



## REPUBLIC OF KENYA

### IN THE SUPREME COURT OF KENYA

(Coram: Mwilu; DCJ & VP; Ibrahim, Njoki, Lenaola, Ouko, SCJJ)

#### APPLICATION NO. E017 OF 2025

— BETWEEN —

**RIFT VALLEY MACHINERY SERVICES LIMITED.....APPLICANT**

**-AND-**

**AGRO COMPLEX (K) LIMITED.....1<sup>ST</sup> RESPONDENT**  
**PETER KIMANI KUMARU.....2<sup>ND</sup> RESPONDENT**  
**JANE WAMBUI.....3<sup>RD</sup> RESPONDENT**  
**REGISTRAR OF COMPANIES.....4<sup>TH</sup> RESPONDENT**  
**PRINCIPAL REGISTRAR OF TITLES.....5<sup>TH</sup> RESPONDENT**  
**KING DEVELOPERS LIMITED.....6<sup>TH</sup> RESPONDENT**  
**JOSHUA GITARI MWANGI.....7<sup>TH</sup> RESPONDENT**  
**MUTUA MULI.....8<sup>TH</sup> RESPONDENT**  
**GEORGE NGUGI.....9<sup>TH</sup> RESPONDENT**  
**ANDREW JACOB ONYANGO ONDIEK.....10<sup>TH</sup> RESPONDENT**  
**CHARLES ODHIAMBO AYORO.....11<sup>TH</sup> RESPONDENT**  
**ALFRED OMONDI MOLA.....12<sup>TH</sup> RESPONDENT**  
**AGRO COMPLEX KENYA LIMITED.....13<sup>TH</sup> RESPONDENT**  
**CHRISTOPHER KALE CHETALAM.....14<sup>TH</sup> RESPONDENT**  
**ELISHA CHEBII CHESIYNA.....15<sup>TH</sup> RESPONDENT**

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*(Being an application for review of the Court of Appeal Ruling in Nyeri Civil Application No. E002 of 2024 delivered on 9<sup>th</sup> May 2025, dismissing application for certification and leave to appeal to the Supreme Court on grounds of general public importance under Article 163(4)(b) of the Constitution)*

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#### Representation:

Mohammed Muigai LLP for the Applicant

Muma & Kanjama Advocates for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Nyachae & Ashitiva Advocates for the 6<sup>th</sup> Respondent

Kale Maina for the 13<sup>th</sup> and 14<sup>th</sup> Respondents

## **RULING OF THE COURT**

**[1] UPON** perusing the Originating Motion dated 5<sup>th</sup> June 2025 and filed on 10<sup>th</sup> June 2025, pursuant to Article 163(4)(b) and 163(5) of the Constitution, Sections 3, 3A 15, 15B, 23(2) and 24 of the Supreme Court Act and Rules 3, 32 and 33 of the Supreme Court Rules seeking review and setting aside of the Ruling of the Court of Appeal (*Gatembu, Ochieng & Muchelule, JJ.A*) delivered on 23<sup>rd</sup> May 2025 in **Nairobi Civil Application No. E443 of 2020**, in which the appellate court declined to certify the intended appeal as one raising matters of general public importance; certification by this Court of the intended appeal against the Ruling of the Court of Appeal (*Gatembu, Ochieng & Muchelule, JJ.A*) delivered on 23<sup>rd</sup> May 2025 in **Nairobi Civil Application No. E443 of 2020**; and costs; and

**[2] UPON CONSIDERING** the applicant's grounds on the face of the application and affidavit sworn by *Peter M. Mbui* on 5<sup>th</sup> June 2025, wherein it is contended that by a judgment dated 17<sup>th</sup> January 2020, the Environment and Land Court (Kossy Bor, J) dismissed the applicant's claim of ownership over the suit property, and granting the prayers sought by the 1<sup>st</sup> to 3<sup>rd</sup> respondents in their counterclaim; aggrieved by the decision, the applicant lodged its notice of appeal on 31<sup>st</sup> January 2020; that an application for stay pending appeal under Rule 5(2)(b) of the Court of Appeal Rules was allowed; that in the process of pursuing the typed proceedings, the court premises were shut down due to the COVID-19 pandemic and the applicant ended up filing their record of appeal out of time on or around 12<sup>th</sup> November 2020; that the delay was attributed to communication challenges between the applicant's previous advocates and the registry during the pandemic, inability to access the registry and lastly, the certificate of delay by the Environment and Land Court registry failed to properly compute time up to the date the typed proceedings were collected; and

**[3] CONSIDERING** that an application seeking extension of time was dismissed by the appellate court (*Murgor, JA*) noting that the reasons for the delay were insufficient; that the crux of the ruling was that the court could not ascertain the likelihood of success of the applicant’s appeal since the draft memorandum of appeal and the judgment of the Environment and Land Court were not annexed to the application; that the finding of a single judge materially deviated from the holding of the three judge bench to the effect that the appeal was arguable and granted stay; that the single judge solely relied on the application without the entire record which had been filed separately at the registry; that the applicant filed a reference to a full bench under Rule 57 of the Court of Appeal Rules; that the full bench (*M’Inoti, Tuiyott & Ngenye, JJ.A*) dismissed the application and upheld the single judge’s findings; that in arriving at its finding, the court held that as a matter of procedure, “*it is not unusual for the single judge to receive only the application, affidavits, submissions and authorities relevant thereto*”; aggrieved, the applicant filed another application against the ruling seeking an order to certify the applicant’s intended appeal to this Court as raising questions of general public importance and to grant leave to appeal the same; that by a ruling dated 23<sup>rd</sup> May 2025, the Court of Appeal (*Gatembu, Ochieng & Muchelule, JJ.A*) dismissed the applicant’s application finding that the applicant’s claim that a miscarriage of justice occurred when the reference was dismissed does not satisfy the issuance of a certification; and

**[4] UPON FURTHER CONSIDERING** the questions of general public importance proffered by the applicant; whether the doctrine of estoppel stops the Court of Appeal from making contradictory findings on the issue of arguability of an intended appeal in the same matter concerning the same parties; and whether the Court of Appeal is further stopped from considering its internal administrative procedures as a material factor when determining whether to exercise its judicial discretion; and

**[5] UPON CONSIDERING** the applicant's submissions dated 5<sup>th</sup> June 2025 and filed on 10<sup>th</sup> June 2025, restating the grounds set out above and in addition urging that the application meets the principles for grant of certification established in ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR); and

**[6] HAVING CONSIDERED** the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents' replying affidavit sworn by *Peter Kimani Kimaru* on 1<sup>st</sup> July 2025 and filed on 2<sup>nd</sup> July 2025 as well as submissions dated and filed on even date, to the effect that not all decisions of the Court of Appeal are appealable to this Court; that the instant application seeks to challenge the exercise of discretion by the appellate court in the determination of the applicant's reference, which decision does not warrant certification as a matter of general public importance; that the nature of the dispute is private being ownership of land; that the issues in contention do not raise any substantial point of law or any issue of jurisprudential moment to justify the Court's exercise of its jurisdiction under Article 163(4)(b) of the Constitution; that the issues intended to be raised were not the subject of determination by the Environment and Land Court; that those issues are an examination of factual issues; that the impugned decision was made by the court in the exercise of its discretion; and that, the court in considering an application for extension of time properly exercised its discretion; that the court correctly applied the principles enunciated in ***Bell Vs Moi & another*** [2013] KESC 23 (KLR); that just like the Supreme Court, a bench of the Court of Appeal may depart from an earlier decision of a bench of equal strength where there are justifiable reasons to do so as was determined in ***Outa Vs Okello & 3 others*** [2017] KESC 25 (KLR); that the arguability of an appeal is not the primary consideration in applications for extension time, according to the guidelines set out in ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** [2014] KESC 12 (KLR); that the requirement to attach a draft memorandum of appeal to an application seeking extension to file an appeal out of time is not merely an administrative requirement but a practice that has developed in courts of law overtime; that the motion is specific to the applicant's own failure to comply with established procedures as determined by the Court of

Appeal (*M'Inoti, Tuiyott & Ngenye, JJ.A*) in its ruling of 8<sup>th</sup> December 2023 and do not transcend the interest of the parties to raise any arguable point of law; that mere apprehension of miscarriage of justice is not a proper basis for granting certification of an appeal to the Supreme Court and the same must fall within the ambit of Article 163 4(b) of the Constitution; and

**[7] NOTING** that the 6<sup>th</sup> respondent's submissions dated 27<sup>th</sup> June 2025 as well as the 13<sup>th</sup> and 14<sup>th</sup> respondents' submissions dated 14<sup>th</sup> July 2025 are in support of the motion; and

**[8] 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 decision on certification of an intended appeal as one of general public importance; and this Court's guiding principles on that question set out in *Steyn (supra)* and the additional guidelines in *Bell (supra)*; and

**[9] HAVING CONSIDERED** the totality of the application and submissions presented by the parties, **WE NOW OPINE** as follows:

- i. The Court of Appeal dismissed the application for certification upon the finding that a purported miscarriage of justice cannot satisfy the issuance of a certificate. In its determination, the Court held as follows;

*"15. What was before the ELC was a dispute over a parcel of land. The applicant claimed the parcel, but there were other claimants. The applicant lost in its claim and sought to challenge the decision before this Court. The certificate sought is not in respect of any point of law or issue that arose from that dispute or the decision. The certificate that the applicant seeks relates to the determination of the reference by the three Judges of this Court. The determination*

*agreed with the exercise of discretion by the single Judge who declined to extend time to appeal.*

*16. We carefully listened to the applicant in its application. Our considered view is that the applicant was aggrieved by the factual appreciation by the learned Judges of the issues contained in the reference. Otherwise, the principles of law applicable in an application to extend time to appeal, or the exercise of discretion in such a matter, are clear and not controversial in any way. The reference did not raise any substantial question of law that would be the subject of certification, and neither has it been demonstrated that any issue of general public importance exercised the minds of the three Judges who heard and determined the reference. To our mind, the applicant thinks that a miscarriage of justice occurred when its reference was declined. Quite unfortunately, this cannot satisfy the issuance of a certificate.”*

- ii. With this finding by the Court of Appeal, this Court cannot entertain an appeal from a ruling emanating from the Court of Appeal’s exercise of its discretion. We have held in ***Njihia Vs Kimani & another*** [2015] KESC 19 (KLR) that not all decisions of the Court of Appeal are subject to appeal to this Court. One category of decisions we perceive as falling outside the set of questions appealable to this Court is the discretionary pronouncements made by the appellate court.
- iii. In the present case, the single Judge (*Murgor, JA*) declined to extend time to file an appeal out of time, and the three-judge bench (*M’Inoti, Tuiyott & Ngenye, JJA*) dismissed the reference.
- iv. Applying the principles established in the ***Steyn case*** and considering our analysis above, we find that the motion lacks merit as 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. No issue of general

public importance under Article 163(4)(b) of the Constitution has been identified.

**[10] CONSEQUENTLY**, and for reasons aforesaid, we make the following **ORDERS**:

***a) The Notice of Motion dated 5<sup>th</sup> June 2025 and filed on 10<sup>th</sup> June 2025 is hereby dismissed.***

***b) The applicant shall bear the costs of this application.***

It is so Ordered.

**DATED and DELIVERED at NAIROBI this 11<sup>th</sup> Day of December 2025.**

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**P.M. MWILU**  
**DEPUTY CHIEF JUSTICE & VICE PRESIDENT**  
**OF THE SUPREME COURT**

.....  
**M.K. IBRAHIM**  
**JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....  
**I.LENAOLA**  
**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**