

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Maraga, CJ & P, Mwilu, DCJ & V-P, Wanjala, Njoki & Lenaola, SCJJ)

CIVIL APPLICATION NO. 10 OF 2015

—BETWEEN—

ERICK MUTHUI MATHEKA.....APPLICANT

—AND—

ISABELLA GICHUGU MATHEKA.....1ST RESPONDENT

RITA MUENI MATHEKA.....2ND RESPONDENT

(Being an application for certification and grant of leave to appeal to the Supreme Court against the Judgment and decree of the Court of Appeal at Nairobi in Civil Appeal No.114 of 2012 (Karanja, M’Inoti and Murgor JJA), delivered on 25th October 2013 and such certification and leave having been refused by that Court (Waki, Nambuye and Mwilu, JJA)

RULING OF THE COURT

[1] UPON perusing the Originating Motion application dated 25th June 2015, and filed on 14th August 2015, for certification and grant of leave to file an appeal to this Court on the ground that the proposed appeal raises questions of general public interest and importance; and

[2] UPON reading the applicant’s affidavit sworn by **ERICK MUTHUI MATHEKA** on 6th July 2015, and the respondents’ replying affidavit sworn by **ISABELLA GICHUGU MATHEKA** on 27th August 2015; as well as written submissions on record; and

[3] **UPON** considering the applicant's submission that the Court of Appeal erred in failing to certify the matter as one of general public importance and yet the issue whether one is said to belong to a family as the natural and fundamental unit of society and the basis of social order within the meaning of Article 45(1) of the Constitution, is an issue of general public importance; and

[4] **UPON** considering the respondents' submission that the application is incurably defective; it not being an application for review of the Court of Appeal's refusal to certify the matter as one of general public importance; and the applicant having failed to show that the matters alleged to have arisen either in the High Court or Court of Appeal are of general public importance;

[5] **AND** having considered the application, by a unanimous decision of this Bench, we make the following Orders under Section 23(2)(b) of the Supreme Court Act, and Rule 23 of the Supreme Court Rules, 2012 (as amended).

ORDERS	REASONS
(a) The Originating Motion of application dated 25 th June 2015 is hereby dismissed.	(a) Following the decision of this Court in <i>Koinange Investment & Development Ltd v Robert Benson Ngethe</i> Civil application No.1 of 2012, <i>“an application for leave, as a matter of good practice, should originate in the Court of Appeal, which would be better placed to certify whether a matter is of</i>

	<i>general public importance; and if the applicant should be dissatisfied with its decision in that regard, would be at liberty to seek review under Article 163(5) of the Constitution”. The present application is not one for review and is therefore improperly before us.</i>
(b) The respondents shall have costs thereof as costs must follow the event.	(b) In any event, the core issue that arose for determination before the High Court and Court of Appeal to wit whether the applicant is a survivor of one George Musau Matheka (deceased) is not a matter of great public importance and an attempt at crafting it as such before this Court is clearly mischievous and an abuse of Court process.

DATED and DELIVERED at NAIROBI this 13th Day of April, 2018

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D. K. MARAGA
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

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

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
N. S. NJOKI
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