



REPUBLIC OF KENYA



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**Malamu v Gakuru & another (Petition (Application)
E002 of 2023) [2025] KESC 15 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KESC 15 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) E002 OF 2023
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
APRIL 11, 2025**

BETWEEN

DAVID MULWA MALAMU PETITIONER

AND

JOHN WAWERU GAKURU 1ST RESPONDENT

PETER MURAGE KAMANJA 2ND RESPONDENT

(In relation to the Petitioner's application for stay of execution of the Court of Appeal Judgement and consequential orders arising therefrom, and the Respondents' application to strike out the Petition of Appeal for want of Jurisdiction)

RULING

Representation:

Mr. Kamau Kuria, SC for the Petitioner

(Kamau Kuria & Company Advocates)

Mr. Fred Ngatia, SC for the Respondents

(Ngatia & Associates Advocates)

A. Litigation Background

1. The dispute between the parties herein relates to the acquisition and ownership of L.R. NO. UNS Commercial Plot No. 63 Nanyuki now L.R. No. Nanyuki/ Municipality Block 8/909.
2. The facts of the case as discerned from the pleadings are that an offer of grant to the suit premises was made out to Colonel John. K. Lebo (now deceased) and a letter of allotment issued to that effect on 5th March 1992. It was a specific term of the offer that Colonel Lebo was to pay a stand premium of Kshs.



33, 320/= within thirty (30) days of the offer but he paid the said sum ten (10) months later, on 2nd January 1993. The Respondents thereafter purchased the suit property from Colonel Lebo in the year 1998 for a sum of Kshs. 400,000/= partly on the understanding that Colonel Lebo would ultimately transfer the same to them once it was registered and title issued. Colonel Lebo was subsequently issued with a consent to transfer the suit premises to the respondents but as at the time of his demise, in the year 1999, the transfer to the respondents had not been formally effected.

3. The petitioner's claim to the suit property arose from the alleged fact that the acquisition of the suit premises by Colonel Lebo had not materialised. They posit that Colonel Lebo's failure to comply with statutory requirements including the acceptance of the offer letter in writing and the payment of the standard premium on time left the property free for lawful re-allocation by the Government. The suit property was thus alienated under the Government Lands Act by the then Commissioner of Lands and a fresh letter of allotment issued to Samuel Kariuki Muiruri on 18th July 2009 who later sold it to the petitioner herein.
4. The petitioner, noting the above facts, commenced a suit at Nanyuki Senior Principal Magistrate's Court by a plaint dated 9th October 2009 (amended on 23rd October 2009, to inter alia add the 2nd Respondent) wherein he sought a declaration that he is the lawful owner of all that parcel of land known as L.R. No. Nanyuki/Municipality Block 8/909 and an order for the permanent injunction restraining the respondents, their agents, workers or servants or anybody under them from trespassing, occupying and/or constructing structures or in any way whatsoever interfering with possession and ownership of the suit property.
5. The respondents filed a defence and counterclaim seeking a declaration that they are the legal owners of L.R. NO. UNS Commercial Plot No. 63 Nanyuki Municipality and for an order rectifying the register for L.R. No. Nanyuki/ Municipality/Block 8/909 by cancelling the registration of the petitioner as its owner and for the respondents to be registered as the owners, and for a permanent injunction restraining the petitioner by himself or any other person claiming through or under him from interfering with L.R. No. UNS Commercial Plot No. 63 Nanyuki Municipality.
6. Upon hearing both parties, the trial magistrate granted orders as sought by the petitioner and dismissed the counterclaim.
7. Aggrieved by the judgment, the respondents lodged an appeal before the Environment and Land Court (ELC) sitting in Nyeri citing thirteen grounds of appeal. Upon hearing the appeal, the ELC (L.N. Waithaka, J.) held that neither the respondent nor the appellant had proved their claim to the suit property to the required standard of proof; she directed the question concerning the disposition of the suit property to be referred to the National Land Commission for further review of the grant. The NLC filed its report dated 7th June 2017 which was to the effect that the title issued to the appellant was forged. The report therefore recommended that the respondents herein be issued with the title to the suit property.
8. Upon receipt of the report by the National Land Commission dated 7th June 2017, the learned judge issued her final orders on 19th December 2017 finding that the Commission fell short of the expectations of the court and the law by recommending that the title be issued to the respondents, yet the respondents had not made out a case for such issuance. The judge therefore disregarded the report and reiterated her finding that neither the petitioner nor the respondent herein had proved that they are entitled to the suit premises. The learned judge for that reason cancelled the certificate of title issued to the petitioner and ordered that title to the suit property does revert to the status which obtained before the same was unprocedurally transferred to the petitioner herein. She also directed that any



person with interest in the suit property may pursue its interests with the right government entities and in accordance with the applicable laws and regulations.

9. Aggrieved by the above determination, the petitioner lodged an appeal at the Court of Appeal citing five (5) grounds of appeal summarized by the appellate court into the following three issues:
 - i. Whether the Court of Appeal had jurisdiction to determine the appeal, it having been said to have been filed out of time and without leave of the court.
 - ii. Whether the learned judge erred in law by cancelling the title held by the petitioner who had purchased the land from Samuel Kariuki.
 - iii. Whether the petitioner was able to prove that he acquired a valid and legal title upon transfer.
10. The Court of Appeal found that the appeal was filed within time based on the fact that the final judgement of the ELC was made on 19th December 2017 and that time therefore started running from the date of the final decision.
11. On the second issue, the appellate court held that it was not disputed or controverted that the processes involved in the issuance of title were not complied with before the title was issued, for instance; that the transfer was effected before the requisite clearance certificates were obtained; that there is no evidence that stamp duty in respect of the transfer was paid and there is serious doubt as to the authenticity of the documents used to effect the transfer in favour of the petitioner; and that the officers at the Lands Registry who allegedly authored them later disowned the transfer documents. Further, that expert opinion tendered in court in respect thereof was to the effect that the documents were not authentic and that records held at the lands registry concerning the suit property indicated that the bonafide owner thereof was still Colonel John Lebo (deceased) and that although there were attempts to transfer the suit property to the respondents, those attempts did not materialize.
12. The Court furthermore opined that, on second appeal, it was not within their remit to re-analyse the documents produced before the trial court and authenticated by the ELC. From the evidence adduced before the trial court, and upheld by the ELC, the suit property lawfully belonged to the deceased Colonel John K. Lebo. That, Samuel Muiruri Kariuki was neither the registered owner nor a beneficiary to the estate of the said Colonel Lebo (deceased), and as held by the two courts below, he had no good title to pass to any other party. The appellate court therefore agreed with the ELC that the title, having been obtained illegally and through a corrupt scheme, was liable to be cancelled. As to whether the petitioner was able to prove that he acquired a valid and legal title upon transfer, the court determined that the ELC was right in reverting the ownership of the suit property to the position before the illegal transfer to the petitioner therein.
13. The Court of Appeal however found that the late Colonel Lebo had done an informal transfer of the suit property to the respondents several years before he died and it was on that basis that they had taken possession as they waited for the other formalities to be concluded. They cannot therefore, be said to have been inter-meddlers in the deceased's estate as opined by the learned Judge. The suit property had also already been transferred to the respondents and it was therefore not part of the deceased's free estate.
14. Invoking the principle "Equity regards as done that which ought to have been done", the Court of Appeal determined that, since there was already an informal transfer of the suit property by the Colonel Lebo (deceased) several years before his demise and there was no evidence of him ever changing his mind, then the completion of the transfer lay in the hands of the Land Registrar and it was not clear why the transfer process had not been completed. In the circumstances, the appellate court ordered



the Land Registrar to facilitate the completion of the transfer of the suit property to the respondents herein pursuant to their judgment.

15. Consequently, the petitioner and the respondents have filed two applications to which this Ruling relates.

a. Petitioner's Application

16. Aggrieved by the determination of the Court of Appeal, the petitioner filed his petition of appeal on 8th January 2025 anchored on Article 163 (4) (a). The petitioner also filed an application of even date seeking the following Orders:
 - a. This Honourable Court be pleased to stay the execution of the judgement of the Court of appeal at Nyeri in Civil Appeal No. 31 of 2018 directing the Land Registrar, Nanyuki to complete the transfer of L.R. No. Nanyuki/ Municipality Block 8/909 to the Respondents, pending the hearing and determination of this appeal.
 - b. And for an order that the costs of and incidental to this application abide the result of the said appeal.
17. The petitioner's application was supported by the sworn affidavit of David Mulwa Malamu. The petitioner also filed written submissions dated 8th January 2025. The petitioner submits that Colonel Lebo's failure to comply with the statutory requirements invalidated the transaction leaving the property free for lawful allocation by the Government. The respondents purchase of the same in 1998 was therefore based on an illusory equitable interest in the suit property since Colonel Lebo did not hold any equitable interest in the suit property capable of being sustained or transferred to any other party. This fact, the petitioner argues, was manifested by the Registrar of Survey's denial that he amended the registry index map for the benefit of the respondents when they requested the same in the year 2010. Such denial, the petitioner argues, underscored the respondents lack of any legal and equitable interest to the suit property and that, despite Colonel Lebo being granted a consent to transfer the suit property to the respondents in the year 1998, the land had not been registered in favour of the respondents as at the time of his demise.
18. The petitioner further submits that the Court of Appeal overlooked the fact that the Registered [Land Act](#), under which the lease was issued, embodies the Torrens system of land; registration under which the government is the custodian of a document of title and a buyer does not need to go beyond the register to establish the owner. Further, that the Court of Appeal ignored the basic tenets of land law by upholding the purported informal transfer on the assumption that Colonel Lebo was a beneficial owner of it under an enforceable contract between him and the Government of Kenya under the repealed Government Lands Act, to sell it within the meaning of Section 39 (1) (a) of the repealed Registered [Land Act](#).
19. He also submits that, once the land was sold to him by Samuel Muiruri Kariuki, it ceased to be government land because the essence of any sale is that ownership is transferred from the seller to the buyer hence the government does not have any land capable of being transferred as ordered by the Court of Appeal.
20. The petitioner further urges that the transfer order made by the Court of Appeal in effect unfairly granted the respondents a leasehold interest to replace the one held by the petitioner. And that, if this were to happen, his appeal would be rendered a mere academic exercise as this court would not be able to discharge its constitutional mandate in determining the contested issues placed before it. In support of that proposition, he relies on this Court's decision in Board of Governors, Moi High



School, Kabarak & another v Bell & 2 others [2013] KESC 12 (KLR) where the Court held that it has inherent jurisdiction to make such orders as will enable it to execute its constitutional mandate to do justice.

21. Lastly, he submits that the superior courts contravened his right to fair hearing by relying on, and taking into account a prejudicial charge sheet and hand written statements filed by the respondents to prejudice his case and by declining to admit as evidence the proceedings and judgement in the Chief Magistrate's Court at Nanyuki Criminal Case No. 611 of 2014: Republic vs David Mulwa Malamu and Samuel Muiruri Kariuki which showed that the two did not commit any offence and secondly, that the registration of Samuel Muiruri Kariuki the vendor, as the proprietor under the repealed Registered Land Act, was lawful.
22. The respondents on their part filed a response to the petitioner's application through a replying affidavit dated 24th January 2025 sworn by Peter Murage Kamanja who avers that the superior courts did not determine any question concerning the interpretation and application of the Constitution, and, absent a certification that the petition raises a matter of general public importance, this Court lacks jurisdiction to determine the present Motion.
23. The respondents also filed written submissions dated 24th January 2025 where they reiterate that the Court lacks jurisdiction to entertain the suit. They cite the following decisions in support of their submissions; Peter Gatirau Munya vs Dickson Mwenda Kithinji & 2 Others SC (Appl.) No. 5 of 2014; (2014) eKLR Wavinya Ndeti vs Independent Electoral and Boundaries Commission (IEBC) & 4 Others SC Petition No. 19 of 2014; (2015) eKLR Dysara Investments Limited & 2 Others vs Woburn Estate Limited & 5 Others (Petition 40 of 2018); (2020) KESC 15 (KLR) Suleiman Mwamlole Warrakah & 2 Others vs Mwamlole Tchappu Mbwana & 4 Others SC Petition No. 12 of 2018; (2018) eKLR Nasra Ibrahim Ibren vs Independent Electoral and Boundaries Commission & 2 Others SC Petition No. 19 of 2018; (2018) eKLR, Peter Odiwuor Ngoge vs Hon. Francis Kaparo & 3 Others SC Petition No. 2 of 2012; [2012] eKLR, Ngoge t/a OP Ngoge & Associates Advocates & 5379 others v Simoni t/a Namada & Co Advocates & 725 others SC Petition No. 13 of 2013; [2014] KESC 8 (KLR)

b. Respondents' Application

24. The respondents filed a Notice of Motion dated 24th January 2025 seeking the following orders;
 - a. Spent
 - b. The petition of Appeal dated 8th January 2025 filed herein under Article 163 (4) (a) be struck out.
25. The application is supported by the sworn affidavit of Peter Murage Kamanja. The respondents also filed written submissions dated 27th January 2025. The respondents reiterate that the superior courts below did not determine any question before them by interpreting or applying the Constitution. And that, if the petition of appeal raises a matter of general public importance, without certification, this Court lacks jurisdiction to hear and determine the appeal.
26. They further submit that it is grossly unfair for the petitioner to pretend that there were constitutional issues raised in the superior courts below whereas what was filed by the petitioner at the magistrate's court was a simple claim based on the alleged purchase of the suit property by himself. The Constitutional issues now raised are therefore feigned so as to hoodwink this Court to assume jurisdiction under Article 163 (4) (a). Further, that the petitioner's disingenuous effort of evading the constitutional certification process in Article 163 (4) (b) is due to the fact that the petitioner is fully aware that the grievances he advanced at the courts below were all determined on the basis of statute



law and not *the Constitution*. The petitioner therefore seeks to transmute issues under the Registered *Land Act* and the *Land Registration Act* into constitutional matters so as to be within Article 163(4) (a) of *the Constitution*.

27. The respondents rely on the same set of authorities set out in support of their response to the petitioner’s application and as outlined in para. 22 above.
28. In response to the application, the petitioner filed replying affidavit sworn by David Mulwa Malamu and submissions dated 3rd February 2025 wherein he submits that the respondents’ application is premised on the misguided view that the petitioner has no valid reason, under Article 163 (4) (a), to file his petition as a matter of right. The petitioner submits that the constitutional issues he has raised before this court have been present and visible from the beginning and in particular the failure of the superior courts to consider the proceedings in Republic vs. David Mulwa Malamu and Samwel Muiruri Kariuki (the criminal proceedings); the action of the ELC to seek the advice of the National Land Commission, which the petitioner points out to be an inquisitorial and not adversarial act and that such action was equally ignored by the Court of Appeal. The petitioner relies on the Court of Appeal for East Africa decision in R versus Lambert Houreau (1957) EA 575 to propound on the practice of the inquisitorial and adversarial systems in Kenya.
29. The petitioner further posits that, at all times, his suit involved the interpretation and application of Article 50 and the right to property under Article 40 of *the Constitution*; the application of the constitutional presumption not to apply a constitutional and statutory provision retroactively; the protection of an enumerated fundamental right under Article 19 (3) (b) of *the Constitution* namely, the adversarial system of justice to ensure that no court ignores an illegality or the innocence of a citizen and for the court to take into account all the relevant evidence in accordance with Lemankan Aramat vs Harun Meitamei Lempaka & 2 Others SC Petition No. 5 of 2014; [2014] KESC 21 (KLR) and lastly, the obligation of this Court under Section 3 of the *Supreme Court Act* to develop jurisprudence in all areas of law including land law where it was ignored by the ELC and the Court of Appeal.

B. Analysis

30. Two issues fall for this Court’s determination viz; whether the court has jurisdiction to hear and determine the case before it, and if so, whether the petitioner is deserving of a stay of execution of the judgement and consequential orders issued by the Court of Appeal.

a. Whether the Court has jurisdiction to hear and determine the petition of appeal.

31. To address this issue, we have been urged to answer salient questions, being, whether constitutional issues were raised before the trial court as well as the superior courts below; whether the Court can invoke its mandate under Section 3 of the *Supreme Court Act* and in accordance with the Aramat (supra) decision in determining the appeal before us.
32. The Petitioner’s appeal invokes the provisions of Article 163 (4) (a) of *the Constitution* which provides as follows:

“.....(4) Appeals shall lie from the Court of Appeal to the Supreme Court—

- (a) as of right in any case involving the interpretation or application of this Constitution;....”



33. In *Lawrence Nduttu & 6000 Others v. Kenya Breweries Limited & Another*, SC Petition No. 3 of 2012; (2012) eKLR we set out the requirements that an appellant need to satisfy, in any appeal said to be brought under Article 163(4)(a) of *the Constitution*. We stated as follows in that matter:

“... the appeal must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of *the Constitution*. In other words, an appellant must be challenging the interpretation or application of *the Constitution* which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation. Where the case to be appealed from had nothing or little to do with the interpretation of *the Constitution*, it cannot support a further appeal to the Supreme Court under the provisions of Article 163 (4) (a)”

34. Later, in *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others*, SC Application No. 5 of 2014; (2014) eKLR, this Court held that where no constitutional provisions relied upon are readily identifiable from the body of the Judgment of the Appellate Court, a party may also then need to show that the reasoning and the conclusions of the Court below all took a constitutional trajectory. In the words of this Court (para.69):

“The import of the Court’s statement in the Ngoge case is that where specific constitutional provisions cannot be identified as having formed the gist of the cause at the Court of Appeal, the very least an appellant should demonstrate is that the Court’s reasoning, and the conclusions which led to the determination of the issue, put in context, can properly be said to have taken a trajectory of constitutional interpretation or application”.

35. Further, in *Teachers Service Commission v. Kenya National Union of Teachers and 3 Others*, SC Application No. 16 of 2015; [2015] eKLR; the Court observed thus:

“In almost all cases where the Supreme Court has been called upon to invoke its jurisdiction under Article 163 (4) (a) of *the Constitution*, the Court has almost invariably proceeded on the assumption that there exists a substantive determination of a legal/constitutional question by the Court of Appeal which the intending appellant seeks to impugn. Indeed, in general, this is the rational meaning to be ascribed to the word ‘appeal’, in an adversarial system where jurisdiction is assigned by the legal norms to a hierarchy of courts.”

36. To therefore found a further appeal to this Court, pursuant to Article 163(4)(a), a petitioner is expected to show a clear and authentic basis of dissatisfaction with the constitutional interpretation and application as rendered in the reasoning and conclusion of the superior courts below and more so the Court of Appeal, in such a manner that the appeal would properly fall under the purview of that Article. A petition of appeal to the Supreme Court is also expected to particularize constitutional issues said to be erroneously decided in the appellate court, so as to trigger this Court’s jurisdiction to render a final interpretation or application of the same issue(s). (See also *Tong’i v Bichage & 2 others* SC Petition No. 17 of 2014; [2015] KESC 22 (KLR)

37. In the petition before us, the issue before the trial court, the ELC and the Court of Appeal clearly related to the legal ownership of all that parcel of land known as LR. Nanyuki/Municipality 8/909. Our reading of the proceedings and judgment of the trial Court shows that the said court did not decide on any constitutional issue. We also see no constitutional issue that had been canvassed and determined at the ELC, which would also have required a determination by the Court of Appeal. The issue of the legal ownership of the suit property as we have set out from the facts of the case, alone, does not lead to the invocation, interpretation or the application of Article 40 of *the Constitution*.



38. We have also considered the alleged violation of Article 50 of *the Constitution*. The petitioner alleges that the Court of appeal failed to consider the proceedings in Criminal Case No. 611 of 2014; Republic vs. David Mulwa Malamu and Samwel Muiruri Kariuki. The proceedings related to criminal charges instituted against the petitioner and Samuel Muiruri Kariuki and relating to the transaction involving the suit property. The Criminal court delivered a judgment holding inter alia, that: the petitioner was a bona fide purchaser of the suit property from Kariuki aforesaid; and that the Chief Land Registrar followed the proper procedure when issuing a title deed to the suit property. That, the two were acquitted of the criminal charges but on 29th November 2017, the Director of Public Prosecutions appealed to the High Court at Nanyuki against the said judgment but subsequently withdrew the appeal on 24th July 2018. Lastly, that the Court of Appeal ignored those proceedings in determining the appeal before it.
39. In this regard, we note from the record that, at the Court of Appeal, the petitioner sought to introduce the criminal proceedings for the first time in the dispute and the appellate court, by its Ruling dated 23rd October 2020 found merit in the application and allowed the filing of additional evidence introducing the criminal proceedings (both of the trial court and the High Court). Through this Ruling, the criminal proceedings became part of the Court of Appeal record. This, alone, dissuades the notion that the proceedings were not considered.
40. As to whether the Court of Appeal, having allowed the additional evidence, considered that evidence in making its determination, it is clear to us that the Court of Appeal did consider the value of the criminal proceedings while addressing the real issue in controversy; the ownership of the suit property. Further, there is a clear distinction between criminal proceedings and civil proceedings in terms of standard of proof as both are different, with criminal proceedings bearing a higher standard as well as the nature of evidence presented in both instances.
41. Again, for the petitioner to assail a claim that its rights under Article 50 were infringed, the context ought to be in relation to the proceedings in the superior court and whether, procedurally, the court failed in its mandate to afford a party the right to a fair hearing. This Court has also consistently held that the mere claim by a party to the effect that its rights were violated by a superior court for whatever reason, does not bring the intended appeal within the purview of Article 163 (4) (a) of *the Constitution*.
42. The last limb on this aspect of jurisdiction is whether the circumstances in this case warrants the Court's invocation of Section 3 of the *Supreme Court Act*, 2011 and for it to develop jurisprudence settling all the pertinent questions the appeal raises. In Lemankan Aramat vs. Harun Meitamei Lempaka & 2 Others SC Petition No. 5 of 2014; [2014] eKLR we determined that the Court by virtue of its status as the ultimate Court in the settlement of the course of jurisprudence, holds a crucial place in the determination of questions of 'pure law' bearing on matters of public interest. The holding in Aramat (supra) was preceded by the Court determination in Rai & 3 others v Rai & 5 others SC Petition No. 4 of 2012 [2013] KESC 21 (KLR) where Mutunga, C.J. & P. held [paragraph 81]:

“...It will be good practice for this Court to take every opportunity a matter affords it, to pronounce [itself] on the interpretation of a constitutional issue that is argued either substantively or tangentially by parties before it...”



43. Later, in Hon. Mike Mbuvi Sonko vs. The Clerk County Assembly of Nairobi City & Others SC Petition No. 11 (E008) of 2022; [2022] KESC 32 (KLR) the Court considered the public interest nature of the dispute and the need to develop jurisprudence when it held as follows:

“.....but in view of the public interest nature of the dispute, the broad interests of both the parties, the need for due guidance to the judicial process and to the courts below and in terms of the Court’s decision in Lemanken Aramat v. Harun Meitamei Lempaka & 2 others [2014] eKLR, we are minded, for the sake of posterity and development of jurisprudence to settle all the pertinent questions the appeal raises.....”

44. For a party to therefore urge us to take the route adopted in the above authorities, the manner in which the party approached the court ought to be proper; the issues clearly ought to involve the interpretation and application of *the Constitution* and the nature of the dispute ought to have a bearing on public interest that will urge us to issue guidance to judicial processes and to the courts below.

45. The main grievance by the petitioner herein is the final orders by the Court of Appeal ordering the transfer of the suit property to the respondents. In arriving at the determination, the Court of Appeal agreed with the ELC that the title to the suit property was fraudulently acquired by the petitioner. The Court anchored its transfer of the property to the respondents as arising from the actions of Colonel Lebo prior to his demise; there was clear intent that he had sought to transfer the property to the respondent. The controversy was therefore a private dispute arising out of a private land transaction. The fact of transfer to the respondent by Colonel Lebo was not in any way controverted before the lower courts. There is therefore nothing that affords public interest or was of such a nature as would require us to issue any kind of guidance to the courts below.

C. Determination

46. For the above reasons, we agree with the respondents that the jurisdiction of this Court has not been properly invoked. The Court therefore lacks jurisdiction to hear and determine the petition of appeal dated 8th January 2025. The petitioner’s application dated 8th January 2025, by extension, is hereby dismissed. The respondent’s application dated 24th January 2025 therefore has merit and the same is allowed as prayed.

47. The respondents being the successful parties in this suit and while applying the principle in Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai Estate of & 4 others; SC Petition 4 of 2012; [2013] eKLR that costs normally follow the event, we find that the relevant event before costs has materialized and that the respondents are therefore entitled to the costs of the appeal.

D. Orders

48. In light of the above findings and holdings, we order that:

- i. The Respondents’ Notice of Motion dated 24th January 2025 and filed on 27th January 2025 is hereby allowed as prayed.
- ii. The Petitioner’s Notice of Motion dated 8th January 2025 and filed on 14th January 2025 is hereby dismissed.
- iii. Petition of Appeal dated 8th January 2025 and filed on 14th January 2025 is hereby struck out.
- iv. We hereby direct that the sum of Kshs. 6,000/= deposited as security for costs herein be refunded to the petitioner; and



v. The Petitioner shall bear the costs of this appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL, 2025.

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P.M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

.....

M.K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

