



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

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

**APPLICATION NO. E019 OF 2025**

**— BETWEEN —**

**INSURANCE TRAINING & EDUCATION TRUST.....APPLICANT**

**—AND—**

**JOSEPH NDUNG’U GATHONDU** *(As Administrator of the*

*Estate of the Late Thumbi Kariuki)* .....**1<sup>ST</sup> RESPONDENT**

**JANE WANJIRU NDUMIA**..... **2<sup>ND</sup> RESPONDENT**

**JOSEPH NDUNG’U GATHONDU**.....**3<sup>RD</sup> RESPONDENT**

**RAJAB AHMED KARUME**..... **4<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR**.....**5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL**.....**6<sup>TH</sup> RESPONDENT**

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*(Being an application for review of the Ruling of the Court of Appeal in Nairobi*

*(Karanja, Mohammed & Korir, JJ. A), delivered on 20<sup>th</sup> June 2025 in Civil Application (Sup) No. E015 of 2024 denying certification and leave to appeal to the Supreme Court under Article 163(4)(b) of the Constitution)*

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## **Representation:**

Mr. Kenvine Ouma for the applicant  
(TripleOKLaw LLP)

No appearance for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Mr. Peter Muchoki for the 4<sup>th</sup> Respondent  
(Ahmednasir Abdullahi Advocates LLP)

Mr. Motari Matunda for the 5<sup>th</sup> and 6<sup>th</sup> respondents  
(State Law Office)

## **RULING OF THE COURT**

**[1] UPON PERUSING** the Motion dated 27<sup>th</sup> June 2025 and filed on 1<sup>st</sup> July 2025 under Articles 163(4)(b) & (5) of the Constitution, Sections 3, 3A, 15(1), 15B(1)(b) and 21 of the Supreme Court Act, 2011 and Rules 32, 33(2) and (3) of the Supreme Court Rules, 2020, seeking to review the Ruling of the Court of Appeal (**Karanja, Mohammed & Korir, JJ. A**) delivered on 20<sup>th</sup> June 2025, declining to certify the intended appeal to this Court against the judgment of the Court of Appeal delivered on 14<sup>th</sup> June 2025 in **Civil Appeal No. E505 of 2020**; certify the intended appeal as constituting a matter of general public importance and grant leave to the applicant to file an appeal to this Court; and costs; and

**[2] UPON CONSIDERING** the applicant's grounds on the face of the application, the supporting and supplementary affidavits both sworn by *Dr. Ben Kajwang* on 27<sup>th</sup> June 2025 and 21<sup>st</sup> July 2025 respectively, wherein the litigation history is set out in detail and contended that the Court of Appeal erred in law in; applying a different threshold to ascertain the root of the titles held by the contesting parties; imposing onerous registration obligations to the applicant; failing to grant certification and leave to file the intended appeal on the raised

public interest questions; disregarding the established principle of priority of the first in time title in the case of competing lawful registrations; upholding the 4<sup>th</sup> respondent's title and disregarding the applicant's without examining and affirming the legal root of the 4<sup>th</sup> respondent's title; and departing from this Court's finding in **Torino Enterprises Limited Vs Attorney General** [2023] KESC 79 (KLR) as a result creating legal uncertainty; and

**[3] UPON FURTHER CONSIDERING** the questions of general public importance advanced by the applicant, to wit; *whether the jurisdiction of the Court of Appeal under Article 164 of the Constitution, as a first appellate court extends to a determination of questions that were not pleaded by the parties and not subject to evidence or determination by the superior court; whether the Supreme Court decision in Torino Enterprises Ltd. Vs Hon. Attorney General rendered on 22<sup>nd</sup> September 2023 applies retrospectively to informal transfers entered into with the approval of the Commissioner of Lands and titles issued conferring interest in property long before the decision was made; whether public land that has been allocated and titles issued can be validly allocated to a third party before the invalidation of the first allotment; whether a letter of allotment is predicated on the life of the allottee and lapses upon his death; whether an admitted error in a Deed Plan Number can vitiate a regular allocation, compliance with the terms therein and issuance of a grant; and whether expert witnesses are required to prove a claim of forgery where the alleged signatory or maker of the document has appeared in court and personally denied having executed the same; and*

**[4] UPON CONSIDERING** the applicant's submissions dated 27<sup>th</sup> June 2025 and rejoinder submissions dated 21<sup>st</sup> July 2025, restating the grounds set out in the affidavits and in addition urging that the application meets the principles for grant of certification established in **Hermanus Phillipus Steyn Vs Giovanni Gnechchi-Roscone**, (Application No. 4 of 2012) (2013) KESC 11 (KLR) (**Hermanus**). It is submitted that the issues raised transcend the litigation

interests of the parties, have significant implications for public institutions, landowners, and the administration of land justice in the country, and have a bearing on the public interest. The applicant emphasizes that the Court of Appeal's assumption of jurisdiction over unpleaded matters was a jurisdictional error, which this Court has inherent powers to rectify. It cites the decisions in ***Asanyo & 3 others Vs Attorney-General*** [2020] KESC 62 (KLR) and ***Outa Vs Okello & 3 others*** [2017] KESC 25 (KLR). Furthermore, it urges that the retrospective application of this Court's decisions, particularly in land transactions, transcends the interest of the parties herein. To this end, the applicant relies on ***Dhanjal Investments Limited Vs Kenindia Assurance Company Limited*** [2016] KESC 15 (KLR) and ***Shah & 7 others Vs Mombasa Bricks and Tiles Ltd & 5 others*** [2022] KESC 25 (KLR); and

**[5] FURTHER, NOTING** the 5<sup>th</sup> and 6<sup>th</sup> respondents' submissions dated 14<sup>th</sup> July 2025 in support, to the effect that the applicant has raised legal questions of public interest requiring certification, that is, whether the jurisdiction of the Court of Appeal as the first appellate court extends to unpleaded questions which are not the subject of evidence by the parties in a trial court; whether the Court of Appeal can rely on unpleaded issues to overturn a trial court; allocation of public land; the impact of a declaration that letters of allotment cannot be transferred until perfected; and the validity of a letter of allotment after the demise of the holder/allottee. To support this assertion, they cite this Court's decisions in ***Asanyo & 3 others Vs Attorney-General*** [2020] KESC 62 (KLR) and ***Outa Vs Okello & 3 others*** [2017] KESC 25 (KLR); and

**[6] UPON READING AND CONSIDERING** the 4<sup>th</sup> respondent's replying affidavit and submissions, both dated 9<sup>th</sup> July 2025 in opposition, to the effect that the application does not raise legal questions which transcend the facts and circumstances of the parties; and does not demonstrate substantial points of law whose determination would have a significant bearing on the public interest. It is also the 4<sup>th</sup> respondent's submission that a pure case of competing titles, as is in

the present case, cannot be advanced to this Court. It relies on this Court's decision in *Megvel Cartons Limited Vs Diesel Care Limited & 2 others* (Application E008 of 2023) [2023] KESC 24 (KLR). Furthermore, it is urged that the Court of Appeal, acting as a first appellate court, has jurisdiction to re-evaluate the evidence before the trial court as well as the judgment and arrive at its conclusion; the doctrine of stare decisis is applicable as conclusively determined by this Court in *Kidero & 4 others Vs Waititu & 4 others (Petition 18 & 20 of 2014 (Consolidated))* [2014] KESC 11 (KLR) and *Asanyo & 3 others Vs Attorney General (Petition 7 of 2019)* [2020] KESC 62 (KLR); and

[7] **BEARING IN MIND** the facts which precipitated the dispute over Land Reference No. 209/10210 Bellevue (*the suit property*), the subject of the intended appeal, and the decisions of the superior courts; more particularly, the ELC holding (*Obaga, J.*) to the effect that the applicant's title was lawful and regular, as it had been issued pursuant to an allotment informally transferred by the initial allottee with the consent of the Commissioner of Lands. **Further bearing in mind** the trial court's order directing the 5<sup>th</sup> respondent and the Survey Department to rectify any mistake on the deed plan held by the applicant and to effect proper entries in the register;

[8] **NOTING ON THE OTHER HAND**, the Court of Appeal's (*Kiage, Ali-Aroni & Achode J.J.A.*) determination that the applicant's title was irregular because the initial allottee had not perfected the allotment before transferring it to the applicant; the deed plan held by the applicant was not for the suit property, but property located in Kiambu, and could not form the basis of its claim; the grave errors and irregularities that afflict the applicant's title cannot be imputed to a mistake; and that the 4<sup>th</sup> respondent held a valid title to the suit land;

[9] **GUIDED** by the principles enunciated by this Court in *Hermanus Phillipus Steyn* (supra) and *Malcolm Bell Vs Daniel Toroitich Arap Moi & another*, SC Appl. No. 1 of 2013 [2013] eKLR;

***“...for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest...”***

**[10] HAVING CONSIDERED** the decisions of the superior courts, the totality of the pleadings, affidavits, and rival arguments by the parties, **WE NOW OPINE** as follows:

- i. The applicant has not concisely and satisfactorily identified any issue, the determination of which would transcend the circumstances of the matter at hand to justify a review of the Court of Appeal’s ruling denying certification.
- ii. The applicant has not raised any substantial question of law, the determination of which would have a significant bearing on the public interest;
- iii. The questions raised, such as the scope of jurisdiction of the Court of Appeal under article 164 of the Constitution as a first appellate court, the place of unpleaded issues and the application of the law of established precedent, particularly in the ***Torino decision***, are matters long settled in law. The other issues raised are specific to the circumstances of the parties in this case;
- iv. Ultimately, we find no basis upon which to interfere with the Court of Appeal’s conclusion that the proposed issues do not meet the threshold set out in ***Hermanus*** (supra) and ***Malcolm Bell*** (supra).

**[11] ACCORDINGLY**, we make the following orders:

- (i) ***The Originating Motion dated 27<sup>th</sup> June 2025 and filed on 1<sup>st</sup> July 2025 is hereby dismissed.***

**(ii) The Ruling of the Court of Appeal delivered on 20<sup>th</sup> June 2025 denying leave to appeal to this Court is hereby upheld.**

**(iii) The costs of this application shall be borne by the applicant.**

It is so ordered.

**DATED and DELIVERED at NAIROBI this 5<sup>th</sup> Day of September, 2025.**

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**M. K. KOOME**

**CHIEF JUSTICE & 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**

.....  
**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**