



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ &P, Mwilu; DCJ & VP, Wanjala, Njoki & Lenaola, SCJJ)

APPLICATION NO. E012 OF 2025

— BETWEEN —

FRANK WAFULA.....APPLICANT

— AND —

MANSUKHALAL JESANG MARURESPONDENT

*(Being an application for review of the Ruling of the Court of Appeal in Nairobi (**Mativo, Gachoka & Odunga, JJ. A**), delivered on 25th April 2025 in Civil Application (Sup) No. E001 of 2024 denying certification and leave to appeal to the Supreme Court and for stay of execution of the Judgment and orders in Kitale Environment and Land Court Civil Suit No. 103 of 2008 as affirmed by the Court of Appeal in Eldoret Civil Appeal No. E094 of 2023)*

Representation:

Applicant appearing in person

Mr. Nyamu for the respondent
(R. E. Nyamu & Company Advocates)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 5th May 2025 and filed on 15th May 2025, brought under Article 163(4)(b) & (5) of the Constitution, Sections 15(2), 16, 21(2) and 24 of the Supreme Court Act, 2011 and Rules 3, 5, 23, 32(1) and 33(3) of the Supreme Court Rules, 2020, seeking to review the Ruling of the Court of Appeal (**Mativo, Gachoka & Odunga, JJ. A**) delivered on 25th April 2025, declining to certify the intended appeal to this Court against the judgment of the Court of Appeal delivered on 11th October 2024 in **Civil Appeal No. E094 of 2023** as constituting matters of general public importance; 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] NOTING that the applicant seeks the following additional orders: a stay order restraining any eviction or further execution of the judgment against the applicant over L.R. No. 2116/1124 Kitale Municipality pending the hearing and determination of the intended appeal; an order of stay of execution of the judgment and all consequential orders in Kitale Environment and Land Court Civil Suit No. 103 of 2008 as affirmed by the judgment and orders of the Court of Appeal delivered on 11th October 2024 in Eldoret Civil Appeal No. E094 of 2023; and

[3] CONSIDERING the applicant's grounds on the face of the application, the supporting and further affidavits both sworn by the applicant on 5th May 2025 and 27th May 2025 respectively, wherein the litigation history is set out in detail and contended that the Court of Appeal erred in law by: failing to grant certification and leave to file the intended appeal to this Court on constitutional questions of *res judicata*, the existence of conflicting judgments between the same parties over the same parcel of land and alleged violations of the applicant's property rights; overlooking conflicting decisions of courts of competent jurisdiction over the same subject matter and between the same parties, *to wit*, a Judgment delivered on 11th December 2015 in Civil Case No. 334 of 2011 at the Chief Magistrate's Court at

Kitale in favour of the applicant, and a Judgment delivered on 16th October 2024 in Civil Case No. 103 of 2008 at the Environment and Land Court at Kitale in favour of the respondent, thereby creating legal uncertainty; and

[4] UPON FURTHER EXAMINING the questions of general public importance identified by the applicant before the Court of Appeal, namely; *whether an unsigned document is admissible in evidence; whether land fraudulently alienated and registered in contravention of the law can confer genuine and lawful title; and whether there is uncertainty in law arising from contradictory precedents which would require the Court to resolve; and*

[5] NOTING that the applicant has now raised additional questions for determination in the instant application as follows:

- (i) *whether the matter in dispute in the case between the applicant and the respondent raises cardinal issues of jurisprudential moment that have a bearing on public interest that require a further input of this Court;*
- (ii) *whether the failure by the Court of Appeal to resolve the parallel conflicting judgments undermined public confidence in the Judiciary;*
- (iii) *whether in a scenario where only the second judgment is appealed, the first judgment remains legally binding unless it is explicitly set aside or varied by a higher court;*
- (iv) *whether the first in time judgment if not appealed takes precedence;*
- (v) *whether parallel proceedings should be avoided as a matter of general public importance requiring further input by this Court;*
- (vi) *whether the decision to uphold rejection of the respondent's Letter of Allotment may give rise to a conflicting position of law on the face of several decisions of the court below as to require either that this court*

resolves the issue or remits it to the Court of Appeal with appropriate directions;

- (vii) whether the circumstances of this case are unique and transcend the facts of this case as to require to be heard by this Court;*
- (viii) whether the subject matter was indeed public land that could be alienated to private individuals was a matter of general public importance requiring the input by this Court;*
- (ix) whether the Court of Appeal erred in law and fact in failing to resolve the conflicting judgments issued by the two courts below concerning the same parcel of land and the same parties;*
- (x) whether the Court of Appeal misdirected itself by not considering the effect of conflicting judgments by the two lower courts which clearly led to legal uncertainty on the ownership and title of the said parcel of land;*
- (xi) whether the Court of Appeal failed to properly assess the legal principles applicable to the dispute including judicial precedence and the proper approach to resolving conflicting judgments on similar issues;*
- (xii) whether the Court of Appeal's failure to resolve the conflicting judgments/decisions effectively denied the Applicant access to justice;*
- (xiii) whether the Court of Appeal failed to apply and correctly interpret the relevant provisions of law that govern the resolution of conflicting decisions between lower courts;*
- (xiv) whether the Court of Appeal's decision to deny leave to appeal was based on a misapprehension of the facts and law surrounding the conflicting judgments of the lower courts;*

- (xv) *whether the Court of Appeal's ruling declining leave to appeal constitutes a miscarriage of justice and warrants the Supreme Court's intervention to prevent a miscarriage of justice;*
- (xvi) *whether the Court of Appeal's failure to grant leave to appeal infringes upon the right of the applicant to have the matter determined by the highest court in the land, particularly given the public interest in the resolution of land disputes;*
- (xvii) *whether the matter raises a substantial question of law and/or constitutional issue that justifies the intervention of the Court;*
- (xviii) *whether the conflicting judgments from the lower courts have created a legal vacuum and uncertainty "that requires the intervention of the Court for the sake of legal certainty and uniformity; and*
- (xix) *whether the failure to resolve the conflict between the two lower courts resulted in a failure to uphold the rule of law and the principles of justice warranting the Court's intervention; and*

[6] UPON CONSIDERING the applicant's submissions dated 5th May 2025 and supplementary submissions dated 27th May 2025, restating the grounds set out in the affidavits and further urging that, the application meets the principles for grant of certification stated in ***Pati Limited Vs Funzi Gland Development Ltd. & 40 others*** [2019] KESC 23 (KLR). Specifically, the issues raised therein transcend the litigation interests of the parties and have a bearing on the public interest. To this end, the applicant relies on the Court's decision in ***Town Council of Awendo Vs Nelson Oduor Onyango & 13 others (Misc Appl. No. 49 of 2014)*** [2015] KESC 24 (KLR). The applicant also submits that the Court of Appeal misapplied the law by failing to take judicial notice of the consent decree entered into by the applicant and the Trustees of Kitale Club, to which the respondent is a member, in ***Kitale Environment and Land Court Civil Suit No. 165 of 2014***; and the said consent determined the rights over L.R. No.

2116/1124 Kitale Municipality (the suit property) and remains enforceable and binding on the parties to date. In the end, the applicant urges the Court to grant leave to appeal and stay pending the determination of the intended appeal; and

[7] FURTHER NOTING the respondent's replying affidavit and submissions, both dated 21st May 2025, to the effect that the application does not demonstrate substantial points of law whose determination would have a significant bearing on the public interest. Further, the respondent avers that some of the grounds raised in the intended appeal were not the subject of litigation in the superior courts below. Particularly, the issue of *res judicata* in **Civil Case No. 334 of 2011** at the Chief Magistrate's Court in Kitale and **Civil Case No. 103 of 2008** at the Environment and Land Court in Kitale as alleged by the applicant does not arise, since the subject matter in the two suits were different; and the consent decree emanating from **Kitale Environment and Land Court Civil Suit No. 165 of 2014** was not the subject of litigation in the superior courts below. Consequently, it is his submission that there is no uncertainty in law arising from contradictory precedents, which would require the Court's intervention. He, therefore, urges the Court to dismiss the instant Motion with costs; and

[8] BEARING IN MIND the facts which precipitated the dispute over Land Reference No. 2116/1124 Kitale (*the suit property*), the subject of the intended appeal, and the decisions of the superior courts; more particularly, the Environment and Land Court (*Nyagaka, J.*) *inter alia*, that the respondent is the lawful owner of the suit property which comprises all that parcel of land initially registered as L.R No. 2116/1124 Kitale Municipality and later converted to Kitale Municipality Block 12/26. The trial court held that the applicant did not establish fraud as against the respondent to the required standard, so as to warrant impeachment of the respondent's title to the suit property. It also found that the applicant was a trespasser on the suit property and directed him to vacate the same within fifteen days, failure to which he would be evicted. Further, the trial court issued a permanent injunction order as against the applicant and his servants or

agents prohibiting them from entering, remaining on, encroaching, using and/or in any way interfering with the respondent's use of the suit property; and

[9] TAKING INTO ACCOUNT that the Court of Appeal (*Gatembu, Ochieng & Korir, JJA*), upheld the trial court's finding that plot number LR No. 2116/1124 Kitale Municipality measuring 0.5532 hectares and LR No. Kitale Municipality Block 12/26 of similar measurements are one and the same, save that the former was the number the suit property bore before being converted to the new land regime pursuant to the provisions of the Registered Land Act, CAP 300 (now repealed); and that the respondent is the lawful owner of the suit property. On whether the suit was *res judicata*, the appellate court noted that the trial court dismissed a preliminary objection raised by the applicant on that point of law, vide a ruling delivered on 2nd March 2023; the said ruling was not the subject of the appeal and therefore, the appellate court could not make a determination on it. On whether the respondent acquired title to the suit property through fraud, the appellate court found that although the appellant pleaded the particulars of fraud, he did not lead any evidence in support thereof. Ultimately, the appellate court held that the appeal lacked merit and dismissed it with costs to the respondent; and

[10] GUIDED by the principles enunciated by this Court in *Steyn Vs Ruscone* [2013] KESC 11 (KLR) and *Bell Vs Moi & another* [2013] KESC 23 (KLR) that:

“...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...”; and

[11] HAVING CONSIDERED the decisions of the superior courts, totality of the pleadings, affidavits, and rival arguments by the parties, **WE 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. Neither has the applicant raised any substantial question of law, the determination of which would have a significant bearing on the public interest.
- ii. The issues raised by the applicant, such as the admissibility of an unsigned document in evidence and whether land fraudulently alienated and registered in contravention of the law can confer genuine and lawful title, are matters long settled by the superior courts. The other issues raised are specific to the circumstances of this case and do not transcend the interests of the parties. The applicant has not demonstrated the existence of contradictory precedents that have created a state of uncertainty in the law.
- iii. Consequently, we find that the applicant has not satisfied the now firmly established test for certification under Article 163(4)(b) of the Constitution. We are also not persuaded that there are matters of public interest that deserve the Supreme Court's further input. The prayer for stay of execution must consequently be declined.
- iv. Ultimately, we find no fault in the Court of Appeal's conclusion that the proposed issues do not meet the threshold set out in **Steyn** [supra] and **Bell** [supra].

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

- i) The Originating Motion dated 5th May 2025 and filed on 15th May 2025 is hereby dismissed.**
- ii) The Ruling of the Court of Appeal delivered on 25th April 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 23rd Day of January, 2026.

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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

.....
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