



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E015 OF 2025

— BETWEEN —

STEPHEN VICKER MANGIRA.....APPLICANT

-AND-

ASSET RECOVERY AGENCY.....1ST RESPONDENT

ALI CARS LIMITED.....2ND RESPONDENT

(Being an application for review of the ruling of the Court of Appeal (Murgor, Laibuta & Ngenye, J.J.A) sitting in Mombasa Civil Application No. E132 of 2023 delivered on 23rd May 2025, declining certification to appeal against the Judgment of the Court of Appeal (Murgor, Laibuta & Odunga, J.J.A) delivered on 25th October 2024 in Nairobi Civil Appeal No. E132 of 2023)

Representation:

F. Kinyua Kamundi for the Applicant
(Kinyua Muyaa & Co. Advocates)

Mr. Samuel Wambua for the 1st Respondent
(Office of the Attorney General)

RULING OF THE COURT

[1] UPON perusing the Originating Motion dated 5th June 2025 and filed on 9th June 2025, brought pursuant to Article 163(5) of the Constitution and Rule 33(2) of the Supreme Court Rules seeking review and setting aside of the Ruling of the Court of Appeal (*Murgor, Laibuta & Ngenye, J.J.A*) delivered on 23rd May 2025 in **Mombasa Civil Application No. E132 of 2023**, in which that court declined

to certify the intended appeal as one raising matters of general public importance; and

[2] UPON CONSIDERING the applicant's affidavit sworn by *Stephen Vicker Mangira*, the applicant on 5th June 2025, wherein he deposed that he was arrested and questioned by officers of the 1st respondent seconded to the Directorate of Criminal Investigations regarding the source of his wealth, to which he explained that he was a traditional healer; that subsequently he was charged with twelve counts under the Narcotic Drugs and Psychotropic Substances (Control) Act, the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), and the Penal Code, but was eventually acquitted of all the charges; meanwhile the 1st respondent sought and obtained preservation orders over his assets namely, Kshs. 18,500,000/- seized from him, seven motor vehicles, and Kshs. 2,640,339.60/- held in his bank account at Standard Chartered Bank; that the 1st respondent thereafter instituted forfeiture proceedings against him; that following his acquittal in the criminal case, he moved the High Court seeking to terminate the forfeiture proceedings, however by a ruling delivered on 20th January 2023, the court (*Njoki Mwangi, J*) found that the 1st respondent had established that the properties were proceeds of crime and the responses filed by the applicant did not show that the properties had a legitimate source thereby directing that the assets in question be forfeited to the Government; that being aggrieved by that decision, the applicant lodged an appeal before the Court of Appeal anchored on 36 grounds, which appeal was dismissed in a judgment dated 25th October 2024 on the basis that the 1st respondent had laid a proper basis in applying for the orders of forfeiture by establishing that the properties were acquired using illegitimate sources of income and that the applicant had not demonstrated any error on the part of the learned Judge in concluding that the motor vehicles and moneys in issue constituted proceeds of crime; and

[3] NOTING that the applicant was aggrieved by the judgment and wished to challenge it in this Court, he lodged in the Court of Appeal a Notice of Motion dated

24th November 2024 and amended on 27th November 2024 seeking certification to appeal to this Court, stay of the forfeiture orders pending appeal and costs of the motion; that by a ruling dated 23rd May 2025, the Court of Appeal (*Murgor, Laibuta & Ngenye, JJA*) declined to grant those prayers on the grounds that the intended appeal sought to secure interpretation of the already settled law relating to preservation and forfeiture of private property suspected to have been irregularly obtained; that the applicant failed to demonstrate that his case raised matters of general public importance or that it transcended his private interests in the moveable assets and moneys sought to be forfeited pursuant to statute law culminating in the instant application; and

[4] APPRECIATING the questions of general public importance proffered by the applicant in the instant application, anchored on a whopping nineteen (19) grounds, the applicant's submissions dated 18th July 2025 and filed on 21st July 2025, restating the grounds set out above, and in addition, urging that this Court is yet to settle the case of ***Pamela Aboo*** (SC PT No. E044 and E046 of 2024) on how forfeiture proceedings should be commenced; that issues raised concerning the interpretation and application of the Constitution were raised in the High Court and in the Court of Appeal; that the Court of Appeal departed from its judgment in ***Speaker of the National Assembly Vs Karume*** [1992] KECA 42 (KLR) on the party competent to bring proceedings and the correct procedure without assigning reasons; that failure to interpret Section 89(1)(b) of the POCAMLA deprived the applicant of a statutory and constitutional defence to the forfeiture proceedings; that the 1st respondent did not tender any evidence that the applicant's assets were proceeds of crime; and lastly, that the jurisdiction of the High Court under POCAMLA is not the same as that under Anti-Corruption and Economic Crimes Act (ACECA); and

[5] TAKING INTO ACCOUNT the 1st respondent's replying affidavit, sworn by *CPL. Fredrick Muriuki* on 13th June 2025 and filed on 12th August 2025 and submissions dated 23rd July 2025 and filed on 12th August 2025, to the effect that

the application does not raise any questions of general public importance in terms of Article 163(4)(b) of the Constitution, Section 15B of the Supreme Court Act and Rule 33 of the Supreme Court Rules; that this Court lacks jurisdiction to hear and determine the matter since some of the questions raised were neither determined by the High Court nor the Court of Appeal such as the legality or constitutionality of Section 92(4) of POCAMLA; that some questions are still pending before this Court in **Pamela Aboo** SC PT Nos. E044 and E046 of 2024; that, guided by the principles established in **Steyn Vs Ruscone** [2013] KESC 11 (KLR), no proper appeal can lie before this Court because certification must be sought on issues that arose in the courts below and had been the subject of judicial determination; that no request for certification was made in respect of some of the issues now raised before this Court against the Court's decision in **Sum Model Industries Ltd Vs Industrial & Commercial Development Corporation** [2011] KESC 5 (KLR), to the effect that an application for certification should first be made at the Court of Appeal; and

[6] BEARING IN MIND the provisions of 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 grant this Court jurisdiction to review the Court of Appeal's decision on certification; and this Court's guiding principles on certification of an intended appeal as one involving a matter of general public importance set out in **Steyn (supra)** and the additional guidelines in **Bell Vs Moi & another** [2013] KESC 23 (KLR); and

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

- i. The Court of Appeal dismissed the application for certification upon finding that the application was bad in form for non-compliance with Rule 45(1) of the Court of Appeal Rules 2022 and therefore fell short of demonstrating

that the intended appeal raised issues of general public importance. In its determination, the appellate court held as follows;

“9. Having considered the applicants’ Motion, the respondent’s replying affidavit, the applicants’ learned counsel’s written submissions dated 23rd January 2025 and those of counsel for the respondent together with their list and digest of authorities dated 13th January 2025, we form the view that the applicants’ Motion is bad in form for non-compliance with the mandatory provisions of rule 45(1) of the Rules of this Court. Be that as it may, it would be remiss of us not to pronounce ourselves on the points of law raised in the Motion, or to clarify the law on certification under rule 42 for the avoidance of doubt as to the competence or merits of the applicants’ Motion.

....

14. Having considered the instant Motion albeit bereft of a supporting affidavit, the grounds on which it is anchored, the affidavit in reply thereto, the cited authorities and the law, we find that the applicants’ Motion falls short of demonstrating to our satisfaction beyond a blanketing statement that the intended appeal raises issues of general public importance. To our mind, the intended appeal seeks to secure interpretation of the already-settled law relating to preservation and forfeiture of private property suspected of having been irregularly obtained. We find nothing to demonstrate that the applicants’ case raises matters of general public importance or interest, or that their case transcends their private interests in the movable assets and moneys sought to be forfeited pursuant to statute law. Neither have they raised any novel issue deserving of pronouncement by the Supreme Court.

15. The appellants having failed to demonstrate that their interests in the motor vehicles and the bank deposits in issue fall in the

category of those contemplated in Article 163(4) (b) of the Constitution, and having failed to show what in their intended appeal constitute points of law of general public importance that transcend their private litigation interests and, further, having failed to demonstrate how such interest have a bearing on the general public interest and concern with regard to specific elements, we reach the inescapable conclusion that their Motion fails and is hereby dismissed with costs to the respondent. Orders accordingly.”

- ii. The appellate court rejected the application both on substance and form. On the former it found that the threshold for certification was not attained, while on form, it held that the application violated the provisions of rule 45(1) of the Court of Appeal Rules, 2022 which requires any formal application to that court to be supported by an affidavit or affidavits of a person or persons having knowledge of the facts; that since the motion was made pursuant to Rule 42 (application for certification that a point of law of general public importance is involved), it ought to have been supported by an affidavit; and that no such affidavit was on record.
- iii. With the foregoing findings, this Court cannot move to review an application found by the Court of Appeal to be incompetent for want of form. To review the ruling of the Court of Appeal would be tantamount to correcting a substantive irregularity. See ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** [2014] KESC 12 (KLR).
- iv. Like the Court of Appeal, we cannot find any aspect of the intended appeal that raises issues of general public importance. The issues it raises are not novel but those already settled. The matters in question do not transcend the parties' private interests in the specific movable assets and money sought to be forfeited pursuant to statute.
- v. Applying the principles established in the ***Steyn*** case and our analysis above, we find that the motion lacks merit as the applicant has not concisely and satisfactorily identified any issue of general public importance, whose

determination would transcend the circumstances of the matter at hand to justify a review of the Court of Appeal's ruling.

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

a) The Notice of Motion dated 5th June 2025 and filed on 9th 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 30th 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