



Mangira & another v Asset Recovery Agency; Ali Cars Limited (Affected Party) (Civil Appeal (Application) E132 of 2023) [2025] KECA 910 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KECA 910 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E132 OF 2023
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
MAY 23, 2025**

BETWEEN

STEPHEN VICKER MANGIRA 1ST APPLICANT

NABIL LOO MOHAMED 2ND APPLICANT

AND

ASSET RECOVERY AGENCY RESPONDENT

AND

ALI CARS LIMITED AFFECTED PARTY

(Being an application for certification to appeal to the Supreme Court from the Judgment of the Court of Appeal at Mombasa (Murgor, Laibuta & Odunga, JJA.) delivered on 25th October 2024 in Civil Appeal No. E132 of 2023)

RULING

1. From the incomplete record as put to us, we gather from the bare Motion and from the impugned Judgement of this Court that the applicants moved to this Court on appeal in Civil Appeal No. E132 of 2023 from the ruling and orders of the High Court of Kenya at Mombasa (Njoki Mwangi, J.) dated 20th January 2023 in HCCC No. 269 of 2017 in which the respondent, the Assets Recovery Agency (ARA), sought preservation orders against the applicant's and one Bakari Kila Bakari (Bakari) prohibiting the sale, transfer, disposal of, or other dealings in the motor vehicles therein listed.
2. In addition to the foregoing, the respondent sought preservation orders against the 1st applicant and Bakari to prohibit them from accessing, transacting or dealing with Kshs. 2,640,339/60 held in Account No. 01003XXXX0100 at the Standard Bank, Kericho.



3. By an order issued on 14th July 2017, the trial court granted the respondent’s application as prayed, whereupon the respondent moved the court by an Originating Motion dated 31st October 2017 supported by the annexed affidavit of Muthoni Kimani (the then Director of the respondent) sworn on 31st October 2017 deposing to the background of the Motion and the grounds on which it was anchored. In the Originating Motion, the respondent sought: a declaration that the afore-mentioned assets were proceeds of crime and therefore liable to forfeiture to the Government; orders for forfeiture of the said assets and their transfer to the ARA; and costs of the application.
4. By a ruling dated 20th January 2023, Njoki Mwangi, J. allowed the respondent’s Originating Motion as prayed, which prompted the applicants to move to this Court on Appeal, whose judgment dated 25th October 2024 is the subject of the applicants’ Notice of Motion dated 24th November 2024 and amended on 27th November 2024 seeking: certification to appeal to the Supreme Court; stay of the forfeiture orders pending appeal; and costs of the Motion.
5. The applicants’ Motion is made under rules 1(2) and 5(2) (b) of the Court of Appeal Rules, 2022. Though anchored on a whopping 19 grounds, we find no affidavit on record in support thereof as required by the mandatory provisions of rules 45(1) of this Court’s Rules, which reads:
 45.
 - (1) Each formal application to the Court shall be supported—
 - a. by one or more affidavits of the applicant; or
 - b. by one or more affidavits of some other person or persons having knowledge of the facts.
6. We also take note of the fact that, though intended to be supported by the 1st applicant’s affidavit, none was annexed to the Motion. It is also instructive that the applicant’s Motion is a formal application made pursuant to rule 42 (application for certification that a point of law of general public importance is involved), which rule 45(1) require to be supported by an affidavit. Rule 42(b) reads:
 42. Where no appeal lies unless the superior court certifies that a point of law of general public importance is involved, an application for such a certificate may be made—
 - a. ...
 - b. by motion or chamber summons according to the practice of the superior court, within fourteen days after that decision.
7. Even though the respondent has not taken issue with the applicants’ Motion on the grounds that it offends the mandatory provisions of rule 45(1), it replying affidavit of Samuel Wambua, Senior State Counsel, sworn on 30th December 2024 deposes to the respondent’s case that: the applicants have not demonstrated that their Motion raises matters of general public importance; and that the substantial matters raised have no bearing on public interest.
8. On the prayer for stay of forfeiture orders, the respondent’s counsel submits that this Court lacks jurisdiction to hear and determine the application for stay having been rendered functus officio upon delivery of the impugned judgment. We agree. Moreover, such orders are the preserve of the Supreme Court as mandated by section 23A of the *Supreme Court Act*, 2011.
9. Having considered the applicants’ Motion, the respondent’s replying affidavit, the applicants’ learned counsel’s written submissions dated 23rd January 2025 and those of counsel for the respondent together with their list and digest of authorities dated 13th January 2025, we form the view that the applicants’



Motion is bad in form for non-compliance with the mandatory provisions of rule 45(1) of the Rules of this Court. Be that as it may, it would be remiss of us not to pronounce ourselves on the points of law raised in the Motion, or to clarify the law on certification under rule 42 for the avoidance of doubt as to the competence or merits of the applicants' Motion.

10. We take to mind the Supreme Court's decision in *TMG & another v AP* [2024] KESC 48 (KLR) where the Court had this to say on the stringent conditions to be satisfied to merit certification under Article 163(4) (b) of the Constitution:

“It is trite that a matter(s) of general public importance which would warrant the exercise of this Court's appellate jurisdiction under Article 163(4)(b) of the Constitution should transcend the dispute between the parties, and have a significant bearing upon public interest. Further, the onus lies with the applicants to demonstrate that the matter in question carries specific elements of real public interest and concern. We cannot help but note that the applicants did not concisely set out the issues they deem are of general public importance in their Motion. Rather, they set out the issues in their written submissions. This Court has time and time again underscored the requirement and necessity of an intended appellant(s) to concisely set out the issues deemed to be of general importance as appreciated in *Hermanus Phillipus Steyn vs. Giovanni Gnechi-Ruscione* (Supra). In short, the delineated issues form the basis upon which both the Court of Appeal and this Court determine whether indeed an intended appeal raises issues of general public importance which warrant this Court's consideration. Therefore, we find that for proper order and notice to the other parties, an intended appellant, like the applicants, should concisely delineate the issue(s) of general public importance he/she deems arises from an impugned decision of the Court of Appeal...” [Emphasis ours]

11. What then may be viewed as points of general public importance in this case to warrant judicial scrutiny in the intended appeal to the Supreme Court? A similar question was addressed by this Court in *Memphis Limited v Kenya Ports Authority* [2022] KECA 105 (KLR) in the following words:

“18. ... For leave to appeal to be granted, the applicant needs to demonstrate that the points of law are 'of general importance the determination of which will substantially affect the rights of one or more of the parties.'”

12. The Act does not however provide direction on what may be considered to be 'of general importance'. We think what the Supreme Court of Kenya stated in *Hermanus Phillipus Steyn vs. Giovanni Gnechi-Ruscione* [2013] eKLR though in the context of certification under Article 163(4) (b) of the Constitution, does provide guidance in interpreting the words 'of general importance' under Section 39(3) (b) of the Act. In that case, the Supreme Court stated thus:

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: 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.” [Emphasis added]



13. In the afore-cited decision in *Memphis Limited v Kenya Ports Authority* (supra), the Court took to mind the Supreme Court’s pronouncement in *Hermanus Phillipus Steyn v Giovanni Gnecchi-Ruscone* [2013] KESC 11 (KLR) and concluded thus:

“20. ... The importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have a more general significance. Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law and that it is for the common good that such law should be clarified so as to enable the courts to administer the law, not only in the case at hand, but also in such cases in future. It is not enough to show that a difficult question of law arose. It must be an important question of law”. [Emphasis ours]

14. Having considered the instant Motion albeit bereft of a supporting affidavit, the grounds on which it is anchored, the affidavit in reply thereto, the cited authorities and the law, we find that the applicants’ Motion falls short of demonstrating to our satisfaction beyond a blanketing statement that the intended appeal raises issues of general public importance. To our mind, the intended appeal seeks to secure interpretation of the already-settled law relating to preservation and forfeiture of private property suspected of having been irregularly obtained. We find nothing to demonstrate that the applicants’ case raises matters of general public importance or interest, or that their case transcends their private interests in the movable assets and moneys sought to be forfeited pursuant to statute law. Neither have they raised any novel issue deserving of pronouncement by the Supreme Court.

15. The appellants having failed to demonstrate that their interests in the motor vehicles and the bank deposits in issue fall in the category of those contemplated in Article 163(4) (b) of the *Constitution*, and having failed to show what in their intended appeal constitute points of law of general public importance that transcend their private litigation interests and, further, having failed to demonstrate how such interest have a bearing on the general public interest and concern with regard to specific elements, we reach the inescapable conclusion that their Motion fails and is hereby dismissed with costs to the respondent. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY 2025.

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA CARb, FCIArb.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

