



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E013 OF 2025

— BETWEEN —

NANCY WANGECHI PETER.....APPLICANT

-AND-

GIDEON KANINI KAMACHO.....1ST RESPONDENT

CYRUS KANINI NDEGE.....2ND RESPONDENT

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

Representation:

Mrs. Rose Wangari Muthike-Makworo for the Applicant
(Makworo Advocates LLP)

Mr. Joseph N. Karanja for the 2nd Respondent
(Joe Ng'ang'a & Associates Advocates)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 20th May 2025 and filed on 21st May 2025, pursuant to Article 163(4)(b) of the Constitution, Section 15 of the Supreme Court Act and Rule 31 of the Supreme Court Rules; seeking review and setting aside of the Ruling of the Court of Appeal (*Kantai, Lesiit & Ali-Aroni, JJ.A*) delivered on 9th May 2025 in **Nyeri Civil Application No. E002 of 2024**, declining to certify the intended appeal as one raising matters of general public

importance; certification of the intended appeal against the Judgment of the Court of Appeal (*Jamila Mohammed, Kimaru & Muchelule, JJ.A*) delivered on 12th April 2024 in **Nyeri Civil Appeal No. 171 of 2017**; and costs; and

[2] UPON CONSIDERING the applicant's grounds on the face of the application and affidavit sworn by *Nancy Wangechi Peter* on 20th May 2025, wherein it is contended that her father, Kariuki Kanini, the 1st defendant in Nyeri HCCC No. 137 of 2002 passed away on 15th October 2002 while the suit was still pending and was never substituted neither did he give evidence in court; that her mother, Tabitha Wawira Peter, also a party in Nyeri HCCC No. 137 of 2002 passed away too on 11th January 2020 while the Nyeri Court of Appeal case was still pending and was also never substituted; that the property subject of the suit, Land Reference Number Kabare/Mutige/65 (hereinafter the "*suit property*") was initially registered in her father's name and in 1997 jointly between her father and mother and later in the same year was subdivided into three parcels registered in the name of her father, mother and herself respectively; that the orders sought in Nyeri HCCC No. 137 of 2002 in a plaint dated 11th December 2002 were against her father over the original suit property and the resultant parcels after subdivision yet he passed on before giving evidence and was never substituted; that a decree was issued in favour of the respondents despite the fact that her father was deceased at the time; that at no time did she give evidence on behalf of the defendants in Nyeri HCCC No. 137 of 2002; and

[3] UPON FURTHER CONSIDERING the questions of general public importance proffered by the applicant, to wit; that the issues in the intended appeal have a significant bearing on the development of the law specifically, the effect of the abatement of a suit under Order 24 Rules 3(2) and 4(3) of the Civil Procedure Rules; the effect of orders made regarding land registered in the name of a deceased party; and whether a court can alter the determination made in a previously decided suit other than through an appeal or review; and

[4] UPON CONSIDERING the applicant’s submissions dated 20th May 2025 and filed on 21st May 2025, restating the grounds set out above and, in addition, urging that the superior courts erred in failing to comply with the provisions of Order 24 Rule 2 of the Civil Procedure Rules by recording in the file that the suit was to proceed against the surviving defendants upon the death of the 1st defendant; that the application meets the principles for grant of certification established in *Steyn Vs Ruscone* [2013] KESC 11 (KLR); and

[5] HAVING READ and CONSIDERED the 2nd respondent’s replying affidavit sworn by *Cyrus Kanini Ndege* on 26th May 2025 and filed on 30th May 2025 and submissions dated 27th May 2025 and filed on 30th May 2025, to the effect that the applicant is seeking to engage the Supreme Court on an issue catered for under Order 24 Rules 3(2) and 4(2) of the Civil Procedure Rules; that the applicant is the one who subdivided the suit property and the orders issued in Nyeri ELC No. 16 of 2018 (formerly Nyeri HCCC No. 137 of 2002) affected her directly being the surviving defendant; in any event the said decree was issued in favour of the 2nd respondent as the cause of action survived through him when his father, the 1st respondent also died, as against the applicant, hence the question of abatement does not arise; that the issues raised by the applicant as raising issues of general public importance are personal to the applicant and do not meet the threshold for grant of leave to appeal before this Court as set out in the *Steyn* case (*supra*); and

[6] COGNISANT OF THE FACT that this Court has long established the guidelines upon which an intended appeal may be certified as one involving a matter of general public importance in *Steyn* (*supra*), among other authorities, to the effect that:

“(i) 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;

(ii)where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;

(iii)such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;

(iv)where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;

(v)mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163 (4)(b) of the Constitution;

(vi)the intending applicant has an obligation to identify and concisely set out the specific elements of “general public importance” which he or she attributes to the matter for which certification is sought;

(vii)determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”

[7] WE NOW OPINE as follows:

- i. Having considered the pleadings and submissions by the parties herein, and guided by the principles established in the *Steyn Case*, 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 so as to justify a review of the Court of Appeal's ruling denying certification;
- ii. Neither has the applicant raised any substantial question of law, the determination of which would have a significant bearing on the public interest; and
- iii. The applicant has not claimed or shown that there is such a question of law, being raised in the intended appeal, occasioned by a state of uncertainty in the law, arising from contradictory precedents, requiring further input by this Court;
- iv. Therefore, the applicant is mistakenly inviting this Court to determine facts in a contest between the parties, which by itself is not a basis for granting certification to appeal to the Supreme Court.

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

- a) The Notice of Motion dated 20th May 2025 and filed on 21st May 2025 is hereby dismissed.***
- b) 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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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

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

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

REGISTRAR
SUPREME COURT OF KENYA

