



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Ibrahim, Lenaola & Ouko SCJJ)

APPLICATION NO. E002 OF 2023

-BETWEEN-

CHRISTOPHER NDARU KAGINAAPPLICANT

VERSUS

ESTHER MBANDI KAGINA.....1ST RESPONDENT

TABITHA IKAMBA KAGINA..... 2ND RESPONDENT

CHARITY NJOKI KAGINA..... 3RD RESPONDENT

(Being an application for review of the Ruling and orders of the Court of Appeal in Civil Application Sup. E003 of 2021 given at Nyeri (Okwengu, Asike-Makhandia & J. Mohamed JJ.A) dated 3rd February, 2023 dismissing the Applicant's Application for Grant of Certification)

Representation:

Christopher Ndaru Kagina
(The applicant in person)

Mulwa Isika & Mutia Advocates
(The respondents did not respond to or participate in the application)

RULING OF THE COURT

[1] UPON perusing the undated Originating Motion application filed on 17th February, 2023 pursuant to Article 40, 159(2)(d) and 163(4)(b) of the Constitution, Section 15 and 16 of the Supreme Court Act, and Rules 32 and 33 of the Supreme Court Rules, 2020 seeking, *inter alia*: a review of the Court of Appeal's decision declining to grant certificate of leave to appeal against the decision of the Court of Appeal; leave to file the application excluding certified

Application No. E002 of 2023

copies of the Judgment and Ruling of the Court of Appeal; the Notice of Appeal be deemed as duly filed; and there be temporary stay of execution of the Judgment dated 3rd December, 2021 in Nyeri Civil Appeal No. 21 of 2017 pending hearing and determination of the application and the intended appeal;

[2] UPON perusing the proposed issues for certification, grounds on the face of the application, the supporting affidavit sworn on 14th February, 2023 and submissions of even date in which the applicant contends that: the intended appeal raises matters of general public importance as it presents controversy on the law of succession and requires precedence on the threshold of what constitutes intermeddling and the application of Section 45(1) and (2)(a) & (b) and section 55 of the Law of Succession Act Cap 160 Laws of Kenya; that the matter transcends the circumstances of the case and has an important bearing on the public interest, and that the issues were not resolved in the judgment delivered on 3rd December, 2022;

[3] NOTING that the respondents, despite service of the application, neither filed a response, submissions nor participated in these proceedings;

[4] BEARING IN MIND Article 163(5) of the Constitution, Section 15B of the Supreme Court Act and rule 33 (1) and (2) of the Supreme Court Rules, 2020 which grants this Court jurisdiction to review the Court of Appeal's certification of a matter as one of general public importance; and this Court's guiding principles on certification of a matter as one involving general public importance set out in ***Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione*** Sup Ct Application No. 4 of 2012 [2013] eKLR and the decision in ***Glencore Energy (UK) Ltd v Kenya Pipeline Company Ltd*** Sup Ct Civil Application No. 16 of 2016 [2018] eKLR, where we stated that if the applicant's appeal is based on a point of law, the applicant "*must demonstrate that such point is a substantial one, the determination of which will have a significant bearing on the public interest*"; and

[5] TAKING INTO ACCOUNT that the applicant's grievance is that the respondents who are his co-administrators in the estate of Silas Kagina Gichoni (deceased) have intermeddled with the estate and have either subdivided and sold,

retained, alienated or earmarked fraudulently to sell certain properties of the estate.

[6] WE HAVE CONSIDERED the application, supporting affidavit, submissions and the issues proposed to be certified and **NOW OPINE** as follows:

- i. The applicant has not demonstrated the manner in which the decisions of the superior courts have created uncertainty and confusion over the meaning and application of the provisions of Section 45(1), (2)(a) and (b), and section 55 of the Law of Succession Act.
- ii. On the proposed issues for certification, *to wit*, whether an expert witness who testified without a contrary opinion is an acceptable expert; whether the Supreme Court's jurisdiction may be invoked to resolve the failure by the superior courts to appreciate documentary and uncontested evidence; and whether lack of a clearance certificate and consent to transfer properties is sufficient proof of fraud thus illegally disinheriting the applicant, we find that the applicant's objective is to secure an interpretation of the law in the context of the facts of his case. Further, the decisions of the superior courts below were based on the evidence adduced at the trial court, which evidence was evaluated by the trial court and re-evaluated by the appellate court. These do not raise issues of general public importance which transcend the circumstances of this particular case or have a significant bearing on the public interest in line with the guiding principles set in the ***Hermanus case*** (*supra*).
- iii. As we held in ***Malcolm Bell v Daniel Toroitich Arap Moi & another*** Sup Ct Application No. 1 of 2014 [2013] eKLR, as a matter of principle and of judicial policy, the appellate jurisdiction of the Supreme Court is not to be invoked save in accordance with the terms of the Constitution and the law, and not merely for the purpose of rectifying errors with regard to matters of settled law.

[8] CONSEQUENTLY, for reasons aforesaid, we find no issue deserving further input of this Court and make the following orders:

- (i) *The Originating Motion filed on 17th February, 2023 be and is hereby dismissed.*

(ii) No orders as to costs.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 16th day of June, 2023.

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M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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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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I. LENAOLA
JUSTICE OF THE SUPREME COURT

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W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA