



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndirangu v Karanja & 2 others (Civil Application 276 of 2019)  
[2023] KECA 1503 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KECA 1503 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 276 OF 2019  
S OLE KANTAI, M NGUGI & PM GACHOKA, JJA  
DECEMBER 8, 2023**

**BETWEEN**

**PURITY MUGURE NDIRANGU ..... APPLICANT**

**AND**

**ANTHONY KARANJA ..... 1<sup>ST</sup> RESPONDENT**

**DORIS M WANJIRU KINUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**AMOS KINUTHIA GITAU ..... 3<sup>RD</sup> RESPONDENT**

*(Application for certification to the Supreme Court of Kenya of the intended appeal from the Judgment of the Court of Appeal of Kenya at Nairobi (Waki, Musinga & Kiage, JJ.A.) dated 10th May 2019 in Civil Appeal No. 94 of 2014)*

**RULING**

1. Before the Court is a Notice of Motion lodged on 21<sup>st</sup> August, 2019 and brought under Article 163 (4) (b) of the Constitution of Kenya 2010, Section 3A and 3B of the Appellate Jurisdiction Act, rule 24(1) of the Supreme Court Rules 2012 and rules 42 and 43 of the Court of Appeal Rules 2010 (now 2022 Rules). The applicant seeks that this Court be pleased to certify that her intended appeal to the Supreme Court of Kenya raises a point of law of general public importance. The applicant seeks leave to appeal against the judgment delivered on 10<sup>th</sup> May 2019 by Waki, Musinga & Kiage JJA in Civil Appeal 94 of 2014.
2. By way of a brief background, the applicant and one Charles Mukiri were the co-administrators of the Estate of the late Evanson Mburu Muiru. A grant of letters of administration intestate was confirmed in their favour on 17<sup>th</sup> November, 1998. Thereafter, the applicant sold part of the estate namely LR No. Dagoretti/Uthiru/733 to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents via an agreement dated 27<sup>th</sup> January, 1999. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents subdivided the said property and sold the same to third parties who hold



- titles to their portions. Meanwhile, the applicant used part of the proceeds from the sale to purchase another property LR Nyeri/Gatarakwa/686.
3. The 1<sup>st</sup> respondent applied to have the grant revoked on grounds that he was left out as a beneficiary of the Estate despite being a son to the deceased. The application for revocation of grant was allowed on 25<sup>th</sup> January 2005 (Koome J, as she then was) and effectively all consequential transactions were cancelled.
  4. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein sought to review the orders of 25<sup>th</sup> January 2005 which revoked the grant terming it as very prejudicial to them and to the third parties. It came to light that the 3 respondents herein had already discussed and reached an agreement as to how the rest of the suit land could be managed to enable the 1<sup>st</sup> respondent to retain his inheritance without prejudice to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and their purchasers. By a ruling made on 20<sup>th</sup> June, 2013 Kimaru J, (as he then was), recognized the sale agreement between the applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, acknowledged the arrangement between the respondents and ordered that the applicant herein would not benefit from the property as she had already received consideration for it via the sale agreement.
  5. The applicant filed Civil Appeal 94 of 2014 against the ruling of 20<sup>th</sup> June 2013, contesting that there had been no error in the ruling by Koome, J to warrant review of the same by Kimaru, J and that the court ought not to have found that she would have benefitted twice from the property if she inherited it. The respondents' counsels took the position that the sale was valid when it was entered into and was protected under Section 93 of the *Law of Succession Act* and that there was also nothing available for distribution as the land had been sold to third parties save for the part left to the 1<sup>st</sup> respondent.
  6. In the judgment made on 10<sup>th</sup> May, 2019 this Court pronounced itself and held that Section 93 of the *Law of Succession Act* protects bona fide purchasers for value, which the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were. This Court agreed with the High Court Judge that the applicant could not benefit from her own wrongdoing or be allowed to unjustly enrich herself.
  7. Being aggrieved by the judgment of this Court, the applicant has filed the current application, which is accompanied by submissions dated 14<sup>th</sup> December, 2020. The applicant states that there needs to be an interpretation as to the position of land transactions which are undertaken while a grant is in force, before the said grant is revoked. She proposes to seek a determination as to whether consequential transactions emanating from a revoked grant can be valid as Section 93 of the *Law of Succession Act* 'purports to do'.
  8. The applicant states that the grant was revoked by Koome, J and all transactions were nullified. Therefore, according to the applicant, Kimaru, J. erred in recognizing the agreement between the applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. She contends that the judgment by Koome, J. was not an error on the face of the record subject to review. To the applicant, the point of general public importance is what the exceptions under Section 93(1) of the *Law of Succession Act* would be. Further, she states that the court cannot be seen to encourage intermeddling in property relating to succession suits. She terms this as a matter of interpretation of the law calling for attention by the Supreme Court. The applicant also argues that this is a matter affecting the general public and the Supreme Court needs to make a clear pronouncement on the same. She states that her application has met the threshold needed for certification and it ought to be allowed.
  9. The application came up for hearing before us on 30<sup>th</sup> October, 2023 on the virtual platform, when learned counsel, Mr. Lubeto appeared for the applicant, learned counsel Mr. Muchai Njenga appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, while there was no appearance for the 1<sup>st</sup> respondent despite being served with a hearing notice on 13<sup>th</sup> October, 2023. Mr. Lubeto relied fully on his written submissions



dated 14<sup>th</sup> December, 2020. Mr. Muchai Njenga had not filed written submissions but addressed the Court orally and submitted that there was no matter of general public importance; that the matter was a simple succession case and that the threshold had not been met for certification for leave to appeal to the Supreme Court. He urged us to dismiss the application.

10. We have considered the motion and submissions made.
11. The principles that apply for an applicant to be entitled to an order certifying a matter for consideration by the Supreme Court were considered by this Court in the case of *Okuya Omtatab Okoiti & Another v Anne Waiguru – Cabinet Secretary, Devolution and Planning & 3 others* [2017] eKLR as follows:

“There are, in our view, parallels to be drawn between certification for purposes of Article 163(4)(b) of the *Constitution* and certification for purposes of Article 165(4) notwithstanding that the drafters of the *Constitution*, in providing for certification of matters for purposes of appeal to the Supreme Court under Article 163(4)(b) stipulated that a matter should be of “general public importance”, The word, “substantial” in its ordinary meaning, means “of considerable importance”. There is therefore wisdom to be gained from the pronouncements of the Supreme Court of Kenya respecting interpretation of Article 163(4)(b). In *Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscone* [2013] eKLR the Supreme Court of Kenya pronounced governing principles for purposes of certification under Article 163(4)(b) some of which are relevant in the context of certification under Article 165(4). Drawing therefrom, we adopt, with modification, the following principles:

- i. For a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest;
- ii. The applicant must show that there is a state of uncertainty in the law;
- iii. The matter to be certified must fall within the terms of Article 165 (3)(b) or (d) of the *Constitution*;
- (vi) The applicant has an obligation to identify and concisely set out the specific substantial question or questions of law which he or she attributes to the matter for which the certification is sought.”

12. Section 93 of the *Law of Succession Act* provides:

93. Validity of transfer not affected by revocation of representation

1. All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
2. A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.



13. In our view, the meaning, intent and purpose of Section 93 of the *Law of Succession Act* is clear as day, and there is no uncertainty of the law that needs interpretation of this clause by the Supreme Court nor is there a substantial question of law raised. Furthermore, the applicant seeks certification for her own benefit, based on her own peculiar circumstances, therefore this is not a matter that has a significant bearing on the public interest. We note that the grounds that the applicant has raised in support of the application relate to the merits or otherwise of the judgment and falls short of the now well laid down principles for certification to the Supreme Court.
14. We also associate ourselves with the sentiments of the learned Justices Koome and Kimaru; that the applicant indeed sold the suit property and received the proceeds, which she has not denied, and cannot then be seen to claim the land once more as a beneficiary. It would indeed be unconscionable for the Courts to allow such an injustice to occur.
15. For all the foregoing reasons the application is dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2023.**

**S. OLE KANTAI**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**M. GACHOKA, CIArb, FCIArb.**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

