



REPUBLIC OF KENYA



**Nthiiri & 16 others v Muchungu & 12 others (Civil Application
E152 of 2025) [2025] KECA 2121 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2121 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E152 OF 2025
A ALI-ARONI, JA
DECEMBER 1, 2025**

BETWEEN

HERBERT NTHIIRI & 16 OTHERS APPLICANT

AND

NTHUMBI MUCHUNGU & 12 OTHERS RESPONDENT

*(Being an application to seek leave to appeal to the Supreme Court against the
Judgment of the Court of Appeal at Nyeri (W. Karanja, J. Mohammed, L.
Kimaru, JJA.) delivered on 21st March, 2025 in Civil Appeal No. 210 of 2019)*

RULING

1. Before the Court is an application by way of a notice of motion dated 15th October 2025, brought under Articles 159 (2)(d) of *the Constitution*, sections 3A and 3B of the *Appellate Jurisdiction Act*, rules 1 (2), 4, 42 and 46 of the Court of Appeal Rules, seeking leave to file and serve an application for certification to appeal to the Supreme Court out of time, and upon grant of leave, the previous application for certification dated 5th June 2025 be deemed duly and properly filed.
2. The application is predicated upon the grounds on the face of the application, which have been rehashed in the supporting affidavit of Njiru Kanuthu, sworn on 15th October 2025, with the authority of the other applicants. Where he stated that the applicants appealed against the Judgment of the Environment and Land Court at Embu, in ELC Case No. 224 of 2015, and this Court, in its judgment, partially overturned the trial court's findings.
3. Further, he deposed that the applicants are dissatisfied with this Court's judgment and are desirous of preferring the matter to the Supreme Court of Kenya, and will be seeking for the Court address significant constitutional and public interest issues related to land adjudication, appellate jurisdiction in pre-constitutional land disputes, and the interpretation of articles 27, 40, and 50 of *the Constitution*.



4. It was acknowledged that under rule 42(b) of the Court of Appeal Rules, 2022, an application for certification to appeal to the Supreme Court must be filed within fourteen (14) days from the judgment date, which fell on 4th April 2025; the applicants filed a notice of appeal on 2nd April 2025, in compliance with rule 31 of the Supreme Court Rules, indicating their intention to appeal within the required timeline, however, after the judgment was delivered, the applicants faced challenges in tracing and communicating with each other, especially those in remote areas with limited communication and in the process, it was found that some applicants had passed away, requiring the identification and contact of their legal representatives, which caused unavoidable delays.
5. Due to the circumstances, it is further averred, the applicants missed the deadline to apply for certification, and an application for certification under rule 42(b) of the Court of Appeal Rules was filed inadvertently without leave, which application was promptly withdrawn. It is asserted that this Court has the inherent power under article 159(2)(d) of *the Constitution*, rule 4 of the Court of Appeal Rules, and sections 3A and 3B of the *Appellate Jurisdiction Act* to extend time and to ensure justice is meted out without focusing on technicalities.
6. Learned counsel for the applicants filed submissions dated 26th November 2025, wherein he rehashed the contents of the application. Counsel further submitted that the extension of time is an equitable, discretionary remedy, which must be exercised judiciously and in the interests of justice. Relying on principles established in cases like *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231, counsel argued that the delay, from 4th April 2025, to the first filing of the application for certification on 5th June 2025, was not inordinate, the circumstances of the delay have been adequately explained; the reasons are genuine and verifiable; they learnt of the deceased applicants, had to trace their representatives who reside in remote area, and had to secure instructions, which circumstances were beyond counsel's control.
7. Furthermore, counsel argued that the proposed appeal demonstrates arguable issues, is not frivolous, and raises substantial points of law of general public importance suitable for hearing at the Supreme Court, including the doctrine of bona fide purchasers for value without notice, finality of land adjudication, and constitutional property questions under article 40.
8. Counsel submitted further that granting the extension of time being sought will not cause material prejudice to the respondents, as no evidence of adverse effect from the short delay has been placed before the court. Conversely, refusing the application would shut the door on the applicants' constitutional and statutory right to ventilate their grievance before the Supreme Court.
9. Finally, they contended that the court must be guided by the constitutional and statutory overriding objectives, particularly article 159(2)(d), which mandates administering justice without undue regard to procedural technicalities. It is further argued that dismissal of the application due to a procedural lapse would be a disproportionate penalty and would impede access to justice and that the conduct of withdrawing the defective application and immediately filing the current application is a demonstration of good faith on the part of the applicants.
10. The respondents did not file a response to the application or submissions.
11. I have considered the application, the affidavit in support, and submissions by the applicants' counsel. The issue for determination is whether to extend time for the applicants to file an application for certification by the court, and whether the application dated the 5th of October 2025 may be deemed as duly filed.



In *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] KECA 701 (KLR), this Court held that;

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

12. In *County Government of Mombasa vs. Kooba Kenya Limited (Civil Appeal 130 of 2018)* [2019] KECA 221 (KLR), the court relied on the case of *Karny Zaharya & Another vs. Shalom Levi. C. Appl. No. 80 of 2018*, where Koome, JA (as she then was) stated:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal”.

13. I find that the applicants have given a plausible explanation for the delay in filing the application for certification and the circumstances leading to the current application. This explanation has not been challenged, nor have the respondents shown any prejudice they are likely to face if the application is allowed. In the draft memorandum of appeal, the applicants have listed several grounds for the Supreme Court’s consideration. At this point, it is not for me to consider the merit or otherwise of the grounds, as that is an issue for consideration by the full bench that will certify the petition or otherwise.
14. As regards the application dated 5th June 2025, the same was withdrawn by consent of the parties. It ceased to exist and cannot therefore be deemed as duly filed.
15. For the above reasons, I allow the application and direct that a fresh application seeking certification to prefer the matter to the Supreme Court be filed within the next 14 days of the date hereof.
16. The respondents having not participated in the application, I make no order as to costs.

DATED AND DELIVERED AT NYERI THIS 1ST DAY OF DECEMBER, 2025.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

