



Rift Valley Machinery Services Limited v Agro Complex (K) Limited & 14 others (Civil Appeal (Application) E443 of 2020) [2025] KECA 974 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KECA 974 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E443 OF 2020
SG KAIRU, FA OCHIENG & AO MUCHELULE, JJA
MAY 23, 2025**

BETWEEN

RIFT VALLEY MACHINERY SERVICES LIMITED APPLICANT

AND

AGRO COMPLEX (K) LIMITED 1ST RESPONDENT
PETER KIMANI KUMARU 2ND RESPONDENT
JANE WAMBUI 3RD RESPONDENT
REGISTRAR OF COMPANIES 4TH RESPONDENT
PRINCIPAL REGISTRAR OF TITLES 5TH RESPONDENT
KING DEVELOPERS LIMITED 6TH RESPONDENT
JOSHUA GITARI MWANGI 7TH RESPONDENT
MUTUA MULI 8TH RESPONDENT
GEORGE NGUGI 9TH RESPONDENT
ANDREW JACOB ONYANGO ONDIEK 10TH RESPONDENT
CHARLES ODHIAMBO AYORO 11TH RESPONDENT
ALFRED OMONDI MOLA 12TH RESPONDENT
AGRO COMPLEX KENYA LIMITED 13TH RESPONDENT
CHRISTOPHER KALE CHETALAM 14TH RESPONDENT
ELISHA CHEBII CHESIYNA 15TH RESPONDENT



(Being an application for certification and grant of leave to appeal against the ruling of the Court of Appeal at Nairobi (M’Inoti, Tuiyott & Ngenye, JJ.A.) dated 8th December 2023 in Civil Appeal Appl. No. E443 of 2020)

RULING

1. Before the Environment and Land Court (ELC) at Nairobi, there were three claims to LR No. 22140 (the suit property). The first claim was by the applicant, Rift Valley Machinery Services Limited, whose case was that it bought the suit property in 2002 from the 13th respondent, Agro Complex Kenya Limited. The 14th respondent, Christopher Kale Chetalam, and the 15th respondent, Elisha Chebii Chesiyana, are directors of the 13th respondent. The second claim was made by the 1st respondent Agro Complex (K) Limited which stated that it was allocated the suit property and obtained title to it in 2007. The last claim was by the 6th respondent, King Developers Limited, who asserted that it purchased parcel numbers 15110 to 15113 from the 7th to 12th respondents (Joshua Gitari Mwangi, Mutua Muli, George Ngugi, Andrew Jacob Onyango Ondieki, Charles Odhiambo and Alfred Omondi Mola) and amalgamated the parcels to create LR No. 29606 and became the registered owner on 20th March 2013. The 6th respondent claimed that LR No. 29609 was the same as the suit property, which both the applicant and the 1st respondent claimed.
2. The superior court (K. Bor, J.) heard these rival claims and dismissed the claims by the applicant and the 6th respondent. The learned Judge granted prayers (a), (b) and (c) of the counterclaim by the 1st and 2nd respondents.
3. Aggrieved by the decision, the applicant on 22nd January 2020 filed a notice of appeal dated 20th January 2020. The record of appeal was filed out of time on 12th November 2020. By a notice of motion dated 17th November 2020, the applicant sought the extension of time and that the record of appeal filed out of time be deemed to be properly on record.
4. In a ruling dated 7th May 2021, the learned Murgor, JA. dismissed the motion to extend time on the basis that the delay in filing the record of appeal had not been satisfactorily explained. The applicant not having annexed a copy of the draft memorandum of appeal, the learned Judge observed that the likelihood of success of the appeal could not be assessed. Lastly, it was found that to allow the application would prejudice the 1st, 2nd and 3rd respondents. Back to the question of delay, the applicant’s case had been that the delay was occasioned by its inability to access the court registry due to covid-19 pandemic; that there was delay in getting typed proceedings as a result; and that the registry had not communicated the assessed costs for the typed proceedings. It was found that it had not been shown that the applicant had experienced any difficulties in accessing the registry; that it had been written to by the registry that the typed proceedings were ready for collection on 3rd June 2020; and that the costs for typing had been assessed at Ksh.12,400/=. The applicant had 55 days to file the record of appeal but had not filed until 18th November 2020 when he had filed the application to extend time. The certificate of delay that the applicant had annexed had indicated that the period of preparation of the proceedings was from 23rd January 2020 to 3rd June 2020. The period between 3rd June 2020 and 18th November 2020 was found to be inordinate and not satisfactorily explained.
5. The applicant was not satisfied with the ruling. It filed a reference which went before the learned Judges M’Inoti, Tuiyott and Ngenye, JJ.A. The reference was heard, and in a ruling delivered on 8th December 2023 the learned Judges upheld the decision by the single Judge. It was noted that



throughout the Covid-19 period, the applicant's advocate was in communication with the registry. The Court highlighted the communication, and proceeded as follows:-

- “ 10. As early as 18th June, therefore, the applicant's advocates had been notified by the Deputy Registrar that the court's customer service desk was open and operational, a fact which they acknowledge. To turn around and claim that they were not able to access the Court until October due to the Covid-19 mitigation measures is clearly not a convincing or candid explanation for the delay in filing the appeal.
 11. Taking all the foregoing into account, and in particular the certificate of delay duly signed by the Deputy Registrar, we are not satisfied that the learned single judge exercised her discretion erroneously. The applicant did not candidly explain the reason for the delay in filing the appeal. Accordingly, we find no merit in this reference and the same is dismissed with costs to the 1st, 2nd and 3rd respondents. It is so ordered.”
6. In seeking reference, the applicant's case was that the single Judge had erred in finding that, because it had not annexed a copy of the impugned judgment and a copy of draft memorandum of appeal in the supporting affidavit, the arguability of the intended appeal could not be assessed. According to the applicant, the learned Judge ought to have considered these documents which were contained in the record of appeal. The learned Judges found that, although the supporting affidavit had indicated that a copy of the judgment and a draft memorandum of appeal had been annexed, they had actually not been annexed. Nonetheless, in the determination of the learned Judges, the real question, what they called the clincher, was whether the applicant had –
- “ candidly explained the reason or reasons for its delay in filing the appeal.”
7. Before us is a notice of motion dated 22nd December 2023 pursuant to Article 163(4) of the Constitution, sections 3A and 3B of the Appellate Jurisdiction Act and Rules 39, 40, 41, 42 and 43 of the Court of Appeal Rules, 2022 seeking the following orders:
- “ 1) This Honourable Court be pleased to issue an order certifying that the applicant's intended appeal to the Supreme Court of Kenya raises questions of general public importance that transcend the circumstances of the instant case.
 2. This Honourable Court be pleased to grant leave to appeal the ruling and order of the court of appeal (M'Inoti, Tuiyott & Ngenye JJ.A.) dated and delivered at Nairobi on 8th December 2023;
 3. This Honourable Court be pleased to certify the applicant may lodge an appeal to the Supreme Court of Kenya against the ruling and orders of the Court of Appeal (M'Inoti, Tuiyott & Ngenye JJ.A) dated and delivered at Nairobi on the 8th December 2023.
 4. This Honourable Court be pleased to issue such terms as it may deem just, for the period within which the appellant should lodge their intended appeal to the Supreme Court of Kenya.
 5. This Honourable Court be pleased to extend the orders of stay of execution currently in place pending the hearing and determination of this application



and of the intended appeal to the Supreme Court of Kenya as a conservatory measure to maintain the substratum of the matter.

6. The Honourable Court be pleased to issue any other order that it may deem fit to meet the ends of justice.”
8. In the grounds in support of the application, in the supporting affidavit and in the submissions by senior counsel Mr. Mohammed Nyaoga (who appeared alongside learned counsel Mr. Guto Mogere, Mr. Dennis Ngaricia and Ms. Brenda Ogono) for the applicant, it was the applicant’s case that the three Judges of this Court erroneously exercised their discretion by dismissing the application for extension of time to appeal and thereby shut out the applicant from appealing in this dispute in which they risk losing their right to property. It was argued that the intended appeal sought the interpretation of the Constitution on an issue of public importance and therefore certification was sought to take the matter to the Supreme Court. In counsel’s submissions, the fact that a copy of the impugned judgment and a copy of the memorandum of appeal were not annexed to the affidavit supporting the application for extension, when the two were in the record of appeal that had been filed, and on the basis of which the application for extension was dismissed, was a matter of such public importance that the applicant had reached the threshold required for certification to enable the Supreme Court to intervene on appeal. Secondly, that there was a single Judge who had found that the intended appeal was arguable and, over the same matter, the single Judge herein had found that the intended appeal was not arguable. This inconsistency and unpredictability undermined the judicial system and hence the need for the Supreme Court to deal with the issue. Lastly, that the learned Judge had relied on the Court’s internal administrative measures that had not been publicized and on procedural rules that offended the constitutional provisions relating to access to justice and to due process, and there was need for the Supreme Court to clarify the issues to ensure consistency in the exercise of discretion.
9. Learned Counsel Mr. Ashitiva for the 6th respondent supported the application for certification. According to learned counsel, the intended appeal concerns the issue of computing time within which to file an appeal, specifically regarding the computation of time on a certificate of delay issued by the trial court, especially the quantum of time in the unprecedented circumstances of Covid-19 pandemic. It was argued that the determination by the Supreme Court on this issue would provide essential guidance and help to resolve uncertainties that may be affecting numerous proceedings in similar times.
10. The 13th to 14th respondents were represented by learned counsel Mr. Bundotich who supported the application and asked this Court to allow it so that the Supreme Court can ultimately determine the substantive issues raised in the appeal in line with Article 159(2)(d) of the Constitution.
11. Senior counsel Mr. Kanjama, together with Ms. Violet Obure, appeared for the 1st, 2nd and 3rd respondents who opposed the application. According to senior counsel, the primary reason why the application for extension of time was dismissed was that the applicant had failed to satisfactorily explain the delay in filing the record of appeal; that the arguability of the intended appeal was a secondary issue, but even then, the applicant had failed to annex the copy of judgment and the draft memorandum of appeal to enable the issue to be assessed. Regarding the argument that the judgment and memorandum of appeal were filed in the record of appeal that had been filed out of time, the senior counsel, relying on Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others, Applic. No.16 of 2014 [2014] KESC 12 (KLR), submitted that it was presumptuous and inappropriate for a party to file a record of appeal out of time and without leave and then seek extension of time subsequently. Further, it was argued that the issue of extension of time, and what the Court has to consider in such a situation, were not novel issues that required reference to the Supreme Court. Senior Counsel submitted that the applicant had failed to clearly and concisely outline the specific “general public importance” issue that was the basis for the request for certification. Lastly, that factual determinations in disputes between parties alone do not



justify certification for an appeal to the Supreme Court (see *Sundowner Lodge Limited v Kenya Tourist Development Corporation* [2023] KECA 1131 (KCB)).

12. We have considered this application and the rival positions and the submissions by learned counsel.
13. Article 163(4) of the *Constitution* states that appeals shall lie to the Supreme Court from this Court as of right in any case involving the interpretation or application of the *Constitution*, and in any other case in which the Supreme Court, on this Court, certifies that a matter of general public importance is involved.
14. In *Hermanus Phillipus Steyn v Giovanni Gneccchi- Ruscone* [2013] eKLR, the Supreme Court set out the principles applicable in determining whether a matter is of general public importance. The issue or matter in question on appeal must be one the determination of which will transcend –

“the circumstances of the particular case, and has a significant bearing on the public interest.”

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.”

A mere apprehension of miscarriage of justice will not satisfy the issuance of a certificate, and neither will the factual determination to the dispute between the parties justify certificate for an appeal to the Supreme Court (see *Sundowner Lodge Limited v Kenya Tourist Corporation* (*supra*). Lastly, the question or questions of law must have arisen in the court or courts below, and must have been the subject of judicial determination. In this case, the question must have been the subject of determination in the ELC or before this Court (see *Malcom Bell v Hon. Daniel Toroitich Arap Moi & Another*, S.C. Application No. 1 of 2013).

15. What was before the ELC was a dispute over a parcel of land. The applicant claimed the parcel, but there were other claimants. The applicant lost in its claim and sought to challenge the decision before this Court. The certificate sought is not in respect of any point of law or issue that arose from that dispute or the decision. The certificate that the applicant seeks relates to the determination of the reference by the three Judges of this Court. The determination agreed with the exercise of discretion by the single Judge who declined to extend time to appeal.
16. We carefully listened to the applicant in its application. Our considered view is that the applicant was aggrieved by the factual appreciation by the learned Judges of the issues contained in the reference. Otherwise, the principles of law applicable in an application to extend time to appeal, or the exercise of discretion in such a matter, are clear and not controversial in any way. The reference did not raise any substantial question of law that would be the subject of certification, and neither has it been demonstrated that any issue of general public importance exercised the minds of the three Judges who heard and determined the reference. To our mind, the applicant thinks that a miscarriage of justice occurred when its reference was declined. Quite unfortunately, this cannot satisfy the issuance of a certificate.
17. The consequence is that, we decline the request to issue a certificate to the applicant to move to the Supreme Court on appeal. The application is dismissed with costs.

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

S. GATEMBU KAIRU FCI Arb.

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR.

