



**Heldo Foodstuff Limited v Kiptugen & 6 others (Civil Application  
E005 of 2024) [2024] KECA 1522 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1522 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E005 OF 2024  
WK KORIR, SG KAIRU & FA OCHIENG, JJA  
OCTOBER 25, 2024**

**BETWEEN**

**HELDO FOODSTUFF LIMITED ..... APPLICANT**

**AND**

**DAUDI KIPTUGEN ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LANDS REGISTRAR, NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY DISTRICT LAND REGISTRAR, UASIN GISHU,  
ELDORET ..... 5<sup>TH</sup> RESPONDENT**

**HARON CHEPKILOT KISANG T/A HELDO FOODSTUFF . 6<sup>TH</sup> RESPONDENT**

**SILAS KIPTUI KIPCHILAT (ACTING AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE OF THE LATE LEAH JELAGAT  
KIPCHILAT) ..... 7<sup>TH</sup> RESPONDENT**

*(An application for certification to appeal to the Supreme Court against the judgment of the Court of Appeal at Nakuru (Musinga (P), Sichale & Ochieng, JJ.A.) delivered on 15th December, 2023 in CA No. ELD E055 of 2023 Consolidated with CA No. ELD E200 of 2021 & E034 of 2021)*

**RULING**

1. The applicant being dissatisfied with the Judgment of this Court dated 15<sup>th</sup> December 2023 wishes to appeal to the Supreme Court. The applicant has thus filed the application herein dated 12<sup>th</sup> February 2024 seeking the following substantive orders;



- “2. Pending the hearing and determination of the instant application, there be stay of execution/ enforcement of the judgment of this Honourable Court delivered on the 15th day of December 2023 in respect of suit property being Eldoret Municipality Block 7/154 measuring approximately 0.697 Ha.
  3. The Honourable Court be pleased to certify the intended appeal to the Supreme Court, against the judgment of the Court of Appeal at Nakuru delivered on 15th December 2023 in Civil Appeal No. ELD. E055 of 2023 as consolidated with Civil Appeal No. ELD E034 of 2021 and Civil Appeal No. ELD E200 of 2021, which judgment awarded the 1st respondent Daudi Kiptugen, the suit land/property being Eldoret Municipality Block 7/154 pursuant to the provisions of Article 40 of *the Constitution* and Sections 25 and 26 of the *Land Registration Act*, No. 3 of 2012, as a matter of point of law of general public importance.
  4. In granting prayer 3 above, the Honourable Court be pleased to grant the applicant leave to appeal to the Supreme Court against the judgment of the Court of Appeal at Nakuru delivered on 15th December 2023 in Civil Appeal No. ELD. E055 of 2023 as consolidated Civil Appeal No. ELD E034 of 2021 and Civil Appeal No. ELD E200 of 2021.”
2. It was the applicant’s position that this Court had failed to appreciate that the suit land was initially awarded to the applicant, by Munyao J.
  3. Thereafter, it was ordered that the case be heard de novo. It is during the re-hearing of the case that “... the applicant availed the impugned allotment letter of which in the first trial he had testified and stated that he did not have”.
  4. In the circumstances, the applicant told this Court that he was aggrieved with the findings of the court, prompting his decision to seek leave to file an appeal at the Supreme Court.
  5. The applicant lays emphasis on the fact that;
    - “6. That issue related to land and more so land disputes are matters of public importance, and parties should be allowed to ventilate their grievances in the apex court which is the Supreme Court of Kenya.”
  6. This Court was criticized by the applicant because it;
    - “... failed to appreciate the fact that there were fraudulent allotments letters issued to respective appellants and the 1st respondent and that the only genuine and authentic allotment letter, as per the evidence by the Commissioner of Lands, was the one issued to the applicant herein.”
  7. According to the applicant, the letter of allotment which the 1<sup>st</sup> respondent produced was a poor forgery, which was made on paper of doubtful quality.
  8. The applicant faulted the Court for totally ignoring the evidence which was produced by the Commissioner of Lands, which proved that Heldo Foodstuff was allotted the suit land on 24<sup>th</sup> June 1999, which was more than 2 years after the said Heldo Foodstuff was duly registered.



- 9 The applicant further faulted the Court for holding that Heldo Foodstuff could not own real property as it was a business entity. As far as the applicant was concerned, the provisions of Article 40 of *the Constitution* of Kenya gave a very broad definition of a person, including;
- “... an individual, organization, company, association or any other body of persons whether incorporated or unincorporated.”
10. Even though the applicant was originally a “business entity which was unincorporated”, it was of the opinion that the suit land was lawfully allotted to it, contrary to the decision of this Court.
11. The applicant felt aggrieved with the decision, as the same deprived it of the suit land. Therefore, the applicant is desirous of lodging an appeal to the Supreme Court. It was for that reason that the applicant asked this Court to certify its intended appeal as raising a point of law of general public importance.
12. When canvassing the application, Mr. Nabasenge advocate submitted that the issue which would be placed before the Supreme Court was an issue regarding land and the role of the Commissioner for Lands in the allotment of land. Of particular concern to the applicant was the multiple allotment of the same piece of land, to different parties.
- 13 The applicant pointed out that the suit land had been allotted to it by the government. However, it later became apparent that the same land had been allotted multiple times.
14. The applicant told us that the Commissioner of Lands had vouched for the authenticity of its allotment. As this Court did agree with the said testimony of the Commissioner of Lands, the applicant asked this Court to grant him leave to enable him to place the issue before the Supreme Court, for purposes of obtaining a determination on the question of who was the true owner of the suit land.
15. The applicant further emphasized that this was an emotive issue as it relates to land. Therefore, the applicant urged us to give the parties the opportunity to canvass the issue before the apex Court.
16. When the Court asked the applicant to frame the particular question which it wished to have the Supreme Court determine, in the event that leave was granted, the applicant framed it thus;
- “Who would be the right allottee in respect of multiple allotments by the government.”
- 17 On its part, the 6<sup>th</sup> respondent submitted that the case herein raises an important question of law, which requires clarification by the Supreme Court. The said respondent stated that the issue raised had an element of general public importance, on the question of allotment of public land. It added that the important question of law raised herein transcends the circumstances of this particular case, and its determination would have a significant bearing on the public interest.
18. Opposing the application, Mr. J. K. Korir, advocate for the 1st respondent had a two-pronged approach. First, he submitted that the application was incompetent, as it was filed after the lapse of the 14 days provided for under rule 42 of the Court of Appeal Rules.
19. Secondly, the 1st respondent submitted that the application did not meet the threshold set out in Article 163(4) of *the Constitution*. In that regard, it was the view of the 1st respondent that the applicant failed to demonstrate that the intended appeal transcends the circumstances of the particular case, or that the said intended appeal had a significant bearing on public interest.
20. The 1<sup>st</sup> respondent submitted that matters of fact are of a personal nature, and they do not disturb the mind of the public.



- 21 We have given due consideration to the written as well as the oral submissions. We have also taken into consideration the authorities cited, as well as the relevant statutory provisions.
22. In our understanding, the only issue that arises for determination is whether or not the application has met the requirements for certification as one which raises a matter of law of general public importance, which ought, therefore, to be placed before the Supreme Court for determination.
23. The applicant's view was that land issues are construed to be of public importance. In that regard, the applicant cited the following words from the judgment of the Supreme Court in *Pati Limited v Funzi Island Development Limited & 4 Others* [2019] eKLR;

“We are therefore under no illusion that as the crux of this matter is whether the title of the applicant to the suit land was fraudulently acquired or not, which land has to be determined whether it was public land or not, and whether it was available for allocation or not, this matter raises the question of general public importance. Hence, we are inclined to grant certification and allow the appeal to be filed.”

24. The Supreme Court did not say that disputes over land ought to be construed as being of general public importance. The real question was about the availability or otherwise, of public land, for allocation.
- 25 But perhaps of greater significance are the governing principles which were laid down by the Supreme Court in the case of *Hermanus Philipus Steyn v Giovanni Gnechi-Ruscione* [2012] JE LR 101595 (CA). This is what the Court said;

“In summary, we would state the governing principles as follows:-

- 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 an 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;

SUBPARA 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;

- vi. The matter to be certified for a final appeal in the Supreme Court, must fall within the terms of Article 163(4)(b) of *the Constitution*; 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.”

26. In this instance, we note that the applicant largely finds fault with this Court’s appreciation of matters of fact. Does that mean that the intended appeal does not raise an element of general public importance on the question of allotment of public land and the attendant protection in law?
27. It cannot be gainsaid that the courts have a duty to administer justice fairly. The fairness of justice should be discernible through the comparative analysis of one decision against other decisions which arose from similar or comparable circumstances
28. Bearing that factor in mind, we ask ourselves if the question formulated by the applicant would meet the requirements for certification as one raising a matter of general public interest.
29. In our considered opinion, the answer is in the negative. We so hold because a determination of the question about who was the right allottee, in the light of the multiple allotments by the government would be limited to the circumstances prevailing between the parties in this case. It would certainly not constitute a matter of general public interest. The question would be of interest to only those parties who were laying claim to the ownership of the land in issue.
30. We find that the issue which the applicant intended to raise did not transcend the circumstances of this particular case. The determination of the said issue would not have a significant bearing on the public interest.
31. We also find that there is no state of uncertainty in the law, arising from contradictory precedents.
32. The applicant feels that it has been denied justice, by being denied the land which it believes rightly belongs to it. However, as the Supreme Court held in the case of *Hermanus Philipus Steyn vs Giovanni Gnechi-Ruscione* (supra);

“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.”

33. In the result, the application is lacking in merit and is therefore dismissed.
34. The applicant will pay the 1st respondent, the costs of the application.

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

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

**W. KORIR**

.....

**JUDGE OF APPEAL**



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

Signed

**DEPUTY REGISTRAR**

