure that only appeals with elements of general public importance engaged the Supreme Court, whose role may not be relegated to that of correcting errors in the application of settled law, even where they are shown to exist.

**17.** Undeniably, in applications of this nature, the onus to satisfy the Court that such matter or matters of general public importance exists rests on the applicant. The Constitution does not define “a matter of general public importance” nor does the **Supreme Court Act** or **rules** made thereunder. In our view, the omission to define the said phrase may have been deliberate considering that matters of general public importance may be limited in time and scope depending on varying circumstances over a period of time. However, in **Hermanus**

**Phillipus Steyn -vs- Giovanni Gneccchi-Rusccone [2013] eKLR**

the

Supreme Court stated:

***“Before this Court ‘a matter of general public importance’ warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: it impacts and consequences are substantial, broad based, transcending the litigation - interests of the parties, and bearing upon the public interest.”***

**18.** Public interest was defined by this Court in **Kenya Civil Aviation**

**Authority -vs- African Commuter Service [2015] eKLR**, as follows:

***“Public interest, although not susceptible of precise definition, has certain characteristics which are inherent in the term itself. As stated in R (Corner House Research) vs. Director of SFO [2008] 4 All ER 927 “it must mean something of importance to the public as a whole rather than just to a private individual.” The Black’s Law Dictionary defines public interest as: “The general welfare of the public that warrants recognition and protection, something in which the public as a whole has stakes, especially that justifies Government regulation.”***

**19.** The question is whether the applicants have satisfied this Court that their appeal is one of general public importance to justify certification to appeal to the Apex Court. In **Town Council of Awendo -vs- Nelson**

**Oduor Onyango & 13 Others [2015] eKLR** the Supreme Court gave

guidance in dealing with **Article 163(4)(b)** as follows:-

***“i) for an intended appeal to be certified as one involving a “matter of general public importance,” the intending appellant is to satisfy the Court that the issue to be canvassed on appeal is one 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 is to 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 is/are to 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 and of themselves, a basis for granting certification for an appeal before the Supreme Court;**
- viii) issues of law of repeated occurrence in the general course of litigation may, in proper context, become 'matters of general public importance', so as to be a basis of certification for appeal to the Supreme Court;**
- ix) questions of law that are, as a fact, or as appears from the very nature of things, set to affect considerable numbers of persons in general, or as litigants, may become 'matters of general public importance', justifying certification for final appeal in the Supreme Court;**
- x) questions of law that are destined to continually engage the workings of the judicial organs, may become 'matters of general public importance', justifying certification for final appeal in the Supreme Court;**

***xi) questions with a bearing on the proper conduct of the administration of justice, may become 'matters of general public importance,' justifying certification for final appeal in the Supreme Court."***

20. We have carefully analyzed the impugned judgment, the grounds urged by the applicants in their application, the rival affidavits and the submissions. As rightly pointed out by learned counsel for the respondent, the applicants have not framed any substantive issues to be answered by the Apex Court. What we discern is that the applicants were dissatisfied with the decision of this Court and they want to challenge the merits of the entire decision before the Supreme Court.

**21.** The jurisdiction of the Supreme Court under **Article 163(4)(b)** cannot be invoked merely for the determination of contested facts between the parties. It is not a mechanism to re-arguing the appeal. (See **Malcolm Bell -vs- Daniel Toroitich Arap Moi & Another, SC App. No. 1 of 2013**).

22. We are not satisfied that there is any cardinal issue of law or an issue of great jurisprudential moment at stake here. On the contrary, we find that there is no confusion created by this Court in the said decision. The Court did not misinterpret or contradict previous decisions of the Court while determining the land dispute before it. We find nothing to suggest that the application before us raises any questions that are novel.

**23.** As was underscored by the Supreme Court in **Peter Oduor**

**Ngoge -**

**vs- Hon. Francis Ole Kaparo & 5 Others Supreme Court  
Petition**

**No. 2 of 2012 [2012] eKLR**, before invoking its jurisdiction, the guiding principle to be borne in mind is that the chain of courts in the constitutional set-up, running up to the Court of Appeal, have the professional competence and proper safety designs to resolve all matters turning on the technical complexity of the law.

24. In conclusion, we find that the applicants have not discharged the burden of satisfying that their intended appeal to the Supreme Court raises matters of general public importance within the meaning of **Article 163(4)(b)** of the **Constitution**. Accordingly, the applicants' notice of motion dated 15<sup>th</sup> January 2025 is hereby dismissed with costs to the 1<sup>st</sup> respondent.

**Dated and delivered at Nairobi this 21<sup>st</sup> day of November 2025.**

**W. KARANJA**

.....  
**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb, C.Arb.**

.....  
**JUDGE OF APPEAL**

**L. ACHODE**

.....  
**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY**

**REGISTRAR.**