



**Emfil Limited v Attorney General & 17 others (Civil Application E032 of 2023) [2024] KECA 665 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KECA 665 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E032 OF 2023  
P NYAMWEYA, JW LESSIT & GV ODUNGA, JJA  
JANUARY 25, 2024**

**BETWEEN**

**EMFIL LIMITED ..... APPLICANT**

**AND**

**THE HONOURABLE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**GAZI BAY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUMA SHEE MWAMWINDINI ..... 3<sup>RD</sup> RESPONDENT**

**SHEE HAMISI MWAMWINDI ..... 4<sup>TH</sup> RESPONDENT**

**NSHEE HUSSEIN KENYA ..... 5<sup>TH</sup> RESPONDENT**

**JUMA OMARI MWADZIROHO ..... 6<sup>TH</sup> RESPONDENT**

**NASSORO ABDALLA MWACHIBULO ..... 7<sup>TH</sup> RESPONDENT**

**NZURI MAHALI LIMITED ..... 8<sup>TH</sup> RESPONDENT**

**SABA MWANGA LIMITED ..... 9<sup>TH</sup> RESPONDENT**

**MAISHA MEMA LIMITED ..... 10<sup>TH</sup> RESPONDENT**

**MAFANIKO LIMITED ..... 11<sup>TH</sup> RESPONDENT**

**TAMU NDOTO LIMITED ..... 12<sup>TH</sup> RESPONDENT**

**GAZI BAY LIMITED ..... 13<sup>TH</sup> RESPONDENT**

**CLIFF VIEW COMPANY LIMITED ..... 14<sup>TH</sup> RESPONDENT**

**MWABUNGU BAY LIMITED ..... 15<sup>TH</sup> RESPONDENT**

**JOTINDER KAUR MWATHARU ..... 16<sup>TH</sup> RESPONDENT**

**DAANI BAY PARCELS LIMITED ..... 17<sup>TH</sup> RESPONDENT**



*(An application for certification and grant of leave to appeal against the judgment of the Court of Appeal at Mombasa by (Hon. Mr. Justice Gatembu, Hon. Lady Justice Nyamweya, & Hon. Lady Justice Lesiit, JJ.A) delivered on 14th April 2023 in Civil Appeal No. 37 of 2020)*

## RULING

1. On 14<sup>th</sup> April, 2023, this Court (Gatembu, Nyamweya and Lesiit, JJA) delivered a judgement in an appeal by the Attorney General in Mombasa Civil Appeal No. 37 of 2020 - Attorney General v Emfil Limited and 418 Others, against a ruling delivered on 20<sup>th</sup> July 2017 by the Environment and Land Court (the ELC) at Mombasa (A. Omollo J.) in Environment and Land Court Case No. 113 of 2015. By that ruling, the ELC struck out the defences filed by the Attorney General and some of the Defendants and entered judgment for Emfil Ltd (the Applicant herein) as prayed.
2. In striking out the said defences, the learned ELC judge, held that the titles held by the defendants referred to the same parcel of land as the one held by the Plaintiff; that the defences of the 12<sup>th</sup>, 142<sup>nd</sup>, 145<sup>th</sup>, 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 318<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 154<sup>th</sup>, 293<sup>rd</sup>, 306<sup>th</sup> and 308<sup>th</sup> defendants was that they were purchasers without notice; that the defence of the 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup> and 167<sup>th</sup> defendants was that the plaintiff's title was irregularly acquired; that both sets of issues were settled by the Court of Appeal in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR and by the High Court in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007.
3. In arriving at her decision the trial Judge noted that the High Court had in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007 declared the intruders' titles to be of no legal effect and they therefore had nothing to sell to parties claiming to be purchasers for value without notice; that the Court of Appeal in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR found that the government had the option to put in place machinery to have the grant to the Plaintiff in that case revoked through an order of the Court; that since no such steps had been commenced, the 154<sup>th</sup>, 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup> and 167<sup>th</sup> Defendants had no basis to allege that the Appellant's title was acquired unlawfully; and that the defences of the 12<sup>th</sup>, 142<sup>nd</sup>, 145<sup>th</sup>, 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 293<sup>rd</sup>, 306<sup>th</sup>, 308<sup>th</sup> and 318<sup>th</sup> Defendants pleaded that they all acquired their titles after 2010 majority of which were acquired in 2013, which was after the judgment in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007; that the said judgement declared such titles to be of no legal effect; that having not seen the Defences by the 1<sup>st</sup> to 8<sup>th</sup> Defendants, the court would proceed on the basis that none had been filed; and that there was nothing to proceed for trial as the same would result in delay of fair trial of the case.
4. Civil Appeal No. 37 of 2020 (hereinafter the appeal) was lodged as a result of the said decision and upon hearing the appeal, this Court found that the Attorney General, the Chief Land Registrar, the Registrar of Titles Mombasa, the Registrar of Titles Kwale, the Public Service Commission, the Director, Land Adjudication and Settlement and the Settlement Fund Trustees were the 1<sup>st</sup> to 7<sup>th</sup> Defendants in the suit filed by Emfil Ltd in Environment and Land Court Case No. 113 of 2015, and were all represented by the Attorney General in the defence filed therein; that of these parties, the Registrar of Titles Mombasa and the Attorney General were also Respondents in the appeal filed by Emfil Ltd in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR, together with the Commissioner of Lands, who was one of the Defendants in the suit filed in the High Court in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No. 181 of 2007; that from the findings in the above matters, the issues raised in the



defence filed by the Attorney General were res judicata, as Emfil Ltd's title to the suit properties and the legality of the allocation of the said property to third parties, including the arguments being raised of public interest was one that had already been determined by this Court, in a suit in which the Attorney General was a party; that the Attorney General was therefore in law barred from raising the said issues in its defence; that the defence was also in abuse of the process of Court; that any substantive defence filed by the Attorney General challenging the title of Emfil Ltd in the circumstances was therefore untenable; that to this extent the trial Court did not err in striking out any defence filed by the 1<sup>st</sup> to 7<sup>th</sup> Defendants.

5. As regards, the other Defendants, the 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup> and 167<sup>th</sup> Defendants denied the Plaintiff's claim, save that the said Defendants were the registered proprietors of various parcels of land known as Kwale/Ramisi Kinondo SSS Nos 58,77,78,and 85. This Court held that the said Defendants also pleaded that their titles were different from that held by Emfil Ltd; that Emfil Ltd's title had been unlawfully acquired and were surrendered, cancelled and/or revoked; that they were not parties in HCC 181 of 2007 or judicial review proceedings involving the Plaintiff; and that there was also a defence on record by the 283<sup>rd</sup> Defendant dated 29<sup>th</sup> October 2015, in which the said Defendant claimed to be the legal owner of land parcels Kwale/Ramisi/Kinondo SSS Nos 60, 61, 62, 63, 64; and that the main issue pleaded by the 239<sup>th</sup>, 241<sup>st</sup>, 154<sup>th</sup>, 293<sup>rd</sup>, 306<sup>th</sup>, and 308<sup>th</sup> defendants in their defence dated 28<sup>th</sup> October 2015 is that they were purchasers for value of various parcels of land in Kwale/Ramisi Kinondo SSS being Nos 56, 146, 115, 116, and 147, without notice.
6. The Court noted that these Defendants, were not parties in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR, and in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007; that the trial Judge relied on a replying affidavit filed by Emfil Ltd in Environment and Land Court Case No. 113 of 2015 to find that the said Defendants' properties were on the same land as that of Emfil Ltd and therefore subject to the decisions by the Court of Appeal in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR and High Court in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007; that this reliance on affidavit evidence in reaching the decision to strike out the said defences was however contrary to the provisions of Order 2 Rule 15(2) as held by Madan JA in D.T. Dobie & Company (Kenya) Ltd vs Muchina, [1982] KLR 1 on when to exercise the power to strike out pleadings.
7. In determining the appeal, this Court upheld the finding of the High Court in striking out the defence filed by the 1<sup>st</sup> to 7<sup>th</sup> Defendants. The Court however found that there was justifiable reason to interfere with the exercise of the trial Judge's discretion to strike out of the defences of the 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup> and 167<sup>th</sup> Defendants and 12<sup>th</sup>, 142<sup>nd</sup>, 145<sup>th</sup>, 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 293<sup>rd</sup>, 306<sup>th</sup>, 308<sup>th</sup> and 318<sup>th</sup> Defendants; that there was a need for the said Defendants to be heard on the issues raised since those Defendants, were not parties in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR and Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007; that the trial Judge relied on a replying affidavit filed by Emfil Ltd in Environment and Land Court Case No. 113 of 2015 to find that the said Defendants' properties were on the same land as that of Emfil Ltd and therefore subject to the decisions by the Court of Appeal in Emfil Limited vs Registrar of Titles Mombasa [2014] eKLR and High Court in Emfil Limited vs Hamisi Mwalimu & 9 Others, HCCC No 181 of 2007; that reliance on the said affidavit evidence in reaching the decision to strike out the said defences was, however, contrary to the provisions of Order 2 Rule 15(2) as held by Madan JA in D.T. Dobie & Company (Kenya) Ltd vs Muchina, [1982] KLR 1 on when to exercise the power to strike out pleadings; that the trial Judge therefore misapplied the law in arriving at her decision; and that there was a triable issue that needed to be decided conclusively by a full trial.



8. The Court therefore partially allowed the appeal to the extent that the orders that struck out the Defences filed by the 154<sup>th</sup>, 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup>, 167<sup>th</sup> 12<sup>th</sup>, 142<sup>nd</sup> 145<sup>th</sup> 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 283<sup>rd</sup>, 293<sup>rd</sup>, 306<sup>th</sup> 308<sup>th</sup> and 318<sup>th</sup> Defendants, and entered judgment against them for Emfil Ltd was set aside. The Court, however, upheld and confirmed the orders striking out the defences of the 1<sup>st</sup> to 7<sup>th</sup> Defendants and the entry of judgment for Emfil Ltd as against the said Defendants.
9. The Applicant herein being unhappy with the said decision intends to appeal to the Supreme Court and by its application dated 26<sup>th</sup> April 2023, it seeks that this Court certifies that its intended appeal to the Supreme Court involves matters of public importance and that leave be granted to the Applicant to appeal to the Supreme Court of Kenya against part of the said judgment.
10. The application is based on the grounds that the said decision is in conflict with a previous decision of the Court of Appeal in CA 312 of 2012, Emfil Limited v. the Registrar of Titles, Mombasa & Others and the High Court in HCCC No. 181 of 2007, Emfil Limited v. Hamisi Mwalimu, the Commissioner for Lands and Others, both of which affirmed the applicant's Title to the subject property; that it is in the interest of the general public to have the Supreme Court uphold that there should be uniformity and certainty of judgments delivered by the courts in Kenya; that the intended appeal is of general public importance as it involves respondents, who are settled land squatters alleging ownership over private property owned by the applicant or otherwise third parties who claim to be innocent purchasers for value from squatters; that issues of settlement of land squatters in Kenya are matters of public interest; that the intended appeal is of general public importance as it raises an issue on whether settled land squatters can sell or transfer property to third parties; that the respondents in the intended appeal are third parties alleging to have acquired property from land squatters; that the upshot of the judgment in CA 312 of 2012, Emfil Limited v. the Registrar of Titles, Mombasa & Others is that the government did not have land to give away and those claiming ownership through resettlement never have acquired rights of ownership nor the right to transfer property; that the intended appeal pertains to violation of Constitutional Rights to hold private property and to fair hearing provided under Article 40 and 50 of *the Constitution* of Kenya, with the aim of expropriating private property from one litigant to others; that matters involving Constitutional Rights and freedom are of importance to the general public; that the intended appeal is of general public importance as its determination will transcend the circumstances of this case and have significant bearing to multiple individuals in the general public, whose ownership of private property has been duly validated by a Court of law, but are still subjected to litigation over the same property in an attempt to seize their property; that the intended Appeal stems from a judgment by this Court that was delivered way out of the stipulated timeline of sixty days as mandatorily stipulated under Order 21, Rule 1 of the Civil Procedure Rules, 2010; that the intended appeal involves the State, the appellant before the Court of Appeal was the Office of the Attorney General having filed the appeal in the interest of the public as well as the County Government of Kwale.
11. The other grounds upon which the application was based were that the intended appeal raises matters of public importance as to whether third parties can benefit from the action of a litigant, where the benefit was conferred contrary to express court orders; that the intended appeal pertains to a question of whether a party's right to appeal against a ruling includes a right to appeal on behalf of other parties who have, intentionally, waived their right to appeal; that the determination of this question will have an impact on the general practices in our Courts, transcending to an effect on the general public; that the intended appeal involves an issue of the role of the Attorney General in defending public interest; that the Office of the Attorney General, contrary to its Constitutional limits to only act in defending public interest, surreptitiously lodged an appeal to reinstate Defences filed by the 154<sup>th</sup>, 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup>, 166<sup>th</sup>, 167<sup>th</sup>, 12<sup>th</sup> 142<sup>nd</sup>, 145<sup>th</sup>, 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 283<sup>th</sup>, 293<sup>th</sup>, 306<sup>th</sup>, 308<sup>th</sup> and 318<sup>th</sup> Defendants therein; that the intended appeal argues that the pursuit of an appeal by a



small group of people concerning their alleged personal property is not significant enough to qualify as a matter of public interest that would justify the Attorney General to intervene and appeal on their behalf with the use of public resources; that the intended appeal seeks the establishment of a precedent of general application with respect to having private property that has been adjudicated upon and upheld by a competent Court to belong to an individual from being disputed and re-litigated; that the intended appeal raises a substantial point of law as to whether reference to a replying affidavit in a former suit, when determining whether a current matter is *res judicata* and/or issue estoppel, is contrary to provision of Order 2 Rule 15(2) of the Civil procedure Rules; that the determination will have a significant bearing on litigation to the benefit of the general; and that the intended appeal raises a substantial point of law as to whether a litigant who deliberately fails to file submissions in opposition to an Application, can subsequently file an appeal against an adverse judgment.

12. The application was supported by an affidavit sworn by the Applicant's learned counsel, James Gitau Singh on behalf of the applicant. Apart from setting out the history of the dispute, a history which we need not reproduce herein, the said affidavit reiterated the foregoing grounds.
13. The 2<sup>nd</sup>, 13<sup>th</sup> 17<sup>th</sup> and 18<sup>th</sup> Respondents filed a replying affidavit sworn by Alec Van Wijik, a director of the said Respondents. The gist of the said affidavit was that the supporting affidavit, having been sworn by counsel on contentious issues was incompetent; that it is only through a full hearing that the ownership of land known as LR No. 13433143 can be determined; that the cases relied upon by the Applicant were determined without the participation of the said Respondents hence they were denied a chance to be heard; and that this case does not meet the threshold for certifying a matter as raising issues of public importance hence warranting leave to appeal to the Supreme Court.
14. The other replying affidavits on record mirror the contents of the said replying affidavit and we need not reproduce them here.
15. We have considered the submissions made by the parties in support of and in opposition of the instant application.
16. It is trite that the orders sought in this application are not automatic. In order for one to succeed in applications of this nature one must bring oneself within Article 163 (4) of *the Constitution* which stipulates that appeals shall lie from the Court of Appeal to the Supreme 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 or the Court of Appeal certifies that a matter of general public importance is involved. To succeed in an application for leave to certify that an intended appeal preferred in the Supreme Court raises a matter is of general public importance.
17. In the case of *Hermanus Phillipus Steyn vs Giovanni Gneccchi-Ruscone* [2013] eKLR, the Supreme Court identified the principles governing the determination of a matter as one of general public importance, in the following terms;
  - 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 on 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. determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”
18. These principles were reiterated in the case of *Malcolm Bell vs Hon. Daniel Torotich arap Moi and Another*, Supreme Court Application No. 1 of 2013 thus;

“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 on the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;

- i. 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 significant bearing on the public interest;
- ii. Such question or questions of law must have arisen in the court or courts below, and must have been the subject of judicial determination;
- iii. 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;
- iv. Mere apprehension of miscarriage of justice, a matter most apt for resolution [at earlier levels of the] 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;
- vi. 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;



- vii. 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 for appeal to the Supreme Court;
- viii. 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;
- ix. 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;
- x. Questions with a bearing on the proper conduct of the administration of justice, may become ‘matters of general public importance’, justifying final appeal in the Supreme Court.”

See also *Kenya Plantation and Agricultural Workers’ Union vs Kenya Export Floriculture, Horticulture and Allied Workers’ Union (Kefhau)*; represented by its Promoters; David Benedict Omulama & 9 others [2018] eKLR.

19. In a nutshell, the Supreme Court’s guidance is that matters of general public importance are those that inter alia, raise a substantial point of law, or occasion a state of uncertainty in the law or arise from contradictory precedents, or will affect a considerable number of persons in general, or as litigants. We however, eschew getting into the merits of the intended appeal to the Supreme Court and held that we only need to adhere to the guidelines set out both by the Supreme Court and this Court in determining applications of this nature.
20. On substantial issues of law, this Court in *Mwambeja Ranching Company Ltd & another vs Kenya National Capital Corporation* [2023] KECA 660 (KLR) held that:
 

“ This Court has the duty to ensure that the case does not involve a mere question of law, but a substantial question of law. Hence, an applicant must satisfy this test to assume jurisdiction under Article 164 (4) of *the Constitution*. (See Supreme Court of India in *Chunila v Mehta & Sons Ltd v Century SPG & Manufacturing Co Ltd* 1962 AIR 1314, 1962 SCR Supl. (3) 549).

  71. To qualify as a question of law arising from the case, there must have been a foundation laid in the pleadings, the question should emerge from the findings of facts arrived at by the court so as to make it necessary to determine that question of law and arrive at a just and proper decision. If the question is settled by the highest court, or if the general principles to be applied in determining the question are well settled, and there remains the question as to the application of those principles, or that the plea raised is palpably absurd, the question ought not to be viewed as a substantial question of law.”
21. Given the foregoing, the question that we are called upon to determine is what substantial issue of law requires to be determined and what is the nature of the public interest that can be said to arise? In our considered view, this Court was only called upon to deal with was whether or not the learned trial Judge exercised her discretion properly in striking out the defences filed by the Defendants. While the Court upheld part of that decision, the Court set aside part of it and the consequence of that decision



was to remit the matter back to the trial court for determination of that part that was set aside. We fail to see what matters of public interest needs to be determined in such a mundane issue as to whether the defence raised triable issues for the purposes of striking out pleadings.

22. In this application, the issues identified by the Applicant as being substantial are the subject of the matter that was remitted for determination by the trial court. The issues that the Applicant seeks to rely on in the intended appeal are therefore yet to be determined both by the trial court and by this Court. The Applicant moved the trial court for summary determination of its case on the ground that the Defendants' defences did not raise any triable issues in light of the earlier determinations. The trial court agreed with it but this Court disagreed and directed that the issues as regards the defences filed by the 157<sup>th</sup>, 158<sup>th</sup>, 161<sup>st</sup> 166<sup>th</sup> and 167<sup>th</sup> Defendants and 12<sup>th</sup>, 142<sup>nd</sup>, 145<sup>th</sup> 147<sup>th</sup>, 149<sup>th</sup>, 154<sup>th</sup>, 239<sup>th</sup>, 241<sup>st</sup>, 293<sup>rd</sup>, 306<sup>th</sup> 308<sup>th</sup> and 318<sup>th</sup> Defendants be heard and determined on their merits.
23. In our respectful view, issues revolving around striking out of parties' pleadings cannot, without more, cannot transcend the circumstances of that case or be said to have a significant bearing on the public interest. Applications for striking out pleadings are a run of the mill in our jurisdiction and their determination one way or the other, even if substantial rarely have significant bearing on the public interest. The issues raised before us regarding settlement of land squatters were not the subject of the determination that gave rise to the appeal. Such issues, though the Applicant contends had been determined in previous proceedings, were not the subject of the appeal and this Court was not called upon, in the appeal, to determine them. The issue was simply whether the previous determinations of those issues could properly apply to the parties to the appeal. We are unable to find any uncertainty in the law, arising from any contradictory precedents that need to be resolved by the Supreme Court or that need reference the Court of Appeal for its determination. Without dealing with the merits of the intended appeal, this Court found that the Defendants whose cases ought to be heard on merits were not parties to the earlier decision. Therefore, in our view no contradiction arises and in any case the issue ought to come out clearly in the remitted proceedings. As regards the contention that the Attorney General ought not to have appealed, that issue did not arise before this Court or courts below and was not the subject of judicial determination. The same applies to the period taken in the delivery of the judgement and other procedural issues.
24. In our view, where a party has an avenue through which it may ventilate its grievances, the Court ought to be slow in certifying such matters or granting leave to appeal to the Supreme Court. In this case, this Court's decision had the effect of having all the parties heard on the merits of their cases. None of the parties can claim to have been locked out. They still have an opportunity of having their grievances addressed and another option to appeal to tis Court.
25. It is therefore our view that this application has failed the test set out in *Hermanus Phillipus Steyn vs Giovanni Gnecci-Ruscone* (supra). We dismiss it with costs to the Respondents.
26. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JANUARY, 2024**

**P. NYAMWEYA**

.....

**JUDGE OF APPEAL**

**J. LESIIT**

.....

**JUDGE OF APPEAL**



**G. V. ODUNGA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

signed

**DEPUTY REGISTRAR**

