



REPUBLIC OF KENYA



KENYA LAW
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**Olenja v Olenja (Civil Appeal (Application) 560 of 2019)
[2026] KECA 199 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KECA 199 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 560 OF 2019
PO KIAGE, SG KAIRU & K M'INOTI, JJA
FEBRUARY 6, 2026**

BETWEEN

CHARLES KHAKALI OLENJA APPLICANT

AND

JOYCE MUHENGE OLENJA RESPONDENT

(Application for certificate to appeal to the Supreme Court from the ruling and order of the Court of Appeal at Nairobi (Musinga, Sichale & Omondi, JJ.A.) dated 7th February 2025 in CA No. 560 of 2019)

RULING

1. By his Motion on Notice dated 21st February 2025, the applicant, Charles Khakali Olenja seeks a certificate that his intended appeal to the Supreme Court raises matters of general public importance within the meaning of Article 163(4) (b) of *the Constitution*. Since the applicant does not have an automatic right of appeal, it is a certificate either from this Court or the Supreme Court that would give him a foothold in the Supreme Court. The certificate is sought so as to challenge the ruling of this Court dated 7th February 2025, in which the Court declined the applicant's invitation to review its judgment dated 3rd February 2023.
2. The background to the present application is as follows. Following the dissolution of her marriage to the applicant, the respondent, Joyce Muhenge Olenja, lodge a matrimonial property claim in the High Court at Nairobi seeking a declaration that the properties registered in the name of the applicant or jointly in their names were matrimonial properties, and an order for the sale of the properties and division of the proceeds on a 50:50 basis or on such ratio as the Court would deem appropriate.
3. The properties in dispute were listed as follows:
 - a. LR No. 2XXX/73 Karen



- b. LR No. 2019/3XXXX in Kileleshwa
 - c. Isukha/Lubao/XXX
 - d. Motor Vehicle Registration No. KBP XXXB
 - e. Motor Vehicle Registration No. KAS XXXQ
 - f. Lubao Enterprises Limited
 - g. A parcel of land at Majengo in Vihiga; and
 - h. Money in Joint Account No. 1XXXXXX07 at Commercial Bank of Africa, Upper Hill Branch
4. The applicant opposed the suit, contending that the respondent had not contributed to the acquisition of the properties. After hearing the matter, the High Court (Muchelule, J., as he then was), by a judgment dated 11th July 2019, held that the contribution of the parties was 30% by the respondent and 70% by the applicant.
- The respondent was awarded the Kileleshwa property, Motor Vehicle No. KAS XXXQ and Kshs. 55,263,236 alleged to be worth of Treasury Bonds at Central Bank of Kenya. For his part, the applicant was awarded the Karen Property, Motor Vehicle No. KBP XXXB and Kshs 92,894,200 alleged to worth of Treasury Bonds at Central Bank of Kenya.
5. The respondent was aggrieved and lodged an appeal challenging the distribution and prayed for a more equal and equitable distribution. On his part, the applicant was also aggrieved and filed a cross-appeal seeking distribution of the property on a ratio of 84% to himself and 16% to the respondent on the assertion, among others, that the Karen, Kileleshwa, Lubao, and Majengo properties and Motor Vehicle No. KAS XXXQ were purchased solely from his funds.
6. Upon hearing the appeal, this Court (Musiga, Sichale and Omondi, JJ.A) by a judgment dated 3rd February 2023, allowed the appeal and dismissed the cross-appeal. The Court found that the parties were entitled to the properties on a ratio of 50:50 due to joint registration in which the presumption of equal owners was not rebutted, and through financial contribution by both parties. The exception was the Bunyore property which the Court found the applicant had inherited; Lubao Enterprises Ltd, which the Court found to be a dormant company with no tangible assets; and the amount on the Treasury Bonds, which the Court found to be a hypothetical figure worked out by the applicant. The two motor vehicles were awarded to each party with the applicant getting KBP XXXB and the respondent KAS XXXQ.
7. In arriving at the above conclusion, the Court took into account among others, the principles that the Court should strive for a just and equitable distribution, according due and sufficient recognition to each party's contribution without overemphasising or under-compensating a spouse's indirect contribution; that the Court should first determine the direct contribution and thereafter ascribe the second ratio of indirect contribution; that the provision of *the Constitution* on equality did not envisage an automatic 50:50 division of matrimonial property; that both the applicant and respondent were accomplished professionals in gainful employment; that the applicant was out of gainful employment following suspension in 1999 and dismissal in 2002 until 2005 when he went to consult in Botswana; that after retiring in 2011 the applicant engaged in sporadic consultancies; that as regards the respondent, in addition to her formal employment, she was engaged in consultancies; that for the 35 years on marriage she was never unemployed; that she supported the family when the



- applicant was away in Botswana; and that both parties made direct and indirect contribution to the properties acquired during the marriage.
8. On 15th February 2023, the applicant lodged a notice of appeal, evincing intention to seek a certificate to appeal to the Supreme Court against the Judgment of the Court. From the record, the applicant did not pursue the appeal to the Supreme Court against the judgment dated 3rd February 2023.
 9. Instead, on 17th April 2023, the applicant filed an application for review and setting aside of the judgment on the grounds of fundamental errors and manifest mistakes, disregard of evidence and bias of the Court, which he argued had led to a miscarriage of justice. The applicant prayed the Court to render its judgment de novo, taking into account the issues he had raised in the application. In the application, the applicant was really faulting the Court's findings and conclusion regarding what each party had contributed to the acquisition of the properties, with the applicant contending that contrary to the findings of the Court, he was the major contributor to the acquisition of the property, with the contribution of the respondent being minimal and negligible.
 10. The respondent opposed the application as a disguised appeal.
 11. In a ruling dated 7th February 2025, the Court held that its review jurisdiction is limited and exercised in exceptional circumstances, of which the application before it was not. In arriving at that conclusion the Court cited the decisions of this Court in *Benjoh Amalgamated Ltd & Another v. Kenya Commercial Bank Ltd* [2014] eKLR, *Standard Chartered Financial Services Ltd & Another v. Manchester Outfitters (Suing Division) Ltd & 2 Others* [2016] eKLR, *Niels Bruel v Moses Wachira & 2 Others* [2018] eKLR and *Cape Holdings Ltd (Under Administration) v. Synergy Industrial Credit Ltd* [2023] KECA 1497 (KLR) as well as the decision of the Supreme Court in *Fredrick Otieno Outa v. Jared Odoyo Okello & 3 Others* [2017] eKLR on the limited circumstances in which it will entertain an application to review its decisions.
 12. The applicant was still aggrieved and on 21st February 2025 filed the present application for certificate to appeal to the Supreme Court against the ruling on review dated 7th February 2025. The application is supported by an affidavit sworn by the applicant on 21st February 2025; submissions dated 1st April 2025 and supplementary submissions dated 1st July 2025. The applicant contends that the intended appeal raises matters of general public importance which require determination by the Supreme Court. At the heart of the applicant's supporting affidavit is the assertion that the Court ignored his evidence and came to a wrong ratio of distribution.
 13. In support of the application, learned counsel, Mr. Kaminza, who held brief for Dr. Arwa, for the applicant, submitted that the applicant's intended appeal to the Supreme Court raises matters of general public importance because in the application for review, the applicant had precisely set out instances of errors of fact, bias and actions in the judgment of the Court that constituted miscarriage of justice warranting review of the judgment within the ambit of *Benjoh Amalgamated Ltd & another v. Kenya Commercial Bank Ltd*. (supra).
 14. Counsel further submitted that it was a matter of general public importance whether the Court can, when determining contribution made by the parties for purposes of distribution of matrimonial property, ignore evidence presented by both parties and base its decision on presumptions of fact neither presented nor proven. He contended that in such a scenario, the result was a miscarriage of justice which affects administration of justice and is therefore a matter of general public importance.
 15. Counsel further argued that it was also a matter of general public importance whether such an approach affects the right to equal protection of the law under Article 27, the right to access justice under Article 48 and the right to equality under Article 45 of *the Constitution*. He contended that



such issues could validly be determined by the Supreme Court on the authority of *Peter Gatirau Munya v. Dickson Mwenda Kithinji* [2014] eKLR and *Kenya Plantation Agricultural Workers Union v. Omulama 9 Others* [2019] KESC 37(KLR).

16. In the applicant's view it was a matter of general public importance requiring the determination of the Supreme Court whether the principles applicable to division of matrimonial property are similar to those applicable to division of land under the *Land Act*. He contended that the rules on division of matrimonial property are sui generis and that the Court erred by ignoring evidence rebutting equal holding arising from joint registration and merely relied on the fact of joint registration to arrive at a ratio of 50:50.
17. The other issue of general public importance that the applicant wishes the Supreme Court to determine is whether the rules that govern double income marriages apply to single income marriages, it being his contention that indirect contribution is given more weight in single income marriages and that the Court erred by overemphasising the respondent's indirect contribution in the present case. It was also contended that the judgment of the Court was in conflict with its decision in *ENK v. MNNN* [2021] KECA 219 (KLR) holding that where a party cannot prove contribution to property registered in joint names in a double income marriage, such party is entitled to only 10%. The applicant urged that it was essential for the Supreme Court to resolve the conflict.
18. The respondent opposed the application vide her replying affidavit sworn on 20th March 2025 and submissions dated 30th June 2025. Highlighting the submissions, the respondent's learned counsel, Ms. Ndirangu submitted that the intended appeal did not raise any issue of general importance transcending the interests of the parties and implicating the general public; that the principles on division of matrimonial properties are well and firmly settled and that the applicant had not raised any new or novel points; and that the application was a disguised appeal against the judgment of the Court rather than an intended appeal from the ruling on review.
19. Counsel relied on the decision of this Court in *DMM v. MNM* [2004] eKLR in support of the proposition that the principles for determining contributions by former spouses are well settled and that of the Supreme Court in *Hermanus Phillipus Styne v Giovanni Gnecci Ruscone* [2013] eKLR for the principles that guide the court in determining whether an applicant had raised an issue of general public importance. This Court's decision in *Karanja v Ndirangu & Another* [2021] KECA 57 (KLR) was also cited in support of the view that a party who seeks certification on constitutional grounds must demonstrate that the matter determined by this Court had taken a constitutional trajectory.
20. The respondent also attacked the competence of the application, contending that the applicant had not filed a notice of appeal as required by rule 36(1) of the Supreme Court Rules. Counsel relied on the decision of this Court in *Otieno v. National Cereals & Produce Board* [2024] KECA 145 (KLR) in support of the submission.
21. Counsel further submitted that in the ruling that the applicant intends to appeal to the Supreme Court, this Court merely determined whether the applicant had satisfied the threshold for review and did not delve into the merits of the judgment and neither did any issue of interpretation or application of *the Constitution* arise. In counsel's view, any issue referred to the Supreme Court arising from the ruling of 7th February 2025 must be limited to the questions whether there are matters of general importance implicated in the determination by the Court that the applicant had not satisfied the threshold for review.
22. Finally, counsel submitted that none of the issues identified by the applicant for consideration by the Supreme Court arose from the review ruling and therefore there was no basis for issuing a certificate to appeal to the apex Court.



23. In brief submissions in rejoinder, counsel for the applicant submitted that failure to file a notice of appeal against the ruling on review was not fatal and that such notice may be filed before or after certification. In support of the proposition counsel cited the decisions of the Supreme Court in *Maina v. Macharia & 5 Others* [2023] KESC 97 (KLR) and *Amollo v. Wilson* [2023] KESC 77 (KLR).
24. We have considered the application, the ruling of the Court dated 7th February 2025, the submissions and the authorities cited by the parties. Both parties cited the decision of the Supreme Court in *Phillipus Steyn v. Giovanni Gnechchi-Ruscone* [2013] eKLR which comprehensively addressed the factors to be taken into account in determining whether to certify a matter for appeal to the Supreme Court. Among the factors are that the issues intended to be canvassed in the Supreme Court transcend the circumstances of the particular case and have a significant bearing on the public interest; that the point or points of law involved is/are substantial and their determination will have a significant bearing on the public interest; that mere apprehension of a miscarriage of justice is not sufficient reason for certification; and that determination of contested facts between the parties is equally not a sufficient basis for certification.
25. Further, in *Peter Oduor Ngoge v. Francis Ole Kaparo & 5 Others* [2012] eKLR the Supreme Court emphasised that only cardinal issues of law or of jurisprudential moment will deserve its further input, whilst in *Malcolm Bell v. Daniel Torotich Arap Moi & Another* [2013] eKLR the same Court added that its jurisdiction is not to be invoked merely for the purpose of rectifying errors with regard to matters of settled law.
26. Turning to this application, we must first dispose of the respondent's objection founded on lack of a notice of appeal against the ruling which the applicant intends to appeal to the Supreme Court. The applicant readily concedes that he has not filed a notice of appeal against the ruling. We however think the respondent's objection is not well founded and is based on a misapprehension of the difference between the provisions of the Supreme Court Rules, 2012 which were superseded by the current Supreme Court Rules, 2020.
27. In *Salat v. Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR), the Supreme Court was considering the 2012 Rules when it held as follows:
- “Suffice it to say that under the current court rules, one need not seek and get certification before filing a notice of appeal. A notice of appeal is a primary document to be filed outright whether or not the subject matter under appeal is that which requires leave or not. It is a jurisdictional pre-requisite. The California Supreme Court while reversing the Court of Appeal decision that had dismissed the appellant's notice of appeal as having been filed out of time in *Silverbrand v. County of Los Angeles* [2009] 46 Cal 4th 106, 113 stated inter alia: ‘As noted by the Court of Appeal, the filing of a timely notice of appeal is a jurisdictional prerequisite. Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal. The purpose of this requirement is to promote the finality of judgements by forcing the losing party to take an appeal expeditiously or not at all.’” (Emphasis added).
28. The 2012 rules were replaced by the 2020 Rules, whose provisions are distinctly different as regards the filing of a notice of appeal.



In *Shah & 7 Others v. Mombasa Bricks & Tiles Ltd & 5 Others* [2022] KESC 25 (KLR) the Supreme Court held as follows:

“From the foregoing, we opine that following our decision in *Telkom Kenya Limited v John Ochanda & 996 others*, SC Application No. 17 of 2014 [2015] eKLR and *Teachers Service Commission v Simon Kamau & 19 others*, SC Application No.38 of 2014 [2015] eKLR, rule 36(4) of the Supreme Court Rules makes it optional to file a notice of appeal either before or after certification in a matter of general public importance. Accordingly, the present application for review of denial of certification cannot be held to be incompetent merely because it was not preceded by the filing of a notice of appeal.”

29. The two other authorities from the Supreme Court cited by the applicant, namely *Maina v. Macharia & 5 Others* (supra) and *Amollo v. Wilson* (supra) are to the same effect. The decision of this Court in *Otieno v. National Cereals & Produce Board* [2024] which the respondent relied upon, aligns with the view in *Salat v. Independent Electoral and Boundaries Commission & 7 Others* and in light of the subsequent decisions of the Supreme Court and the provisions of Article 163(7) on the binding nature of the decisions of the Supreme Court, we shall go along with the latter decisions that a notice of appeal may be filed before or after certification.
30. As regards the merits of the application for certification, it is crystal clear from the application before us that the applicant wishes to appeal to the Supreme Court against the ruling of this Court dated 7th February 2025 and not the judgment dated 3rd February 2023. The judgment resulted from a merit reconsideration and re-evaluation of the evidence that was adduced before the High Court, which this Court found supported a 50:50 ratio of division of the matrimonial property rather than the 70:30 ratio adopted by the High Court. In an application for certificate to appeal against that judgment, the applicant would be obliged to demonstrate the issues of general public importance arising and emanating from the judgment.
31. The ruling of the Court in respect of which applicant seeks a certificate, on the other hand, did not engage with either the merits of the judgment of the High Court or of this Court. It was restricted to a narrow question whether the applicant had presented grounds upon which the Court could invoke its exceptional review jurisdiction. In that application for review, the Court was not called upon to reconsider the merits of its judgment, otherwise it would have anomalously sat on appeal from its own judgment. The only way the applicant could have had the merits of the judgment reconsidered is by applying for a certificate to appeal to the Supreme Court, which he has elected not to do as regards the judgment. It would be highly irregular to accede to the applicant’s invitation to ignore the questions that the ruling dealt with and issue a disguised certificate against the judgment.
32. The parameters within which this Court will review its decisions are well and firmly settled in a consistent line of decisions like *Benjoh Amalgamated Ltd & Another v. Kenya Commercial Bank Ltd* (supra); *Standard Chartered Financial Services Ltd & Another v. Manchester Outfitters (Suiting Division) Ltd & 2 others* (supra); *Niels Bruel v. Moses Wachira & 2 Others* (supra); *Cape Holdings Ltd (Under Administration) v. Synergy Industrial Credit Ltd* (supra); *Mukuru Munge v. Florence Shingi Mwawana* [2016] eKLR; and *Kitema v Kenya Power & Lighting Co. Ltd.* [2025] KECA 2112 (KLR).
33. Those decisions affirm that the jurisdiction is not intended to create opportunities for disguised appeal against the merits of the decisions of the Court, but is instead a circumscribed jurisdiction to be invoked only in exceptional and clear circumstances where for example, there has been fraud, denial of the right to natural justice, and clear miscarriage of justice. Thus, for example, in *Standard Chartered Financial*



Services Ltd & Another v. Manchester Outfitters [2016] eKLR the Court summed up the review jurisdiction as follows:

“We reiterate that position and stress that this Court is clothed with residual jurisdiction to reopen and rehear a concluded matter where the interest of justice demands, but that such jurisdiction will only be exercised in exceptional situations where the need to obviate injustice outweighs the principle of finality in litigation.” (Emphasis added).

34. Similarly, in Cape Holdings Ltd (Under Administration) v. Synergy Industrial Credit Ltd (supra), the Court held as follows:

“Further, as this Court explained in the decisions we have cited above, allegations that the Court has misapprehended the law constitutes grounds for appeal, not grounds for invocation of the exceptional residual review jurisdiction of the Court. From those decisions, the exceptional residual jurisdiction of the Court will be triggered in the rare instances where the Court is satisfied that the judgment in question was made without jurisdiction, or is tainted by fraud, corruption, violation of the rules of natural justice or other grounds of similar genus that result in a glaring miscarriage of justice, such as what the Supreme Court described in the Nyutu case as “process failures as opposed to the merits of the arbitral award itself.” Such review must be on a case by case basis. Entertaining applications for review of judgments of this Court on the allegation that the Court has misinterpreted or misapplied the law would be the shortest and surest way to create an illegitimate tier of appeals against the decisions of the Court. There is a good reason why the makers of *the Constitution* of Kenya did not confer on the Supreme Court, the apex Court in the land, ordinary appellate jurisdiction from decisions of the Court of Appeal, to correct perceived errors of the law made by the Court.”

35. In the application presently before the Court, the applicant has not demonstrated matters of general public importance that arise and flow from the ruling of this Court dated 7th February 2025. Instead, the alleged matters of general public importance are that the Court erred in how it evaluated the evidence in the judgment dated 3rd February 2023, which is not the subject of the intended appeal to the Supreme Court. We are persuaded that the applicant cannot validly challenge the judgment through the backdoor.

36. But even if we were wrong, we still do not see the matter of general public importance that arises from the judgment on division of matrimonial property, deserving of the attention of the Supreme Court. This Court and the Supreme Court have comprehensively addressed the issues on division of matrimonial property and in particular the decision of the Supreme Court in JOO v. MBO [2023] KESC 4 (KLR). In that case, the High Court awarded the parties 70:30 in one property and 80:20 in another, with the husband taking the lion’s share. The husband appealed to this Court and the wife cross-appealed. This Court re-evaluated and reconsidered the evidence and award the matrimonial property on a 50:50 basis, based on the parties’ respective contributions.

37. The matter was certified to the Supreme Court for determination of, among others, whether the provisions of equality in Article 45(3) of *the Constitution* entitled the parties to distribution on 50:50 basis. The Supreme Court addressed such issues as joint registration, the presumption of equal shares arising therefrom, and rebuttal of the presumption. It reiterated that division of matrimonial property is on the basis of contribution, both direct and indirect; that there was no automatic 50:50 ratio; that upon dissolution of a marriage each party is entitled to a fair-share of the property based on their contribution; and that the determination is to be done on a case by case basis depending on the



evidence. That, in our perception is exactly what this Court did, but the applicant is aggrieved because he would have wished for a different outcome.

38. The applicant has also claimed that the intended appeal raises issues of constitutional interpretation and application and on that basis, it deserves certification. The short answer to that is that, if it were so, the applicant would not have required a certificate because he has an automatic right of appeal to the Supreme Court under Article 163(4) (a) of *the Constitution*. Our perusal of the ruling, the subject of the intended appeal to the Supreme Court, indicates that this Court did not address any constitutional issues and neither did the hearing of the application for review take a trajectory involving determination of constitutional questions. Indeed, in *Kimani & 20 Others v Attorney General & 2 Others* [2020] eKLR, the Supreme Court held as follows:

A mere allegation(s) of constitutional violations or citation of constitutional provisions, or issues on appeal which involves little or nothing to do with the application or interpretation of *the Constitution* does not bring an appeal within the jurisdiction of the Supreme Court under article 163(4)(a).

39. The same Court expounded on that holding as follows in *Wanjigi v. Chebukati & 2 Others* [2023] KESC 15 (KLR):

It is therefore evident that the issues that this court would exercise its jurisdiction over pursuant to Article 163(4)(a) of *the Constitution* are only issues involving the interpretation or application of *the Constitution*, which constitutional issues had been considered and determined by the superior courts. A question identified as involving interpretation or application of *the Constitution* thus must be one that was argued in the court of first instance and canvassed through the hierarchy of courts, at the Court of Appeal and finally in this court. Mere allegation by a party that a question of constitutional interpretation or application is involved does not automatically bring the appeal within the ambit of Article 163(4)(a) of *the Constitution*, unless the party can show that the matter by virtue of the court's determination took a constitutional trajectory of interpretation and application.”

40. Lastly, the applicant contended that there was a conflict between the judgment dated 3rd February 2023 and the decision of this Court in *ENK v. MNNN* (supra) which requires the resolution of the Supreme Court. The applicant claimed that in the latter judgment, this Court held that where a party cannot prove contribution to property registered in joint names in a double income marriage, such party is entitled to only 10%. With great respect, that is a deliberately mischievous reading of the decision in *ENK v. MNNN* (supra). The Court never stated such a rule of general application. That decision turned on the peculiar circumstances of the case. By way of recap, we note that in the *ENK v. MNNN* decision, the High Court distributed matrimonial property which was registered in the joint names of the parties on a ratio of 50:50. The High Court took the view that Article 45(3) of *the Constitution* demanded that kind of distribution. On appeal, the Court found that the respondent had not made any serious contribution to the acquisition of the properties and that, although the properties in question were registered in the joint names of the parties, the appellant had rebutted the presumption of equal ownership. This is what this Court held in that case:

“On the material placed before the Judge, there was no basis at all to reach the conclusion that the parties to the marriage were entitled to an equal distribution of the matrimonial property. They were not. Evidence showed that the appellant paid for the properties in full with no monetary contribution by the respondent at all. Although the properties were registered in their joint names, the appellant was able to show that he did that purely for the



affection he had for his wife at the material time. When divorce came the appellant proved to the required standard that he had personally purchased and paid for the properties. The respondent did not make any monetary contribution. The appellant was able to rebut the presumption that the properties which were jointly registered were equally owned. In any case marriage per se is not a ground for sharing properties acquired during marriage in an equal basis. The law in a well trodden path has established that parties must show evidence of their respective contribution to the properties and secondly to the family well being. It is clear beyond doubt that there was no issue to the marriage for the respondent to assert that she was taking care of children and other family issues. Admittedly both parties were top professionals who pursued their personal and professional interest separately.”

41. Arising from that finding on contribution, the Court reversed the decision of the High Court and distributed the property on a ration of 90:10. It would be most astounding to read that judgment as establishing an immutable rule that where a party cannot prove contribution to property registered in joint names in a double income marriage, such party is entitled to only 10%. The decision in ENK v. MNNN (supra) turned on its own facts and did not establish of general rule of application in all cases. As such, we do not perceive any conflict in the two decisions requiring resolution by the Supreme Court.
42. Having carefully considered this application, we are satisfied that the applicant has failed to demonstrate that there are matters of general public importance, within the meaning of the Phillipus Steyn v. Giovanni Gnechi-Ruscone decision, arising from the ruling of the Court dated 7th February 2025 and deserving a certificate for further consideration by the Supreme Court. Accordingly, the application dated 21st February 2025 is hereby dismissed with costs to the respondent. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026.

P. O. KIAGE

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb, C.Arb

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

