

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
AT NAIROBI

(Coram: Mwilu (DCJ & V-P), Ibrahim, Ojwang, Wanjala, Njoki, SCJJ)

APPLICATION NO. 22 OF 2017

-BETWEEN-

HARUN OSORO NYAMBOKI.....APPLICANT

-AND-

PETER MUJUNGA GATHURU.....RESPONDENT

(Being an Application for Review of the Refusal of Certification by the Ruling of the Court of Appeal given at Nairobi (E.M Githinji, H.M Okwengu & G.B.M Kariuki J.J.A) dated 17th November 2017, in Nairobi Civil Application No. 142 of 2016, refusing to certify that the decision raises matters of General Public Importance)

RULING

[1] UPON reading the Originating Motion dated 29th November, 2017 for review of the Court of Appeal (*E.M Githinji, H.M Okwengu & G.B.M Kariuki J.J.A*) decision of 17th November 2017 which refused to certify the cause as a matter of general public importance and as a matter fit for hearing before the Supreme Court; and;

[2] UPON taking note that the Respondent herein filed a suit *HCCC No. 2876 of 1987* in the High Court seeking orders of specific performance on a sale of land agreement between himself and the applicant over a portion of land parcel LR. No 1276/11; and;

[3] UPON taking note that the agreed issues for determination before the High Court were two namely, *what was the exact purchase price? and whether the applicant was entitled to the remedy of specific performance?* and;

[4] UPON taking note that the High Court in its Judgment delivered on 17th June, 1999, dismissed the suit and held that the evidence adduced in court supported the argument by the Applicant that the purchase price had not been paid in full; and;

[5] UPON taking note that the Respondent being aggrieved by the High Court judgment, filed before the Court of Appeal (*Civil Appeal No. 184 of 2004*) appealing against the whole decision of the High Court; and;

[6] UPON taking note that that the issue for determination at the Court of Appeal was *whether there was a breach of the sale agreement by the Appellant and if there was no such breach then an order for specific performance ought to have been made in the appellant's favour*; and;

[7] UPON taking note that the parties consented to having the appeal disposed by way of written submissions and that the Applicant's submissions had not been filed as at the time the Court of Appeal's judgment had been delivered; and;

[8] UPON taking note that the Court of Appeal allowed the Respondent's Appeal and ordered the transfer of land parcel LR 12767/11 to the Respondent if it had not been transferred to a third party and in the alternative, a refund of the current market value of the suit property together with the costs of the Appeal; and;

[9] UPON noting that the Applicant, after his appeal cause before the Appellate Court, returned by way of application before that Court, seeking certification of the matter for hearing before this court, on the basis that it is matter of general public importance in the terms of Article 163(4)(b) of the Constitution; and;

[10] UPON taking note that the application was declined on the ground that there was no matter of general public importance warranting further appeal that had been shown; and;

[11] UPON considering the Originating Motion, alongside the submissions made before this Court and the governing law on such a matter, as set down by this Court in *Hermanus Phillipus Steyn v Giovanni Gnechi Ruscone*, SC Application No 4 of 2012; and;

[12] UPON considering the Replying Affidavit Sworn by Peter Mujunga Gathuru on 19th December, 2017, alongside the written submissions;

[13] IT is clear that the Applicant has not demonstrated that this matter is of general public importance, warranting further consideration by this Court. Accordingly, we make the following Orders:

	ORDERS	REASONS
1	The Applicant's motion dated 29 th November, 2017 is hereby dismissed.	1. The Application fails to comply with the principles enunciated by this Court in <i>Hermanus Phillipus Steyn v. Giovanni Gnechi Rusconne [2013] eKLR</i>
2.	The Applicant shall bear the costs of the application herein.	2. The Applicant fails to show that the Appellate Court's decision of 17 th November, 2017 in Application No. NAI 142 of 2016, had not applied the proper criteria for matters of general public importance.

DATED and DELIVERED at NAIROBI this 5th day of October 2018

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P.M MWILU
DCJ &V-P OF
THE SUPREME COURT

.....

M.K IBRAHIM
JUSTICE OF THE SUPREME COURT

.....

J.B OJWANG
JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA
JUSTICE OF THE SUPREME
COURT

.....

N. S. NDUNGU
JUSTICE OF THE SUPREME COURT