



**Githugu v Ngirigacha & another (Civil Application Sup
E039 of 2024) [2025] KECA 141 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KECA 141 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION SUP E039 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
JANUARY 23, 2025**

BETWEEN

NANCY WANGECHI GITHUGU APPLICANT

AND

NELSON KARIMI NGIRIGACHA 1ST RESPONDENT

DOMINIC KARIMI GUTHUA 2ND RESPONDENT

*(Being an application for leave to appeal to the Supreme Court from the
judgment of the Court of Appeal (Karanja, Sichale & Kantai, JJ.A.)
delivered on 18th November, 2022 in Nyeri Civil Appeal 162 of 2012)*

RULING

1. The applicant, Nancy Wangechi Githugu, has brought a motion under Article 163(4)(B) of *the Constitution* of Kenya, 2010 and sections 15 and 23 of the *Supreme Court Act* and all enabling provisions of the law seeking leave to appeal to the Supreme Court for that Court to determine whether the applicant's rights were infringed when the Court of Appeal failed to determine that a title acquired through corrupt schemes ought to be cancelled. She also applies for certification that the issues raised are in the public interest. What is the background of the matter that has been before the courts?
2. The applicant's father was the late Githugu Nyamu, who owned LR No. Mutira/Kiajege/75 measuring 5 acres. He entered into a sale agreement with the 1st respondent, Nelson Karimi Ngirigacha, where the 1st respondent was to buy 2 acres of the property. The 1st respondent is said to have conned the deceased by dividing the land into two equal portions of 2.5 acres, each, numbered LR No. Mutira/Kiajege/347 and 348. The 1st respondent then subdivided parcel 347 into parcels LR No. Mutira/Kiajege/359 and 360, which he transferred into his name. He also subdivided parcel LR No. Mutira/Kiajege/348 into parcels LR No. Mutira/Kiajege/385 and 386 which he also transferred to himself. He would thereafter transfer parcels LR No. Mutira/Kiajege/ 360 and 386 to the 2nd respondent, Dominic



Karimi Guthua. The 1st respondent was accused of failing to pay any consideration at all for the land, including for the 2 acres he was to buy.

3. The applicant herein filed Kerugoya CMCC No. 403 of 2010 asking that the whole land be transferred to her as the administrator of the Estate while the 2nd respondent filed Kerugoya CMCC No. 379 of 2010 over the properties. The two suits were consolidated and the court gave judgment on 26th July 2012, where it was ordered that the applicant gets 3 acres and the 2nd respondent gets 2 acres which he bought from the 1st respondent (Nelson Karimi Ngrigacha). The 1st respondent filed an appeal and the applicant filed a cross-appeal which were both dismissed on 18th November 2022. In the cross-appeal, the applicant had contended that the respondents should transfer the land LR No. Mutira/Kiajege/360 and 386 to her, as according to her, the same had been irregularly acquired before being transferred to the respondents.
4. The 2nd respondent then filed Kerugoya ELC Appeal No. 43 of 2004 seeking to have the parcel LR No. Mutira/Kiajege/385 revert to him. He also sought to have parcel LR No. Mutira/Kiajege/359 registered in his name as per the orders of the High Court in HCCC No. 25 of 1978. In Kerugoya ELC Appeal No. 43 of 2004, the applicant filed a cross-appeal seeking to have the parcels numbers LR Nos. Mutira/Kiajege 360 and 386, held by the 2nd respondent, transferred to her.
5. On 28th July 2017, the ELC gave judgment wherein the 2nd respondent's appeal was partly allowed, and the court directed that there be registered in his favour 0.41 hectares from parcel LR No. Mutira/Kiajege/359 as per the order in HCCC No. 25 of 1978. His appeal regarding ownership of parcel Mutira/Kiajege/385 was dismissed. Additionally, the ELC agreed with the trial court that the 2nd respondent did not perpetrate any fraud and the titles he held were good in law. Therefore, the cross-appeal by the applicant herein was dismissed.
6. The applicant then filed Civil Appeal No. 162 of 2012. This Court, in a judgment delivered on 18th November 2022, agreed with the findings of the lower court and the ELC, that the 1st respondent herein had wrongly transferred the property to himself but did not fault the reasoning and determination by the trial court and the ELC in concluding the matter. This Court also agreed that the 2nd respondent had not taken part in the said fraud thus there was no reason for his titles to be cancelled. The 2nd respondent herein had also filed a cross-appeal, which was dismissed.
7. The applicant being dissatisfied with the judgment of this Court, now seeks to have an audience with the Supreme Court and asks this Court to find that her application raises matters of general public importance. The applicant seeks determination of the question as to whether her rights were infringed when the court failed to find that a title acquired through what she calls corrupt schemes ought to be cancelled. The applicant has filed submissions dated 18th October 2024 in support of the motion.
8. The applicant is of the view that the 2nd respondent's titles should have been cancelled because he purchased them from the 1st respondent who had acquired the properties through alleged fraud. She submits that the 1st respondent had no good title to pass on, notwithstanding that the purchaser did not participate in the fraud. The applicant states that this matter affects public land cases to determine whether such purchaser titles are safe. The applicant also submits that a notice of appeal prior to her application is not mandatory in applications for certification as a matter of general public importance.
9. The 1st respondent has filed what he calls grounds of opposition dated 26th September 2024 stating that the application is incompetent and the court has no jurisdiction to entertain the same, though the reason for the incompetence and lack of jurisdiction is not stated on the face of the said grounds of opposition. He urges the court to strike out the application. The 2nd respondent did not file



written submissions despite being served with a hearing notice where he was required to file written submissions.

10. The matter came up for hearing before us on 22nd October 2024 where an undated letter by the applicant was brought to our attention where she indicated that she was relying entirely on her written submissions and did not wish to attend court for hearing. The respondents were absent despite being served with a hearing notice for the day.
11. We have considered the record of appeal, the application and the submissions on record. In applications such as this, the principles for consideration are well settled by the Supreme Court of Kenya. In *Hermanus Phillipus Steyn vs. Giovanni Gneccchi-Ruscone*, Sup. Ct. Appl. No. 4 of 2012 [2013] eKLR the Supreme Court pronounced the test applicable in determining whether a matter is of general public importance befitting to be heard by the Court. The Court outlined the governing principles thus:
 - 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 [other] 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 themselves, a basis for granting certification for an appeal before the Supreme Court.”
12. This Court in *Johnson Gitthaiga Njoroge vs. Daniel Gitthaiga Mwaniki* [2014] eKLR stated:

...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 impact and consequences are substantial, broad-based, transcending the litigation interest 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. The applicant has not raised any issue that would benefit a determination by the Supreme Court. Alleged fraud that was raised before the subordinate court, the ELC and this Court is an issue that has been sufficiently addressed and determined by this Court and the High Court. Issues on rights



acquired by a purchaser of land have been equally addressed by this Court and the High Court. The applicant has not raised any new or novel issue calling for determination by the apex court. There are no issues that transcend the circumstances of the case; there are no issues of general public importance at all. The motion fails and is dismissed with no order on costs, the respondents having failed to attend the hearing despite being served with a hearing notice.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL ALI - ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

