



**Dhanjal v Dhanjal & 4 others (Application 13 of 2019)
[2020] KESC 69 (KLR) (7 February 2020) (Ruling)**

Nirmal Singh Dhanjal v Joginder Singh Dhanjal & 4 others [2020] eKLR

Neutral citation: [2020] KESC 69 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
APPLICATION 13 OF 2019
DK MARAGA, CJ & P, PM MWILU, DCJ & VP,
MK IBRAHIM, SC WANJALA & N NDUNGU, SCJJ
FEBRUARY 7, 2020**

BETWEEN

NIRMAL SINGH DHANJAL APPLICANT

AND

JOGINDER SINGH DHANJAL 1ST RESPONDENT

DAIJIT SINGH DHANJAL 2ND RESPONDENT

DHANJAL BROTHERS LIMITED 3RD RESPONDENT

SUKWANT KAUR KINDI 4TH RESPONDENT

JASPAL KAUR NAGI 5TH RESPONDENT

(Being an application for Certification and leave to be given to the Applicant to appeal to the Supreme Court after Review of the Ruling of the Court of Appeal delivered on the 4th April 2019 at Mombasa (Visram, Karanja & Koome JJA) declining to grant Certification to the Applicant to file a petition and appeal in the Supreme Court, in a Notice of Motion lodged in that Court on the 23rd February 2018)

Principles applicable in determining whether a Supreme Court matter was of general public importance.

Reported by Chelimo Eunice

Civil Practice and Procedure – appeals – appeals from the Court of Appeal to the Supreme Court – certification of appeals from the Court of Appeal to the Supreme Court – criteria to certify appeals – public interest - principles used to determine whether there was public interest in an appeal- what were the principles to determine whether a matter was of general public importance - Constitution of Kenya, 2010, article 163(4)(b).



Civil Practice and Procedure – appeals – appeals from the Court of Appeal to the Supreme Court - what types of appeals lay from the Court of Appeal to the Supreme Court – Constitution of Kenya, 2010, article 163(4) (b).

Brief facts

The applicant sought a review of the Court of Appeal's order dated April 4, 2019 declining to grant certification that his intended appeal to the Supreme Court involved a matter of general public importance. The application was brought pursuant to the provisions of article 163(4)(b) & (5) of the Constitution and rule 24(2) of the Supreme Court Rules, 2012.

Issues

- i. What types of appeals lay from the Court of Appeal to the Supreme Court?
- ii. What were the principles used to determine whether a matter was of general public importance?

Held

1. The Supreme Court was not intended to be an extra tier of appeal to handle all and sundry appeals from all decisions of the Court of Appeal. The Constitution intended the Supreme Court to concern itself only with important legal issues that had a clear bearing on the public interest. It was for that reason that certification had to be obtained under article 163(4)(b) of the Constitution that a matter was of general public importance to warrant an appeal to the Supreme Court. For an intended appeal to qualify as a matter of general public importance, it had to be one, the determination of which transcended the circumstances of the particular case and had a significant bearing on the public interest.
2. At the time of the transfer of the deceased's assets, the grant to the 2nd respondent of letters of administration of the deceased's estate had not been confirmed and the 2nd respondent therefore lacked the authority to effect transfers of the deceased's properties. Besides that clear impropriety, the issues of the 1st respondent's *locus standi*; the High Court's order of rectification and the restoration of the deceased's name on to the register of Dhanjal Investments Limited with or without jurisdiction; and whether or not the courts below substituted express provisions of law with their decisions, were not matters of general public importance requiring a further input of the Supreme Court.
3. The issue of validity or otherwise of the settlement agreement dated the March 9, 2006, together with other issues were decided upon the unique facts of the dispute between the parties in the instant matter with no bearing whatsoever on public interest.

Application dismissed.

Orders

Application dismissed with costs to the 1st and 4th respondents.

Citations

Statutes

1. Constitution of Kenya, 2010
2. Law of Succession Act

Advocates

None mentioned

RULING

1. By his Originating Motion dated 8th April 2019, Nirmal Singh Dhanjal, the applicant, seeks a review of the Court of Appeal's order dated 4th April 2019 denying him certification that his intended appeal to this Court involves a matter of general public importance. The application is brought pursuant to the provisions of Article 163(4)(b) & (5) of the Constitution and Rule 24(2) of the Supreme Court Rules, 2012.



2. The brief facts of the case are that one Jaswant Singh Boor Dhanjal (deceased) died intestate and was survived by five (5) children being the 1st, 2nd, 4th and 5th Respondents and one Surjit Singh Jaswant. By consent of the deceased's family, the 2nd Respondent petitioned and was on 26th of July 2006 issued with a temporary grant of letters of administration in Succession Cause No. 20 of 2006. Prior to that grant, however, on 9th March 2006 the 2nd Respondent purportedly entered into a settlement agreement with the deceased's brothers pursuant to which certain shares of the deceased's estate, along with other properties, were disposed of.
3. Aggrieved by those alienations, the 1st Respondent, one of the sons and a beneficiary of the estate of the deceased, challenged them and by her ruling delivered on 13th October 2016, Thande J, granted that application and nullified the settlement agreement of 9th March, 2006 together with the transfer of the deceased's 18,750 shares in Dhanjal Investments Limited. She also made an order for the rectification of the register of members of Dhanjal Investments Limited and restored the deceased's name onto that register.
4. Upon the dismissal by the Court of Appeal of his appeal against that decision, Nirmal Singh Dhanjal's (the Applicant herein), vide his application dated 21st February 2018, sought the Court of Appeal's certification to appeal to this Court on the ground that his intended appeal involved matters of general public importance. In its ruling of 4th April 2019, the Court of Appeal dismissed that application as unmeritorious thus provoking the present application.
5. This application is based on more or less the same grounds the Applicant relied on in the Court of Appeal: that the 1st Respondent, having not obtained letters of administration of the deceased's estate, lacked locus standi to challenge the settlement agreement; that the High Court's order of rectification and the restoration of the deceased's name on to the register of Dhanjal Investments Limited, more than 10 years after his death, was issued without jurisdiction; and that the substitution by the courts below of express provisions of Section 93 of the *Law of Succession Act* with their decisions, are all matters of general public importance requiring a further input of this Court.
6. As the Court of Appeal quite correctly observed, the Supreme Court was not intended to be an extra tier of appeal to handle all and sundry appeals from all decisions of the Court of Appeal. "the *Constitution* of Kenya, 2010 intended the Supreme Court to concern itself only with important legal issues that have a clear bearing on the public interest." It is for this reason that certification has to be obtained under Article 163(4)(b) that a matter is of general public importance to warrant an appeal to this Court. And the criteria for such certification has long been settled in many decisions of this Court. In a nutshell, as this Court stated in *Hermanus Phillipus Styen vs Giovanni Gnecci-Ruscione* [2013] eKLR. for an intended appeal to qualify as a matter of general public importance, it must be one, the determination of which transcends the circumstances of the particular case and has a significant bearing on the public interest.
7. In this matter, we agree with the 1st and 4th Respondents that at the time of the transfer of the deceased's assets, the grant to the 2nd respondent of letters of administration of the deceased's estate had not been confirmed and the 2nd Respondent therefore lacked the authority to effect transfers of the deceased's properties. Besides that clear impropriety, we also agree with the 1st and 4th Respondents that the issues of the 1st Respondent's locus standi; the High Court's order of rectification and the restoration of the deceased's name on to the register of Dhanjal Investments Limited with or without jurisdiction; and whether or not the courts below substituted express provisions of law with their decisions, are not matters of general public importance requiring a further input of this Court. The central issue in this matter is the validity or otherwise of the settlement agreement dated the 9th March 2006. That



together with other issues were decided upon the unique facts of the dispute between the parties in this matter with no bearing whatsoever on public interest. In the circumstances, we find no merit in this application and we accordingly dismiss it with costs to the 1st and 4th respondents.

8. Pursuant to the above decision, we make the following Orders:

(i) The Applicant's Originating Motion dated 8th April 2019 is hereby dismissed.

(ii) The Applicant shall bear the 1st and 4th Respondents' costs of this application.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2020.

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT OF KENYA

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

