

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: MUSINGA, (P), NDERI & L. NJUGUNA, JJ.A.)**

**CIVIL APPLICATION NO. NAI E694 OF 2025**

**BETWEEN**

**HABAYWEZA MAWAZO ANNE** (*Suing as the Legal Representative of  
the Estate of **Lucas Oluoch Mumia***)

.....  
**APPLICANT**

AND

**PRAVINCHANDRA JAMNADAS KAKAD.....RESPONDENT**

*(Being an application for certification and leave to appeal to  
the Supreme Court arising from a judgment of the Court of  
Appeal at Nairobi (**Nyamweya, Muchelule & Odunga,  
JJ.A.**) delivered on 24<sup>th</sup> October 2025*

in

**Civil Appeal No. 174 of 2019**

\*\*\*\*\*

**RULING OF THE COURT**

1. The applicant's notice of motion dated 19<sup>th</sup> November 2025 seeks certification that the intended appeal to the Supreme Court raises matters of general public importance within the meaning of **Article 163(4)(b)** of the Constitution. The applicant also seeks leave to appeal to the Supreme Court from the judgment of this Court (**Nyamweya, Muchelule & Odunga, JJ.A.**) delivered on 24<sup>th</sup> October 2025 in **Civil Appeal No. 174 of 2019**. Further, the applicant prays that

upon grant of leave,

- she be allowed to file a petition of appeal to the Supreme Court within 30 days or such period as the Court may direct.
2. In her affidavit in support of the application, the applicant, who is the legal representative of the Estate of the late **Lucas Oluoch Mumia, (deceased)**, depones that on 24<sup>th</sup> October 2025 this Court delivered judgment where it reversed the High Court's decision and ordered the applicant to pay a sum of Kshs. 206,926,300 to the respondent together with interest. She argues that the said liability is substantial, and it arises from findings based on documents whose authenticity and evidentiary value were never adequately tested.
  3. In the High Court matter that gave rise to this Court's judgment, the respondent had alleged that the deceased received over Kshs. 206,926,300 from him between 2004 and 2006, based on fraudulent misrepresentations. The High Court dismissed the claim, holding, *inter alia*, that crucial financial documents sought to be relied upon had not been authenticated, and that the evidence presented was riddled with inconsistencies. That finding was however reversed by this Court.
  4. The applicant argues that the makers of various documents from the Central Bank of Kenya that were relied upon in

reversing the judgment had not testified, nor was any forensic evidence tendered to authenticate the documents. She contends that the acceptance of such documents without authentication raises serious legal questions regarding the evidentiary standards applicable in fraud matters, and that such questions transcend the circumstances of this case, and require definitive pronouncement by the Supreme Court.

5. The applicant also raises an issue relating to the application of **section 26** of the **Limitation of Actions Act** as to when time begins to run in cases where fraud is alleged.
6. The applicant believes that the aforesaid issues amount to matters of general public importance, and this Court ought to grant her leave to appeal to the Supreme Court. She submits that unless such leave is granted, the deceased's estate will suffer irreparable prejudice in that it will have to shoulder a heavy financial liability that may deplete the entire estate.
7. When the application came up for hearing on 24<sup>th</sup> February 2026, **Mr. Paul Muchiri** appeared for the applicant. There was no appearance for the respondent, despite service of a hearing notice on 10<sup>th</sup> February 2026 upon his advocate. Mr. Muchiri opted to rely on his written submissions dated 30<sup>th</sup>

January 2026 without any oral highlights of the same.

8. In his submissions, learned counsel argues that this Court applied a standard of proof for fraud that is inconsistent with established jurisprudence. Whereas it is a settled principle that fraud must be specifically pleaded and strictly proved, it was submitted that this Court departed from that principle. Counsel further submits that it is important that the Supreme Court pronounces itself as to whether unauthenticated secondary documents can be relied upon without the testimony of the makers as required under **section 35** and **78** of the **Evidence Act**. He asserts that this is a matter of general public importance as it affects the integrity of the banking sector and the safety of commercial transactions.
9. Regarding interpretation of **section 26** of the **Limitation of Actions Act**, counsel submits that the respondent's claim dates back to transactions that took place between 2004 and 2006, yet the suit was filed in 2012. He faults this Court's reliance on section 26 to "reset" the clock on limitation based on alleged discovery of fraud, without stringent proof of when that discovery occurred.
10. The applicant believes that the threshold for grant of leave to appeal to the Supreme Court as set out in **Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione** [2013]

eKLR, and

**Malcolm Bell v Daniel Toroitich Arap Moi & another**

[2013] eKLR has been established, and therefore urges this Court to grant the orders sought.

11. We have considered the application as well as the submissions by the applicant. Article 163(4) of the Constitution states that appeals lie from this Court to the Supreme Court: -

***“(a) as of right in any case involving the interpretation or application of this 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, subject to Clause (5).”***

12. In **Hermanus Phillipus Steyn v Giovanni Gniecchi-Ruscione** (supra) it was held that to succeed in an application for certification under Article 163(4)(b) of the Constitution, an applicant has to demonstrate that the issue to be raised in the intended appeal involves a matter of general public importance. A matter of general public importance was defined in the said decision as follows:

***“....a matter of general public importance warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: its impacts and consequences are substantial, broad-based, transcending the litigation-interests of the parties, and bearing upon the public interest. As the categories constituting the public interest are not closed, the burden falls on the intending***

***appellant to demonstrate that the matter in***

***question carries specific elements of real public interest and concern.”***

13. This Court in **Kenya Plantation and Agriculture Workers’ Union vs Kenya Export Floriculture, Horticulture and Allied Workers’ Union (Kefhau); represented by its promoters; David Benedict Omulama & 9 Others** [2018] eKLR stated thus:

***“The principles set out in Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione (supra) to determine whether a matter is of general public importance included:***

- 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 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 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. determination of facts in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”**

14. In our view, the issues raised by the applicant are in their very nature ordinary ones that cannot be said to transcend the applicant's personal interest. They do not meet the threshold defined above. We are not satisfied that they can be described as issues of general public importance, and neither is the applicant raising any novel issue of law that warrants determination by the Supreme court.

15. There is a plethora of decisions by this Court relating to admissibility of documentary evidence as well as the issue of limitation of time. We do not think that there is any lacuna or uncertainty in the law on the issues cited by the applicant that requires any clarification by the Supreme Court. We,

therefore,

think that there will be no jurisprudential value in having the Supreme Court address itself to the mundane issues raised by the applicant.

16. Consequently, we find and hold that the application is without merit and hereby dismiss it. As the respondent neither filed any document in response to the application nor attended Court when the application came up for hearing, we make no order as to costs.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of March 2026.**

**D.K. MUSINGA (PRESIDENT)**

.....  
**JUDGE OF APEPAL**

**NDUMA NDERI**

.....  
**JUDGE OF APEPAL**

**L. NJUGUNA**

.....  
**JUDGE OF APEPAL**

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

***Signed***

**DEPUTY REGISTRAR.**