



REPUBLIC OF KENYA



**Wafula v Maru (Civil Application E001 of 2024)
[2025] KECA 700 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 700 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E001 OF 2024
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
APRIL 25, 2025**

BETWEEN

FRANK WAFULA APPLICANT

AND

MANSUKHALAL JESANG MARU RESPONDENT

*(Being an application for leave to appeal to the Supreme Court against
the Judgment and Order of this Court (Gatembu, Ochieng & Korir, JJ.A.)
dated 11th October, 2024 in Eldoret Civil Appeal No. E094 of 2023)*

RULING

1. By a plaint dated 27th November 2008, the respondent sued the applicant at the Environment and Land Court at Kitale in ELC No. 103 of 2008 claiming ownership of land reference number Kitale Municipality Block 12/26. By a judgment dated 16th October 2023, Nyagaka, J. allowed the respondent's claim and issued a declaration that the respondent is the sole owner of the said land and ordered the applicant to vacate the said land within 15 days from the date of the judgment, in default, he would be forcefully evicted. The learned judge also issued a permanent injunction inter alia restraining the applicant from in any manner interfering with the said land and also awarded the respondent the costs of the suit and interests.
2. Aggrieved by the said decision, the applicant appealed to this Court in Eldoret Civil Appeal No. E094 of 2023 essentially faulting the trial court for: (a) declaring the respondent as the owner of the property, (b) failing to comply with order 11 of the Civil Procedure Rules, (c) failing to award him costs since the plea for mesne profits had failed, (d) blocking crucial witnesses, and (d) the suit was res judicata. By a judgment dated 11th October 2024, this Court (Gatembu, Ochieng & Korir, JJ.A.) dismissed the applicant's appeal for being devoid of merit.



3. The applicant is now before this Court by an application dated 24th October 2024 brought under Articles 159, 163 (4) (a) & (b) of the Constitution, Section 3 (B) of the Appellate Jurisdiction Act and Rules 1 (2) and 42 of the Court of Appeal Rules, 2022, beseeching this Court to certify that his intended appeal involves a matter of general public importance and grant him leave to appeal to the Supreme Court.
4. The grounds in support of the application are that land issues are emotive matters of public importance and parties should be allowed to ventilate their grievances before the Apex Court. He also claims that the impugned judgment has created a state of uncertainty in law arising from contradictory precedents. He has framed the following questions to be canvassed in his intended appeal:
 - a. Whether an unsigned document is admissible in evidence;
 - b. Whether land fraudulently alienated and registered in contravention of the law can confer genuine and lawful title.
 - c. Whether there is uncertainty in law, arising from contradictory precedents which would require the Supreme Court to resolve.
5. The respondent opposed the application through his replying affidavit dated 18th November 2024. The gist of the affidavit is that the application lacks merit, that some of the grounds cited are contrary to what was litigated before the trial court, that the application does not meet the tests for certification, and that the impugned judgment has not created inconsistencies in the law.
6. The applicant filed a further affidavit dated 28th November 2024 in which he averred that some exhibits were never produced in the criminal trial and the civil suit, therefore, this created uncertainty in the law and maintained that his intended appeal raises weighty issues of law.
7. During the virtual hearing of the application on 11th March 2025, the applicant appeared in person while the respondent was represented by learned counsel Mr. Nyamu. Both parties had filed written submissions which they adopted.
8. In his written submissions dated 28th November 2024, the applicant maintained that the question whether a title to land was fraudulently acquired is a question of general public importance and cited *Pati vs. Funzi Island Development & 4 Others* (Civil Application No. 4 of 2015, [2019] KESC 23 (KLR) (CIV) (6 August 2019) (Ruling). It was also his submission that there is uncertainty in the law and cited several decisions such as *Kitale CMCC Case No. 103 of 2008* dated 16th October 2023 and *Kitale CMCC Case No. 334 of 2011* dated 11th December 2015 between the same parties over the same land. Lastly, the applicant claims that the decision concealed (sic) several provisions of the law which he cited before the trial court.
9. The nub of the respondent's submissions dated 24th January 2025 is that the application does not meet the tests for certification.
10. We have considered the application, the submissions by both parties and the case law cited. The sole issue for determination is whether the applicant has demonstrated that his case involves a matter of general public importance to merit certification by this Court to appeal to the Supreme Court under Article 163 (4) (b) of the Constitution. Under the said Article, appeals lie from the Court of Appeal to the Supreme Court under the following circumstances: (a) as of right in any case involving the interpretation or application of the 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. However, the Supreme Court may review certification under paragraph (b) and affirm, vary or overturn it.



11. The Supreme Court and this Court have consistently held that in applications for certification under Article 163 (4) (b) of the Constitution, only exceptional cases, which raise cardinal issues of law or of jurisprudential moment will deserve the attention of the Supreme Court. (See Peter Oduor Ngoge vs. Hon. Francis Ole Kaparo & 5 Others, SC Petition No. 2 of 2012 [2012] eKLR and Koinange Investment and Development Company Limited vs. Ian Kahiu Ngethe & 3 Others (Being sued as the personal representatives of the Estate of Robert Nelson Ngethe (Deceased)) [2019] eKLR. The rationale for the above approach is that the Supreme Court was never intended to serve as an additional tier for all and sundry appeals from this Court. Conversely, the requirement for certification was intended to serve as a filtering process to ensure that only appeals with elements of general public importance engaged the Supreme Court, whose role may not be relegated to that of correcting errors in the application of settled law, even where they are shown to exist.
12. Undeniably, in applications of this nature, the onus to satisfy the Court that such matter or matters of general public importance exist rests on the applicant. the Constitution does not define “a matter of general public importance” nor does the Supreme Court Act or rules made thereunder. In our view, the omission to define the said phrase may have been deliberate considering that matters of general public importance may be limited in time and scope depending on varying circumstances over a period of time. However, in *Hermanns Phillipus Steyn vs. Giovanni Gnechi-Ruscione* [2013] eKLR the Supreme Court stated:

“Before this Court ‘a matter of general public importance’ warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: it impacts and consequences are substantial, broad based, transcending the litigation- interests of the parties, and bearing upon the public interest”.
13. Public interest was defined by this Court in *Kenya Civil Aviation Authority vs. African Commuter Service* [2015] eKLR, as follows:

“Public interest, although not susceptible of precise definition, has certain characteristics which are inherent in the term itself. As stated in *R (Corner House Research) vs. Director of SFO* [2008] 4 All ER 927

“it must mean something of importance to the public as a whole rather than just to a private individual.” The Black’s Law Dictionary defines public interest as:

“The general welfare of the public that warrants recognition and protection, something in which the public as a whole has stakes, especially that justifies Government regulation.”
14. The question is whether the applicant has satisfied this Court that his appeal is one of general public importance to justify certification to appeal to the Apex Court. In *Town Council of Awendo vs. Nelson Oduor Onyango & 13 Others* [2015] eKLR the Supreme Court gave guidance in dealing with Article 163 (4) (b) as follows:
 - i. for an intended appeal to be certified as one involving a “matter of general public importance,” the intending appellant is to 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 is to 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 is/are to 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. determinations of fact in contests between parties are not, by and of themselves, a basis for granting certification for an appeal before the Supreme Court;
 - viii. issues of law of repeated occurrence in the general course of litigation may, in proper context, become ‘matters of general public importance’, so as to be a basis of certification for appeal to the Supreme Court;
 - ix. questions of law that are, as a fact, or as appears from the very nature of things, set to affect considerable numbers of persons in general, or as litigants, may become ‘matters of general public importance’, justifying certification for final appeal in the Supreme Court;
 - x. questions of law that are destined to continually engage the workings of the judicial organs, may become ‘matters of general public importance’, justifying certification for final appeal in the Supreme Court;
 - xi. Questions with a bearing on the proper conduct of the administration of justice, may become ‘matters of general public importance,’ justifying certification for final appeal in the Supreme Court.”
15. We have carefully analyzed the impugned judgment, the grounds urged by the applicant in his application, his supporting affidavit and in his submissions. At the risk of being repetitive, the applicant seeks to have the following questions answered by the Apex Court: (a) whether an unsigned document is admissible in evidence; (b) whether land fraudulently alienated and registered in contravention of the law can confer genuine and lawful title, and, (c) whether there is uncertainty in law, arising from contradictory precedents which would require the Supreme Court to resolve.
16. We find nothing to suggest that the above questions are novel.
- The applicant has even cited decisions rendered by magistrate’s courts in support of his assertion that there are conflicting court decisions. This suggests a clear misunderstanding of what constitutes conflicting court decisions. What the applicant describes as matters of general importance do not fall anywhere near the definition in *Kenya Civil Aviation Authority vs. African Commuter Service (Supra)*. More importantly, the dispute in question does not transcend beyond the parties.



17. The jurisdiction of the Supreme Court under Article 163 (4) (b) cannot be invoked merely for the purpose of rectifying errors. Nor is it a jurisdiction to be invoked merely for the determination of contested facts between the parties. It is not a mechanism to re-arguing the appeal. (See *Malcolm Bell vs. Daniel Toroitich Arap Moi & Another*, SC App. No. 1 of 2013).
18. We are not satisfied that there is any cardinal issue of law or an issue of great jurisprudential moment at stake. On the contrary, we find that there is no confusion in the legal practice as this Court did not misinterpret previous decisions of the Court while determining the land dispute before it.
19. As was underscored by the Supreme Court in *Peter Oduor Ngoge vs. Hon. Francis Ole Kaparo & 5 Others* Supreme Court Petition No. 2 of 2012 [2012] eKLR, before invoking its jurisdiction, the guiding principle to be borne in mind is that the chain of courts in the constitutional set-up, running up to the Court of Appeal, have the professional competence and proper safety designs to resolve all matters turning on the technical complexity of the law.
20. In conclusion, we find that the applicant has not discharged the burden of satisfying 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*. Accordingly, the applicant's notice of motion dated 24th October 2024 is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF APRIL, 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C. Arb, FCI Arb.

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JUDGE OF APPEAL

G.V. ODUNGA

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

