



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Koome (CJ & P), Ibrahim, Wanjala, Njoki & Ouko, SCJJ)*

**APPLICATION NO. E029 OF 2024**

– BETWEEN –

**HELDO FOODSTUFFS LIMITED ..... APPLICANT**

**AND**

**DAUDI KIPTUGEN ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER FOR LANDS.....2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR, NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**COUNTY DISTRICT LAND REGISTRAR,**

**UASIN GISHU ELDORET.....5<sup>TH</sup> RESPONDENT**

**HARON CHEPKILOT KIPSANG T/A**

**HELDO FOODSTUFF.....6<sup>TH</sup> RESPONDENT**

**SILAS KIPTUI KIPCHILAT (acting as the**

**legal personal representative of the estate of the late**

**LEAH JELAGAL KIPCHILAT.....7<sup>TH</sup> RESPONDENT**

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*(Being an Application for review of the Ruling of the Court of Appeal at Eldoret  
(Gatembu, Ochieng & Korir JJ. A) dated 25<sup>th</sup> October 2024 in Civil Application  
No. E005 of 2024 )*

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Representation

Mr. Kaira Nabasenge for the Applicant

(*Kaira Nabasenge & Co. Advocates*)

Mr. Mua Wambua for the 7<sup>th</sup> Respondent  
(*Wambua Kigamwa & Co. Advocates*)

N/A for the 1<sup>st</sup> to 6<sup>th</sup> Respondents

## **RULING OF THE COURT**

**[1] UPON CONSIDERING** the Applicant's Notice of Motion dated 5<sup>th</sup> November 2024 and filed on 5<sup>th</sup> March 2025, where the Applicant seeks a review of the Court of Appeal's Ruling on certification in Civil Application No. E005 of 2024 dated 25<sup>th</sup> October 2024; that the intended appeal to the Supreme Court of Kenya raises issues of general public importance, and leave to appeal to the Supreme Court against the Judgment of the Court of Appeal delivered on 15<sup>th</sup> December 2023 in consolidated Appeals *Eld E055 of 2023, Eld E034 of 2021* and *Eld 200 of 2021*.

**[2] UPON CONSIDERING** the grounds on the face of the Application, the supporting affidavit dated 5<sup>th</sup> November 2024 sworn by Kimitei Shadrack Kemboi, a director of the Applicant, and written submission in support of the Application dated 3<sup>rd</sup> March 2025 wherein the Applicant contends that the core dispute pertains to ownership of Eldoret Municipality Block 7/154, with multiple allotments issued by the Commissioner of Lands over time to: the Applicant, *Heldo Food Stuffs Limited; Daudi Kiptugen* (1<sup>st</sup> Respondent), who was eventually awarded the land by both the trial and appellate courts; *Heldo Foodstuff* (6<sup>th</sup> Respondent); and, the estate of *Leah Jelagat Kipchilat* (represented by Silas Kiptui Kichilat, 7<sup>th</sup> Respondent). The Applicant maintains that despite the Commissioner of Lands presenting evidence to the extent that the allotment belonging to the Applicant was the genuine allotment, the trial court (*ELC case No. 787 of 2021, formerly HCCC No. 213 of 2011*) and Court of Appeal proceeded to issue the suit land to the 1<sup>st</sup> Respondent. The Applicant argues that the issue of multiple allotments by the government raises a point of law of general public importance warranting Supreme Court intervention. He relies on this Court's decision in ***Malcolm Bell v Daniel Toroitich Arap Moi*** [2013] eKLR, specifically citing

para 53 to submit that matters of repeated legal occurrence may justify Supreme Court certification, and, *Pati Limited v Funzi Island Development Ltd* [2019] eKLR, to posit that fraudulent acquisition and public interest in land were recognized as raising issues of general public importance.

**[4] UPON CONSIDERING** the 1<sup>st</sup> Respondents written submissions dated 26<sup>th</sup> April 2025 wherein he distinguishes *Pati Limited* (supra) on grounds that it concerned public land where the public had a direct stake, unlike the current matter involving private claims based on allotment letters. He argues that the dispute lacks the broader implications required to meet the threshold of general public importance.

**[5] NOTING THAT** from the record the trial court found in favour of the 1<sup>st</sup> Respondent, holding that his allotment letter was never cancelled, other allotments were irregular or made to non-existent entities at the time and that fraudulent conduct was proven against the Commissioner of Lands. The Court of Appeal upheld the trial court's decision in all respects. It also specifically held that the 1<sup>st</sup> Respondent's allotment was first in time and that on a balance of probabilities he was the *bonafide* registered owner of the suit land.

**[6]** As relates to the Application for certification, the Court of Appeal in its Ruling dated 25<sup>th</sup> October 2024 held that the Applicant's arguments related more to a factual dispute than legal issues of general public importance. The Applicant's proposed legal question, that is, "*who is the rightful allottee in case of multiple allotments by the Government?*", was too specific to the case and lacked broader public interest.

**[7] TAKING INTO ACCOUNT** the parameters of what amounts to a matter of general public importance as set out by this court in *Hermanus Phillipus Steyn v. Giovanni Gnechi-Ruscione, Civil Appl. No. Sup.4 of 2012 (UR3/2012)* case, as appreciated by the parties and the Court of Appeal; and the additional guidelines in *Malcom Bell v Daniel Toroitich Arap Moi & another, (supra)*.

[7] We have considered the totality of the Application and submissions put forth, **WE NOW OPINE** as follows:

- i. Article 163 (4) (b) of the Constitution grants this Court the jurisdiction to hear appeals from the Court of Appeal on matters of general public importance. Section 15B of the Supreme Court Act and Rule 33 (2) of the Supreme Court Rules, 2020 empower this Court to review the Court of Appeal's decision on certification of a matter as one of general public importance.
- ii. Upon careful reflection, we agree with the finding of the Court of Appeal that the Applicant's proposed legal question, that is, "*who is the rightful allottee in case of multiple allotments by the Government?*", is fact-specific, and arises from the circumstances prevailing between the parties. The Applicant has not demonstrated how this question transcends the dispute between the parties or implicates the broader public interest in a manner contemplated under Article 163 (4) (b).
- iii. We also concur with the Court of Appeal's appreciation of the principles in ***Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione*** [2013] eKLR and agree with its observation that the Applicant largely faulted the Court of Appeal appreciation of matters of fact in its Application seeking certification, grounds which, by themselves do not raise matters of general public importance. Moreover, the Applicant has not demonstrated any uncertainty in the law or conflicting judicial pronouncements that would necessitate intervention by this Court to settle the legal position.
- iv. This Court has also largely addressed the legal principles governing procedure for allocation of unalienated land in ***Dina Management Limited v County Government of Mombasa & 5 others*** [2023] KESC 30 (KLR) and ***Torino Enterprises Limited v Attorney General*** [2023] KESC 79 (KLR). In ***Dina*** (*supra*) we emphasized that

courts must trace the root title, starting from the first allotment, to determine whether a party qualifies as a bona fide purchaser for value. We note that the Court of Appeal took guidance from these authorities in its reasoning.

- v. In the circumstances, we are satisfied that the Court of Appeal correctly interrogated the proposed question, and applied the threshold for certification as set out in the *Hermanus Phillipus Steyn Case* and arrived at the correct conclusion. We therefore find no basis to interfere with its determination.
- vi. As to costs, the 1<sup>st</sup> Respondent being the only party who responded to the Application, we find that he is entitled to costs of the Application.

[14] **CONSEQUENTLY**, and for the reasons aforesaid, we make the following orders:

- a) ***The Notice of Motion dated 5<sup>th</sup> November 2024 and filed on 5<sup>th</sup> March 2025 by the Applicant be and is hereby dismissed.***
- b) ***The 1<sup>st</sup> Respondent is entitled to cost of the Application, to be borne by the Applicant.***

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> day of May, 2025.**

.....  
**M.K. KOOME**  
**CHIEF JUSTICE & 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**

.....  
**W. OUKO**  
**JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR,**  
**SUPREME COURT OF KENYA.**

