IN THE COURT OF APPEAL AT NAKURU

(CORAM: MATIVO, JA (IN CHAMBERS)

CIVIL APPEAL (APPLICATION) NO. NAK E005 OF 2025 BETWEEN

AGRICULATURAL DEVELOPMENT CORPORATION.....1ST APPLICANT

LANDS LIMITED.....2ND APPLICANT AND

JASON KARANJA MBUGUA.....1ST RESPONDENT

GODFREY WAINAINA CHEGE.....2ND RESPONDENT

JOSPHAT KAUNDA MAIKARA.....3RD RESPONDENT

JOSEPH KIPLANGAT KILISIO.....4TH RESPONDENT

JOSEPH MUNGAI KAMANO.....5TH RESPONDENT

EDWIN MAINA.....6TH RESPONDENT

WILLIAM KANGETHE THUKU.....7TH RESPONDENT

GIBSON MWANGI.....8TH RESPONDENT

(Being an application from the ruling of the Environment and Land Court of Kenya at Naivasha ***(M. C. Oundo, J.)*** *dated 20th November 2025*

in

ELC No. 101 of 2024).

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RULING

1. This ruling is on the question of urgency on the applicant's application dated 16th January 2026. The application was previously before me and I declined to certify it as urgent prompting the applicant to invoke rule 49 (5) of this Court's Rules.

2. In support of the question, the appellant's counsel M/s Kolum argued that the applicants risk being arrested and committed to civil jail, that they are required to be arraigned in court on 3rd

March 2026 for sentencing for contempt of court hence the urgency. They fear that their application may be rendered an academic exercise in the event they are imprisoned.

3. The application is opposed. Learned counsel for the respondents Mr. Ogolla argued that the applicants are only required to attend court on 3rd March 2026 to show cause why they should not be committed to civil jail and that the court will decide whether or not to impose a sentence.

4. For starters, an urgent application is one which does not follow the normal process because the applicant cannot afford to wait to ask a court for help. Thus, a certificate of urgency is issued by a court stating that a particular case is urgent and must be heard and determined expeditiously. Irrefutably, not all cases can be heard in the ordinary course; the prejudice, damage or suffering of parties may be such that the matter requires urgent or even immediate attention. A litigant seeking to have a matter certified as urgent approaches the Court in a rather unique way which bypasses the queue. At this point I may profitable refer to ***Jared Okello vs. Charles Otieno Opiyo & 3 Others, CA No. 151 of 2017***, in which this Court stated:

> ***"Certifying a matter urgent means that the same is to be set down for hearing and determination***

immediately. It gets priority over other matters, even though they were filed earlier in time and the parties have been waiting patiently for their turn. Before a matter can be allowed to jump the queue, it must be shown to deserve priority hearing. That approach is deliberate and dictated by the principles and values of fairness to all litigants and case management considerations to the end that deserving applications filed first in time, are not relegated to the periphery while later applications of equal or less urgency get fast-tracked and given preferential treatment."

5. Similarly, in ***Heritage Insurance Company Limited vs. Christopher Onyango, Civil Application No. NAI 110 of 2016***

this Court stated:

"The practice of this Court is to hear such motions on a "first-come-first heard" basis, the rationale being obviously to treat parties who come to this Court with a measure of equality. Rule 47 comes in to assist those who are able to demonstrate that there is imminent danger of execution and a delay cannot be allowed at all. It is a safety valve, designed in the nature of a fast lane of traffic in congested city which lane is reserved for ambulances, fire engines and such. So a party who succeeds in showing imminent danger of execution is permitted by rule 47 to use that lane to jump the queue and be ahead of lined-up traffic".

6. In an application of this nature, an applicant must first convince the Court that the application is urgent, so that the Court will grant him condonation for not following the queue and permit him to enroll their application on the urgent roll for immediate hearing. Nevertheless, urgency must be judged against the background of rule 49 (1) (2) of the Court of Appeal

Rules, 2022 which provides:

49. Urgent applications

(1)An application which the applicant desires to set down for hearing as a matter of urgency shall be accompanied by a certificate of urgency signed by the applicant or the applicant's advocate, supported by affidavit setting forth the matters upon which the applicant relies as showing that his or her application should be heard without delay.

(2) The application under sub-rule (1), certificate and supporting affidavit shall be placed before a single judge, who shall peruse it, and the application shall not be set down for hearing as a matter of urgency unless the judge certifies that it is urgent.

7. In ***Bryan Yongo vs. Jigisha P. Jani & 2 Others [2018] eKLR,***

M'inoti, J.A held:

> ***"For an application to be certified urgent, the applicant must satisfy the Court that there are circumstances in the application showing that if it is not heard promptly, both the application and the intended appeal may be rendered nugatory. (See Railways & Allied Workers Union v. Rift Valley Railways Workers Union, CA No. Nai. 29 of 2015 and New Kenya Co-operative Creameries Ltd v. Olga Ouma Adede, CA No. Nai. 316 of 2014."***

8. I must underscore that it is natural to see harm as the equivalent of urgency since without harm or some threat there would never be a need to bring an urgent application. However, the concepts of harm and a lack of substantial redress in due course should be kept separate, and the test for urgency should not be obscured by a confusion between the two. As was expounded in ***East Rock***

Trading 7 (Pty) Ltd and Another vs. Eagle Valley Granite (Pty) Ltd [2011] ZAGPJHC 196, a judgment rendered by the South Gauteng High Court, South Africa that deserves to be the *locus classicus* on the general principles of urgency, the court pithily set out the test for urgency as follows:

> "***… An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.***
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> ***It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case.***"

9. As demonstrated by the above jurisprudence, the test for urgency begins and ends with whether the applicant can obtain substantial redress in due course. It means that a matter will be urgent if the applicant can demonstrate with facts, that he requires immediate assistance from the Court, and that if his

application is not heard earlier than it would be in due course, any order that he might later be granted will by then no longer be capable of providing him with the legal protection he requires. Accordingly, harm does not find urgency. Rather, harm is a mere precondition to urgency. Where no harm has, is, or will be suffered, no application may be brought, since there would be no reason for a court to hear the matter. However, where harm is present, an application to address the harm will not necessarily be urgent. It will only be urgent if the applicant cannot obtain redress for that harm in due course. Thus, harm is an antecedent for urgency, but urgency is not a consequence of harm. By now from the foregoing paragraphs, the criterion for judging urgency should be clear. This absolute requirement was reverberated in the meekest of language in ***Mogalakwena Local Municipality vs. Provincial Executive Council, Limpopo and Others [2014] ZAGPPHC 400***:

> "***It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.***"

10. It is important to underscore that an urgent application is an extraordinary remedy where a party seeks to gain an advantage

over other litigants by jumping the queue. This indulgency can only be granted by a judge after considering all the relevant factors and concluding that the matter cannot wait. The Court is required to carefully study the application, the certificate of urgency and the affidavit in support of the urgency and formulate an opinion regarding the urgency of the matter. Predominantly, the applicant carries a heavy duty of demonstrating the urgency and why he should be allowed to jump the queue. The reasons offered in support of the urgency basically aid the Court to satisfy itself that the application is urgent and they cannot be a substitution to the discretion of the Court, which must be exercised judicially and upon consideration of the positions taken by both parties and the tests for determining urgency.

11. The question before me narrows to whether the applicant has presented a case to be allowed to jump the queue and get priority hearing. A matter will be urgent if the applicant can demonstrate, with facts, that he requires immediate assistance from the Court, and that if his application is not heard earlier than it would be in due course, any order that he might later be granted will by then no longer be capable of providing him with the legal protection he requires. The applicant has cited the risk of being arrested and

sentenced to serve civil jail. I am persuaded that the applicant has met the threshold because in the event the sentence is imposed before the application is heard and determined, he risks suffering damage in that his application may be rendered moot. Therefore, it is my finding that the applicant has demonstrated sufficient reasons to be permitted to jump the queue. Accordingly, the application dated 16th January 2026 will be accorded priority hearing.

Dated and delivered in Nakuru this 25th day of February 2026.

J. MATIVO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.