



REPUBLIC OF KENYA



**Livingstone v Wanjiku & 2 others (Motion 24 of 2015)
[2018] KESC 52 (KLR) (11 May 2018) (Ruling)**

Njenga Livingstone v Joyce Wanjiku & 2 others [2018] eKLR

Neutral citation: [2018] KESC 52 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

MOTION 24 OF 2015

DK MARAGA, CJ & P, JB OJWANG, JB OJWANG, N NDUNGU & I LENAOLA, SCJJ

MAY 11, 2018

BETWEEN

NJENGA LIVINGSTONE APPLICANT

AND

JOYCE WANJIKU 1ST RESPONDENT

PAULINEWANGUI 2ND RESPONDENT

GRACE WANJIRU KAMAU 3RD RESPONDENT

(Being an application for review against the Ruling of the Court of Appeal sitting at Nyeri, dated 17th March, 2015 in C.A. Application No. Sup. 6 of 2014 (Visram, Koome & Odek, JJ.A.)

RULING

1. Upon reading the applicant's originating motion dated 8th September, 2015, filed under Rule 24 of the Supreme Court Rules and seeking a review of the decision of the Court of Appeal Visram, Koome and Odek, JJ.A dated 17th March, 2012 which had refused certification as a matter of general public importance, and as a matter fit for hearing before the Supreme Court;
2. Upon taking note that the applicant, a son of the deceased, had sought designation as administrator for LR No Karunge/Scheme/555, alongside the widows who were duly declared administratrixes, but his claim was denied by the Magistrate's Court and also by the High Court;
3. Upon recognizing that the applicant's summons for revocation of grant of letters of administration dated 27th November, 1995 was dismissed by the High Court on 2nd August, 2012, for failure to meet the threshold set in Section 76 of the *Law of Succession Act* (Cap. 161);



4. Upon noting that the applicant thereafter moved to the Court of Appeal, and that the Appellate Court found itself unable to interfere with the factual findings of the Courts below, as there was no demonstration that those Courts had overlooked relevant fact, or that any error of law had occurred before those Courts – and in this regard we would recall the High Court’s clear expression of its stand:

...there is a concurrent finding by the two Courts below that the 1st and 2nd respondents were the surviving widows of the deceased. We note the testimony of the applicant and see no reason to interfere with the concurrent finding of fact by the two Courts....We are of the considered view that the learned Judge did not err in fact or in law in upholding the trial Court’s finding that the 1st and 2nd respondents were the surviving widows of the deceased. We have also examined the provisions of Section 66 of the Law of Succession Act and we concur that the respondents as the surviving widows to the deceased have priority in grant of letters of administration over the appellant who is son of the deceased”.

5. Upon noting that the applicant, after his appeal cause before the Appellate Court, returned by way of application before that Court, seeking the certification of the matter for hearing before this Court, on the basis that it is matter of general public importance in the terms of Article 163 (4) (b) of the Constitution;
6. Upon considering the originating motion, alongside the submissions made before this Court, and the governing law on such a matter, as set down by this Court in Hermanus Phillipus Steyn v Giovanni Gnechi Ruscone 2013 eKLR (para 50):

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....”

7. We find that the applicant has not demonstrated that this matter is of general public importance, warranting further consideration by this Court. Accordingly, we make the following Orders:

Orders	Reasons	
1	The applicant’s motion dated September 8, 2015 is hereby dismissed.	1. The application fails to comply with the principles enunciated by this court in <u>Hermanus Phillipus Steyn v Giovanni Gnechi Ruscone</u> 2013 eKLR.
2	The applicant shall bear the costs of the application herein.	2. The applicant fails to show that the Appellate Court’s decision of 17 th March, 2015 in Application No Sup. 6 of 2014 had not applied the proper criteria for matters of general public importance.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2018.

D.K. MARAGA



CHIEF JUSTICE & PRESIDENT

OF THE SUPREME COURT

J. B. OJWANG S.C. WANJALA

**JUSTICE OF THE SUPREME JUSTICE OF THE SUPREME
COURT COURT**

N.S. NJOKI I. LENAOLA

**JUSTICE OF THE SUPREME JUSTICE OF THE SUPREME
COURT COURT**

I certify that this is a true copy of the original

Registrar, Supreme Court

