



**Gachuhi v Njoroge (Suing as the Administrator of the Estate of NjorogeThiaru) & 2 others
(Civil Appeal (Application) E087 of 2021) [2025] KECA 1360 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1360 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E087 OF 2021
W KARANJA, SG KAIRU & P NYAMWEYA, JJA
JULY 25, 2025**

BETWEEN

JOSEPH MURAYA GACHUHI APPELLANT

AND

**JAMES MUKURIA NJOROGE (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF NJOROGE THIARU) 1ST RESPONDENT**

JORETH LIMITED 2ND RESPONDENT

THE COMMISSIONER OF LANDS 3RD RESPONDENT

(Being an application for the certification and leave to appeal to the Supreme Court with against the judgment of this Court (Musinga (P), Laibuta, & Gachoka JJ.A) delivered on 17th March 2023 in NAI Civil Appeal No. E087 of 2021)

RULING

1. This ruling is on an application lodged by the applicant on 29th March 2023, and arises from the judgment delivered by this Court (Musinga (P), Laibuta, & Gachoka JJ.A) on 17th March 2023 in Civil Appeal E087 of 2021. The applicant herein, who was the appellant in the said appeal, is seeking leave to appeal against the judgment in Civil Appeal E087 of 2021 that dismissed his appeal to the Supreme Court, and that pending the hearing and determination of the intended appeal, this Court issues an order for stay of execution of the decree issued in Nairobi ELC No. 462 of 2012.
2. The application is supported by an affidavit deponed to on 23rd March 2023 by the applicant herein, wherein he detailed the background to the appeal before this Court, and stated that it is in the interest of justice and in the public interest for the Supreme Court to determine the question in the intended appeal, namely whether a mere inserting of a date in a document later than the date of signing which is the normal practice in conveyancing, can invalidate or make the document a forged or manipulated document. Further, whether a transfer document signed by a vendor which remains undated and is



- dated after his death by itself invalidates the transfer and or makes it a forged document. The applicant averred that the matter is of public importance due to the fact that in many conveyancing matters transfer documents are prepared and executed and a date is normally inserted at the time of lodging the same for registration.
3. The applicant's advocates on record reiterated these grounds in written submission dated 18th March 2025, and invited this Court to take judicial notice that there is a practice and norm in conveyance for parties to sign documents and to be dated later at the time of lodging registration and payment of stamp duty to avoid attracting unnecessary penalties. It was thus submitted that the applicant had established the legal threshold set out in *Hermanus Phillipus Steyn vs. Giovanni Gneccchi Ruscone*, (2013) eKLR for granting leave to appeal to the Supreme Court against the judgment and orders of the Court of Appeal.
 4. The 1st respondent opposed the application by way of a replying affidavit he swore on 2nd May 2024, wherein he stated that there is no ground that has been set to demonstrate that the matter is of public interest. In particular, that the issue of undated documents was properly dealt with during trial and in the appeal; the issue of the dating of the transfer documents was not the only determinant of the appeal, as the applicant could not tell how much stamp duty was paid and the evidence contradicted the purchase price paid and valuation; the transfer documents were signed by Mr. Njenga Karume on 23rd April, 2012, several months after his death which was a clear prove of forgery, fraud and mistake, being the only grounds on which a title deed issued of him could be cancelled; and the other directors were not called to confirm execution of the documents.
 5. The 1st respondent's advocates on record filed submissions dated 13th March 2024 and urged that the applicant failed to discharge the burden of proving that the documents were signed by the late Karume Njenga and failed to call key witnesses to testify to this effect; that at the material time they allege the documents were signed, the late Karume Njenga was sick in hospital; and the trial court therefore found that he could not have signed the documents. Consequently, the issues framed by the applicant are an attempt to disguise the matter as of general importance so as to further delay the 1st respondent's enjoyment of his land. On whether the applicant can be granted a stay of execution of the judgment, the 1st respondent submitted that it is trite that litigation has to come to an end.
 6. The above averments and submissions were reiterated at a hearing held on this Court's virtual platform on 19th March 2025 by learned counsel Mr. Musa Mugo, who was holding brief for learned counsel Mr Gachuhi for the applicant, and Mr. Charles Kimathi , learned counsel for the 1st respondent. The 2nd and 3rd respondents did not file any response to the application, nor participate at the hearing.
 7. The background to the instant application is that the 1st respondent filed a suit against the appellant and the 2nd and 3rd respondents in the Environment and Land Court (the ELC), Nairobi, claiming that his late father, Njoroge Thiaru, was allotted plot number 173 as a shareholder in Thome Farmers No. 5 Limited, and upon subdivision, the parcel number changed to land reference number 13330/592 "(hereinafter "the suit property"). Upon his father's demise, he was appointed administrator of his estate, and he paid all dues to facilitate the issuance of a title in his name.
 8. However, that the 2nd respondent illegally transferred the suit property to the applicant through fraud, forgery and misrepresentation; that the transfer could not have been signed by the 2nd respondent's director, Mr. Njenga Karume, on 12th April 2012 because he was already dead by then. The ELC found that the 1st respondent had proved his case on a balance of probabilities and ordered a cancellation of the applicant's title, and an order of injunction restraining the appellant from disposing of, trespassing or in any way dealing with the suit property.



9. On the part of the applicant, his position was that the suit property which was initially registered in the 2nd respondent's name was advertised for sale and he bought the said property and paid the full purchase price totalling to Kshs.10,000,000 and thereafter the transfer was prepared and executed by the directors of the 2nd respondent. However, the date for execution was not inserted to avoid accumulation of the stamp duty penalties. He maintained that the suit property had never been registered in the name of Thome Farmers Number 5 Limited, or of the 1st respondent's father, and argued that the registration of the transfer in his name was lawful and valid.
10. The 2nd respondent on its part stated that it sold the disputed property to the applicant and not to the 1st respondent, and upon paying the entire purchase price the land was transferred in favour of the applicant herein.
11. Aggrieved by the judgment of the ELC, the applicant lodged an appeal in this Court seeking orders to set aside the judgment of the ELC on the grounds, inter alia, that the learned trial Judge erred in finding that Njenga Karume did not execute the transfer document for the suit property; that it is the applicant and the 2nd and 3rd respondents who should have called witnesses to prove fraud and forgery; and by disregarding the evidence of the applicant's witnesses and finding for the 1st respondent.
12. In dismissing the applicant's appeal, this Court found that the failure by the applicant to adduce evidence to rebut the 1st respondent's evidence meant that the evidence of the 1st respondent remained uncontroverted, and therefore the ELC did not err in finding that the 1st respondent had proved his case on a balance of probabilities. The Court also noted that the trial Judge did not err in finding that the burden of proving fraud and forgery and that Mr. Njenga Karume executed the transfer in favour of the applicant lay on the applicant under the Evidence Act, but that he did not discharge this burden since his witnesses were inconsistent as to when Mr. Njenga executed the transfer, and where it was executed.
13. It is in this context that we consider the issue before us, namely whether the intended appeal to the Supreme Court raises a matter of general public importance, and is therefore eligible for certification as such to warrant leave to appeal pursuant to Article 163(4) of the Constitution. The criteria for certification of a matter as one of general importance was laid down by the Supreme Court in *Hermanus Phillipus Steyn vs. Giovanni Gnechi Ruscone*, (supra) as follows:

“...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 close, the burden falls on the intending appellant to demonstrate that the matter in question carries specific elements of real public interest and concern.”
14. The Supreme Court further enunciated the principles for determining whether a matter of general public importance 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 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. determination of facts in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”
15. It is notable in this respect that the law on the sale, transfer, and registration of land, as well as cancellation of title to land is settled. Likewise, the law on the burden of proof in civil cases is also not in controversy and was set out by this Court in the impugned judgment. What informs the applicant’s application, and which we are being invited to take judicial notice of, is a practice in conveyancing of the inserting of dates in document on a later date after they are signed. However, the applicant did not indicate that this particular argument or issue was raised in the ELC or during the hearing of the appeal in this Court for consideration, and having not been a subject of the impugned decision by this Court, we cannot purport to make a finding on this practice one way or another at this stage.
16. In addition, the grievance of the applicant arises from the peculiar facts of his case, as noted by this Court in the impugned judgment as follows:
- “22. The order crucial issues, and which was ably dealt by the trial court, is the question as to when the transfer document was signed, and whether the signatory, Njenga Karume, was alive or dead at the time. The appellant makes heavy weather of the assertion that Njenga Karume signed the transfer document and the sale agreement, and that the learned Judge ignored his evidence through his witnesses. The appellant testified that he was present when Njenga Karume and his co-director signed the sale agreement and the transfer document. The questions that beg for answers include: were his lawyers present together with him? On which date did Njenga Karume sign the transfer document? Who else was present? Were they called as witnesses? We note that the appellant did not dispute the fact that Njenga Karume was not alive on the date indicated on the transfer. The date of signing of a document is a factual issue, and the date on a transfer is deemed to be the date of signing unless the party can demonstrate why that is not the case. A mere assertion by a party without any evidence holds no water and will be treated by the court as of no probative value”
17. Lastly, it is evident that the findings of the ELC and of this Court were based on the evidence that was adduced by the parties. To this extent the intended appeal, therefore, does not transcend the circumstances of that particular case. Arising from the above stated reasons, the issues and question raised by the applicant in our view do not qualify as substantial questions of law or matters of general public importance, nor are they capable of transcending the dispute between the parties in this particular case.



18. On the outstanding prayer for stay of execution of the decree issued in Nairobi ELC No. 462 of 2012, this Court has no jurisdiction to grant such an order under Rule 5(2)(b) of the Court of Appeal Rules, which is the operative law. It was held in this respect by this Court in Dickson Muricho Muriuki vs Timothy Kagundu Muriuki & 6 others (2013) eKLR that Rule 5(2)(b) confers power to this Court to hear interlocutory applications pending the hearing and determination of the main appeal before it, and does not confer power to this Court to entertain any application on the merits or otherwise of a suit after judgment. We are in agreement with this holding.
19. The applicant's Notice of Motion application of 29th March 2023 is accordingly found not to have merit, and is dismissed with costs to the 1st respondent.
20. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2025.

W. KARANJA

.....

JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

.....

JUDGE OF APPEAL

NYAMWEYA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

