



**Insurance Training & Education Trust v Gathondu (As the Administrator of the Estate of the Late Thumbi Kariuki Jane Wanjiru Ndumia) & 5 others (Civil Application E015 of 2024) [2025] KECA 1109 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1109 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E015 OF 2024  
W KARANJA, J MOHAMMED & WK KORIR, JJA  
JUNE 20, 2025**

**BETWEEN**

**INSURANCE TRAINING & EDUCATION TRUST ..... APPLICANT**

**AND**

**JOSEPH NDUNG’U GATHONDU (AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE THUMBI KARIUKI JANE WANJIRU NDUMIA) ..... 1<sup>ST</sup> RESPONDENT**  
**JOSEPH NDUNG’U GATHONDU ..... 2<sup>ND</sup> RESPONDENT**  
**JANE WANJIRU NDUMIA ..... 3<sup>RD</sup> RESPONDENT**  
**RAJAB AHMED KARUME ..... 4<sup>TH</sup> RESPONDENT**  
**THE CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT**  
**THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

*(Being an application for certification that a matter of General Public Importance is involve warranting the grant of leave to appeal to the Supreme Court against the judgment of the Court of Appeal (Kiage, Ali-Aroni & Achode, J.J.A.) dated 14th June 2024 in Civil Appeal No. E505 of 2020)*

**RULING**

1. The subject of the application before us and the suit as a whole is ownership of Land Reference No. 209/10210, Bellevue area, Nairobi (the suit property), which is claimed by the applicant herein on one hand and the 1<sup>st</sup> - 4<sup>th</sup> respondents on the other. The Environment and Land Court (ELC) in Nairobi was moved vide ELC No. 816 of 2012 and ELC No. 47 of 2010 to determine the said issue. The rival



parties hold ownership documents to the suit property and each party claims its documents are the valid or legitimate ones.

2. The ELC heard the dispute and in a judgment rendered on 27<sup>th</sup> October 2020, the court found the applicant's documents to be valid and the Grants held by the 1<sup>st</sup> - 4<sup>th</sup> respondents were found to be forged. The court held, further, that where a property is registered in the name of one party, no other person can be allocated that property.
3. Being aggrieved by the judgment, the 1<sup>st</sup> - 4<sup>th</sup> respondents filed an appeal before this Court, being Civil Appeal No. E505 of 2020. The 4<sup>th</sup> respondent (Rajab Ahmed Karume) also filed a separate appeal, being Civil Appeal No. E519 of 2020. The two appeals were consolidated and heard together resulting in the judgment now impugned, which judgment overturned the ELC judgment and ruled in favour of the 4<sup>th</sup> respondent.
4. The application is filed pursuant to Article 163(4) of *the Constitution* of Kenya and other relevant provisions of the *Supreme Court Act* and Rules and the Court of Appeal Rules. The applicant seeks certification that the intended appeal to the Supreme Court raises matters of general public interest/importance which need to be canvassed and determined before the Supreme Court.
5. The applicant has preferred eight (8) grounds in support of the application as hereunder:-

“1) That by a Judgment delivered on 27<sup>th</sup> October 2020 in ELC 816 of 2012 consolidated with ELC Case No. 47 of 2010, the Environment and Land Court found that the Applicant was the valid registered owner of Land Reference No. 209/10210, Bellevue area, Nairobi. The Court found that the Grants held by the 1<sup>st</sup> – 4<sup>th</sup> Respondents herein were forgeries and/or obtained on the basis of falsification of documents and fraud. The Superior Court further found that where a property is registered in the name of one party, no other person can be allocated such property.

That aggrieved by the said Judgment, the 1<sup>st</sup> – 4<sup>th</sup> Respondents instituted Civil Appeal No. E505 of 2020, Joseph Ndung'u Gathondu & 2 Others - vs- The Chief Land Registrar & 2 Others and Civil Appeal No. E519 of 2020, Rajab Ahmed Karume -vs- The Chief Land Registrar & 5 Others, respectively. The two appeals were consolidated, and this Honourable Court delivered a Judgment on 14<sup>th</sup> June 2024.

2. That in its Judgment, this Honourable Court reversed the decision of the Superior Court that the Applicant was the valid registered owner of Land Reference No. 209/10210, Bellevue, Nairobi holding instead that the 4<sup>th</sup> Respondent obtained a valid title to the suit property.
3. That the decision of this Honourable Court has a huge impact on all claims regarding titles particularly where third parties collude with officers from the Ministry of Lands and Director of Surveys to create fraudulent title documents in order to deprive public institutions of property which they acquired for value and obtained titles thereto even before the purported subsequent allocations to the third parties thereby transcending the interest of litigants in this case.
4. In particular, the decision of this Honourable Court brings to the fore the following specific issues which merit a further input from the Supreme Court:
  - i. Whether the jurisdiction of the Court of Appeal as the first appellate Court to review the facts and arrive at its own independent conclusions extend to questions or issues that were not pleaded and subject of evidence by the parties in the trial Court and



whether the Court of Appeal can use the unpleaded issues as a basis to set aside the decision of the trial Court.

- ii. Can the decision of the Supreme Court in Petition No. 5 (E006 of 2022) Torino Enterprises Limited vs Hon Attorney General 10 rendered on 22<sup>nd</sup> September 2023 affect the practice of transfer and registration of property through Informal Transfers entered into between allottees of public land and subsequent purchasers thereof with the consent and approval of the Commissioner of Lands long before the decision of the Supreme Court.
  - iii. What is the impact of the declaration that Letters of Allotment cannot be transferred until perfection particularly on informal transfers entered into before the Supreme Court decision particularly the fact that the law (including case law) should not apply retrospectively to deprive innocent purchasers for value holding grants registered in their favour by the Ministry of Lands.
  - iv. Whether public land that has already been allocated and the allotment perfected result in the issuance of a Grant and registration of the same thus transmuting to private land can be re-allocated to a third party before the invalidation of the initial allotment that has been perfected and a Grant issued in favour of the first allottee or an innocent third party.
  - v. Whether a Letter of Allotment is predicated on the life of the allottee and lapses upon his death and cannot be transferred to a third party by the Administrators of his Estate.
  - vi. Whether an admitted error by Public Officers in allocating a Deed Plan Number to a property can be used as a basis to invalidate a regular allocation, compliance with the conditions, payments, and issuance of a Grant in favour of an innocent purchaser.
  - vi. Whether expert witnesses are a mandatory requirement to prove forgery of signatures in documents when the alleged makers of the said documents have appeared in Court and denied having executed such documents.
  - vii. Whether in light of the foregoing, the Court of Appeal breached the Applicant's rights to a fair hearing under Article 50 of *the Constitution* when it purported to adjudicate upon matters that had not been pleaded before the trial court.
6. That the issues set out above are substantial and weighty and determination of the same shall have tremendous impact and bearing on the general public interest particularly in the litigation of land related cases with rival Grants or Certificates of Title.
  7. That the issues listed above meet the test laid out by the Supreme Court in Phillipus Steyn v Giovanni Gneccchi-Ruscone [2013] eKLR, Supreme Court Application No. 4 of 2012.
  8. That the decision of this Honourable Court has created uncertainty in entities including public bodies that hold property registered in their names after spending public funds and purchasing property for public or institutional use which are grabbed by private entities in collaboration with public officials from the Ministry of Lands and Director of Surveys.
  9. That the foregoing matters transcend the litigation interest of the parties herein which only the Supreme Court can conclusively and finally settle to give guidance to both this Honourable Court and the Superior Courts dealing with similar claims regarding land held by public and private bodies.



10. That it is in the public interest that the Orders sought be granted as none of the Respondents herein will be prejudiced by the grant of the Orders sought.
11. That the Applicant has already evinced an intention to appeal by filing a Notice of Appeal as provided for under Rule 36 of the Supreme Court Rules, 2020 which has been served upon all the parties herein.”
6. The application is supported by 2 affidavits sworn by Dr. Ben Kajwang the director and CEO of the applicant on 12<sup>th</sup> July 2024 which has several annexures, and another one dated 16<sup>th</sup> September 2024 in response to the 4<sup>th</sup> respondent’s replying affidavit dated 23<sup>rd</sup> July 2024. The application is opposed by the 4<sup>th</sup> respondent through a replying affidavit filed in four (4) volumes. Both parties also filed submissions amplifying their rival positions and case digests in support of their submissions.
7. According to counsel for the applicant, the application raises issues that transcend the interests of the parties herein and which impact the entire gamut of land ownership in Kenya, particularly in regard to letters of allotment where holders of such letters die and the subsequent owners transfer the property. The respondent avers that the matter is of general public interest particularly in the litigation of land related cases with rival Grants or Certificates of title particularly those involving public institutions which have been and continue to be victims of land grabbing by private individuals in Kenya.
8. Counsel also refers to the Supreme Court decision in *Petition No. 5 (E006 of 2022) Torino enterprises limited -vs- the Honorable Attorney General* which was delivered on 22<sup>nd</sup> of September 2023 and which impacted on land ownership throughout the Country. Counsel posed the question whether the said decision can apply retrospectively and whether it affects land ownership rights existing before it was determined. The question is also posed as to whether the said decision affects the practice of transfer and registration of property through informal transfers entered into between allottees of public land and subsequent purchasers thereof with the consent and approval of the Commissioner of Lands long before the decision of the Supreme Court.
9. The applicant is of the view that this and other questions can only conclusively be answered by the Supreme Court, and that can only be done if this application is allowed in order to pave way for the matter to be heard by the Supreme Court.
10. Most of the depositions and averments contained in the grounds in support of the application and the supporting affidavits seem to challenge the merit of the appeal, which is, nonetheless, not an issue before us, as the application before us must be constrained to a determination only on whether there are some issues raised by the applicant on matters of law and which issues are not confined to this particular case, and the same transcend the interests of the parties and apply to land ownership generally.
11. There is also the issue that this Court entertained matters that were not raised before the trial court, posing the question whether doing so violated the applicant’s rights to fair trial as enshrined under Article 50 of *the Constitution* of Kenya, 2010.
12. Learned counsel for the applicant maintains that the issues raised are substantial and weighty and determination of the same will have tremendous impact and bearing on general public interest, particularly in the litigation of land related cases. He says that the application meets the criteria set by the Supreme Court in *Hermanus Phillipus Steyn Stein -vs- Giovanni Gnecci - Ruscone* [2013] eKLR.
13. The application is strongly opposed by the 4<sup>th</sup> respondent through the replying affidavit dated 22<sup>nd</sup> July 2024, the submissions mentioned earlier and case digest. According to the respondent the application is factually and legally defective and bad in law. It is said to be an abuse of the court process in that it was filed outside the 14 days prescribed under rule 42 (b) of the Court of Appeal Rules and no leave



of court has been sought and or granted to file their application out of time. The fourth respondent maintains that the application is only meant to delay the final resolution of this matter.

14. According to the 4th respondent the decision by the ELC was unfair and illegal and meant to legitimize what is otherwise a fraudulent and illegal title which is held by the applicant herein over the suit property. He deposes that the Court of Appeal decision was within the law, and it was premised on the documents and the evidence that was produced by the parties. He maintained that the Court of Appeal merely restated, asserted and applied well known principles of law to the facts in dispute between the parties and upheld the dictates of the doctrine of stare decisis by following the Supreme Court decision in Torino Enterprises Limited -vs- The Hon. Attorney General. (supra).
15. According to the 4th respondent, the application does not meet the standard set by the Supreme Court in the Philippus Stein case (supra), and that their application has not pleaded or demonstrated the existence of any cogent and or substantial points of law the determination of which will have a significant bearing on public interest. He says that there is no demonstration of any contradictory decisions of this Court on principles of law relating to the issues addressed by the learned Judges of appeal, and concludes by saying that the application lacks merit and the same should be dismissed.
16. When the matter came up for hearing before us learned counsel Mr. Ochieng Oduol appeared for the applicant while learned senior counsel, Mr. Ahmed Nassir appeared for the respondent. They both highlighted, albeit briefly, their submissions which are quite detailed and which in our view cover every aspect of the application before us. We have read and noted the contents of the said submissions, and we do not find it necessary to paraphrase them here for purposes of this ruling.
17. On the issue as to whether or not the application was filed out of time without leave of the court, our view of the matter is that the application was filed within time. We say so because rule 41 (2) of the Court of Appeal Rules states as follows:

“An application seeking certification that a matter of general public importance is involved shall be made within 30 days after delivery of the decision.”

Accordingly, we find no merit in that objection as the application was filed within 30 days.

18. On the substantive application, the law is now settled as to the threshold an application has to reach in order for an appeal to be catapulted to the Supreme Court for determination. As expressed by the Supreme Court in Ngao -vs- Kitheka (Petition E006 of 2024) [2025] KESC 1 (KLR), Article 163(4) (b) of *the Constitution* is not a thoroughfare for all intended appeals from the Court of Appeal to the Supreme Court. Only those appeals arising from cases involving the interpretation or application of *the Constitution* or those that can be said to involve matters of general public importance will be entertained by the Supreme Court. It is not the mere allegation in pleadings by a party that clothes the Supreme Court with jurisdiction. See also: Lawrence Nduttu & 6000 Others -vs- Kenya Breweries Ltd & Another, SC Petition No. 3 of 2012; [2012] eKLR, Samuel Kamau Macharia and Another -vs- Kenya Commercial Bank and 2 Others, SC Application No. 2 of 2011; [2012] eKLR, among many other decisions.
19. For a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court
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  - i. 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. 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*;
  - v. 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; and
  - vi. determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court. (Emphasis ours)
20. It is against the above guidelines that we will consider the application before us. We have considered the 8 issues counsel for the applicant has concisely identified as the ones that qualify to be determined by the Supreme Court. Do these issues transcend the interests of the parties herein or are they issues that were peculiar to the specific matter before the Court? We shall analyse them and determine if they pass the test set out in the Hermanus Phillipus case (*supra*).
21. The first issue questions whether the Court of Appeal as the first appellate court in its mandate to review facts and arrive at its own independent conclusions can consider unpleaded issues as a basis to set aside the decision of the trial court. This issue is intertwined with issue No. (viii) where the applicant says that the Court of Appeal breached the applicant’s right to a fair hearing under Article 50 of *the Constitution* on account of basing its decision on issues that had not been pleaded before the trial court.
22. On this point, our answer is that the mandate of the Court of Appeal in re-analysing the evidence is clearly circumscribed under rule 31 of the Court of Appeal Rules. The issue is not novel and the mandate has been articulated in many decided cases. In our view the point is not one that the Supreme Court can be called upon to interpret. If indeed the Court of Appeal overshot that mandate and considered matters that were outside its remit, that would go to the merit of the decision. Unfortunately, an application for certification cannot be a challenge of the merits of the decision.
23. Several other issues related to the specific letter of allotment and the specific Grants or Certificates of title and the circumstances under which they were issued and the reasons why the Court of Appeal decided to validate some documents as opposed to the others. The decision was based on the specific circumstances of the case and the evidence presented before the Court. We cannot say that similar issues have arisen before the courts and the courts have rendered different opinions on the same, to require clarification by the Supreme Court.
24. On application of the Supreme Court decision in Petition No. 5 (E006 of 2022) Torino Enterprises Limited -vs- Honorable Attorney General, the applicant has tied it to “transfer and registration of property” through informal transfers between allottees of public land and subsequent purchasers thereof with the consent and approval of the Commissioner of Lands before the decision was made. The framing of this issue is actually specific to the circumstances pertaining to this case, and not to other situations which have arisen before or that are likely to arise.



25. The question of calling of expert witnesses and what is required to prove fraud, as framed in issue No. (vii) is a common occurrence issue which courts have dealt with routinely and it does not require interpretation by the Supreme Court.

26. Finally, we have looked at the matrix in the supporting affidavit.

The same seems to question why the learned Judges arrived at particular conclusions on the evidence presented to them, and not other conclusions. This in our view goes to the root of the reasoning and merit of the judgment, and given that the Supreme Court will not be hearing an appeal on the merit of the impugned decision, there is nothing identified for us, within the parameters listed above, to refer to the Supreme Court for interpretation.

27. Evidently, the applicant harbours serious apprehension that its title to the suit property was taken away from it unfairly. It has raised some germane questions, but as long as the issues in question relate to the specific peculiar circumstances of this case and challenge the merits of the decision, we cannot elevate them to a pedestal of general public importance as underlined earlier in this ruling, and we must eschew making any comments on the same.

28. We think we have said enough to demonstrate that we are not persuaded that this application meets the threshold set out in the Hermanus Philippus case (supra). In the circumstances we find the application without merit and dismiss it with costs to the 4<sup>th</sup> respondent.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**W. KORIR**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

