REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

ORIGINATING MOTION NO. E019 OF 2026

IN THE MATTER OF THE COURT OF APPEAL'S CIVIL APPEAL (APPLICATION) NO. E061 OF 2024

-AND-

IN THE MATTER OF REVIEW OF THE COURT OF APPEAL'S RULING DELIVERED ON 15TH MAY 2026

-BETWEEN-

HOUSING FINANCE COMPANY (K) LIMITED..............APPLICANT

-VERSUS-

FAITH WAIRIMU KIMERIAH *(Suing in her capacity as the Administrator of the Estate of Harrison Charles Kimeriah)*......................................**RESPONDENT**

(Being an Application for review of the Court of Appeal's Ruling of 15th May 2026 in Civil Appeal (App.) No. E061 of 2024 (Nyamweya, Achode and Muchelule, JJ. A)

Representation:

Mr. Chacha Odera, Advocate for the Applicant
(Oraro & Co. Advocates)
Mr. Gichuki King'ara, Advocate for the Respondent
(Gichuki King'ara & Co. Advocates)

RULING OF THE COURT

[1] UPON CONSIDERING the applicant's Originating Motion dated 29th May 2026 and filed on 11th June 2026 pursuant to Article 163 (4) of the Constitution, Rule 33 of the Supreme Court Rules, 2020, and the inherent powers of the Court, seeking orders *inter alia* that:

a. ***The Ruling of the Court of Appeal (Nyamweya, Achode and Muchelule, JJ. A) delivered on 15th May 2026 in Civil Appeal (Application) No. E061 of 2024 be reviewed and set aside;***
b. ***This Honourable Court do find that the Court of Appeal erred in certifying that the Respondent's Certification Application dated 28th July 2025 raised questions of general public importance;***
c. ***The costs of this application be borne by the Respondent; and***
d. ***Such further or other orders as this Honourable Court may deem fit and just in the circumstances be granted;*** and

[2] UPON FURTHER CONSIDERING the issues for determination on the face of the application, the supporting affidavit of Ms. Belinda Ng'ang'a, Head of Legal Department at Housing Finance Company (K) Ltd, sworn on 29th May 2026, and filed on 11th June 2026 and the written submissions of even date, wherein the applicant, by way of background, depones that: in July 1980, the applicant advanced a loan facility to the late Harrison Charles Kimeriah (*hereinafter* the deceased), secured by a charge over the property known as L.R No. 7793/6, which was jointly owned by the deceased and the respondent herein; the deceased subsequently defaulted in repayment of the loan facility; the deceased failed to comply with the terms of a consent order recorded in ***Nairobi HCCC No. 693 of 1982***; the applicant exercised its statutory power of sale over the property; the respondent instituted ***Civil Suit No. 250 of 2008*** in the High Court at Nairobi challenging the sale; the High Court (*Mongare J.*) entered judgment for the respondent on 30th November 2023; the applicant appealed the decision; and finally, the Court of Appeal (*Musinga, Mumbi Ngugi, Odunga JJ.A*) on 4th May 2026, allowed the appeal and dismissed the suit in its entirety; and

[3] UNDETERRED, the respondent filed ***Civil Appeal (Application) No. E061 of 2024*** at the Court of Appeal seeking certification pursuant to Article 163 (4)(b) of the Constitution that the intended appeal raises issues of general public importance and leave to appeal to this Court; the Court of Appeal allowed the application and, in its Ruling delivered on 15th May 2026, framed the certifiable issues as "***whether additional legal requirements and procedures come to play in relation to the realization of a security where the charger is deceased at the time of sale and the legal and evidentiary obligations and requirements of a charge with respect to an insurance policy taken in relation to the loan facility.***"; and

[4] NOTING the applicant's contention that the question of general public importance as framed by the Court of Appeal in its Ruling was neither pleaded, argued nor determined before the superior courts; that the substratum of the case concerns a private commercial dispute between two parties; that the dispute does not raise any cardinal issues of law, of a jurisprudential moment that requires the input of this Court; and that the Court of Appeal erred in granting the respondent leave to appeal to this Court as the respondent's case did not meet the test as set out in ***Mwambeja Ranching Company Ltd & Another Vs Kenya National Capital Corporation*** [2023] KECA 660 (KLR) and in ***Kenya Commercial Bank Limited Vs Muiri Coffee Estate Limited & Others*** [2016] KESC 6 (KLR); and

[5] TAKING INTO ACCOUNT the respondent's replying affidavit sworn by the respondent, Ms. Faith Wanjiru Kimeriah, on 24th June 2026 and filed on 29th June 2026, together with written submissions of even date, wherein the respondent concedes that the deceased took a loan facility of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/=) from the applicant secured by a charge over a property known as L.R No. 7793/6 Kisembe Estate, Nairobi; however, she contends that the deceased accepted the loan on the terms that the applicant would procure a life and property insurance cover in respect of the deceased and the charged property; that the deceased passed away in January 2005 before full repayment of the loan facility; that despite the deceased's death and the insurance arrangements contemplated under the Charge documents, the applicant issued a statutory notice of sale; that the applicant thereafter proceeded to exercise the statutory power of sale over the property, grossly undervaluing and underselling the property for Kshs. 10,000,000/- against the current estimated market value of Kshs. 150,000,000/-; and that the applicant also recovered the insurance premiums in the process of sale; and

[6] FURTHER TAKING INTO ACCOUNT the respondent's averments that the certification in this matter was correctly arrived at as the law remains unsettled with regard to the legal obligations and evidentiary requirements on the part of a lender in instances where an insurance policy is required to be taken together with a loan facility and legal incidents arising from the intervening death of a borrower; that the issue of general public importance was framed from the factual issues determined upon by the superior courts; and that the grounds of the application herein does not meet the threshold for review of a ruling certifying a matter as one raising issues of general public importance and thus should be dismissed; and

[7] IN OPPOSING the application, the respondent relied on the principles set out by this Court in ***Sum Model Industries Limited Vs Industrial and Commercial Development Corporation*** [2011] KESC 5 (KLR); ***Hermanus Phillipus Steyn Vs Giovani Gnecchi-Ruscone*** [2013] KESC 11 (KLR); and ***Malcolm Bell Vs Daniel Toroitich arap Moi & Another*** [2013] KESC 23 (KLR), where this Court underscored that matters of general public importance are those whose determination extends beyond the immediate interests of specific litigants; and

[8] HAVING CONSIDERED the application, affidavits, written submissions and rival arguments by the parties**, WE NOW OPINE AS FOLLOWS:**

i. The principles in determining whether an intended appeal to this Court raises a matter of general public importance are as set out by this Court in ***Hermanus Phillipus Steyn Vs Giovanni Gnecchi - Ruscone (supra)*** as follows***:***

   a. 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;

   b. 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;

c. ***Such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;***
d. ***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 determinations;***
e. ***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;***
f. ***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;***
g. ***Determination of a fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.***"; and

ii. These principles were reiterated by this Court in ***Malcolm Bell Vs Hon. Daniel Toroitich arap Moi and Another*** [2013] KESC 23 (KLR), where we held 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 in which its determination transcends the circumstances of the particular case, and has a significant bearing on the public interest; and

iii. The question whether the respondent has met the threshold for certification of a matter as raising questions of general public importance falls to be considered against the principles enunciated in ***Hermanus***

Phillipus Steyn Vs Giovanni Gnecchi - Ruscone (Supra) as outlined hereinabove, which principles were appreciated by both parties in their submissions and considered by the Court of Appeal in the impugned Ruling at para 22 as follows:

> ***"……………We are, however, persuaded that the facts of the appeal and arguments made by the parties raised a novel incidental issue, as regards <u>whether there are additional legal requirements and procedures that come to play in relation to the realization of a security where the charger is deceased at the time of sale</u>. In this respect, it is notable that the Court of Appeal in its judgment specifically referred to the pleadings by the applicant that " the sale of the suit property was unlawful since she was not served with the requisite statutory notices before sale, as the one dated 26th January 2006 sent to the estate of the late Harrison Charles Kimeriah was not received by her";*** and

iv. The Court of Appeal further observed at para 28 as follows:

> ***" In our view, the two questions we have set out hereinabove that were posed by the applicant raise a substantial issue of law that require to be determined by the Supreme Court for reasons that they not only arose from the facts of the appeal; but are likely to affect a substantial number of members of the public and in particular the representatives and dependents of deceased chargors whose security are subsequently realized; and will also clarify the application of the law as regards the exercise of the statutory power of sale and the insurance implications in these circumstances. It is therefore our view that this application meets the test set out in Hermanus Phillipus Steyn Vs Giovanni Gnecchi - Ruscone (Supra) and warrants certification."*** *[**Emphasis ours**]*; and

v. In granting the certification, the Court of Appeal summed up the issues as involving uncertainty in the law on the issue of whether there are additional legal requirements and procedures that come into play in relation to the realization of a security where the chargor is deceased at the time of exercising the statutory power of sale; and the legal and evidentiary obligations and requirements of a charge with respect to an insurance policy taken in relation to the loan facility. The appellate court noted that, whereas the issue of statutory power of sale rests on the facts of each case, the incidental issues highlighted above are novel, had been canvassed during the proceedings in the superior courts; met the guidelines in ***Hermanus Phillipus Steyn Vs Giovanni Gnecchi - Ruscone (Supra);*** and thus, warranted certification and leave to appeal to this Court; and

vi. The applicant, on the other hand, contends that the respondent was impermissibly attempting to clothe a plain civil dispute with a constitutional character so as to manufacture jurisdiction; that the respondent had introduced a new set of facts for determination by the Court; that the dispute related to the right to property under Article 40 of the Constitution; that the factual issues raised were case-specific, requiring proof and evidentiary interrogation, were unsubstantiated and speculative, and thus this Court will be turned into a trial court if it considers the matter; and

vii. Having considered the rival arguments above, and the impugned Ruling of the Court of Appeal, we determine that the certifiable questions as framed by the Court of Appeal were issues canvassed at the superior courts and have a foundation in law; the issues have also transcended the parties' commercial dispute that was case-specific as there is the unsettled question of processes that may arise upon the intervening death of a chargor, on which it appears there is uncertainty on principles and requirements, specifically on the purpose and effect of an insurance cover as outlined above; the applicant has not, with specificity, demonstrated the prejudice it will suffer if the intended appeal is filed, pursued and the law settled by this Court as mandated by the Constitution and the Supreme Court Act; and

viii. It is our view that the twin issues of whether there are additional legal requirements and procedures that come into play in relation to the realization of a security where the chargor is deceased at the time of exercising the statutory power of sale; and the legal and evidentiary obligations and requirements of a charge with respect to an insurance policy taken in relation to the loan facility transcends the parties herein, amounts to a substantial point of law for determination, and has a significant bearing on the public interest as it affects thousands of borrowers across the country and implicates consumer protection, transparency, and accountability of financial institutions; and that the intended appeal therefore raises matters of general public importance that require our intervention and input; and

ix. In line with our decision in ***Jasbir Singh Rai & 3 Others Vs Tarlochan Singh Rai & 4 Others***, [2014] KESC 31 (KLR), costs shall be in the cause.

[9] CONSEQUENTLY, and for reasons afore-stated, we make the following orders:

i. The Originating Motion dated 29th May 2026 and filed on 11th June 2026 be and is hereby dismissed.

ii. The Ruling of the Court of Appeal dated 15th May 2025 is hereby upheld.

iii. The respondent is granted leave to appeal to the Supreme Court limited to the following issues which are certified as involving general public importance;

a. Whether there are additional legal requirements and procedures that come into play in relation to the realization of a security where a borrower is deceased at the time that a lender is exercising the statutory power of sale; and

b. The legal and evidentiary obligations and requirements of a charge with respect to an insurance policy taken in relation to a loan facility.

iv. The costs of the application shall be in the cause.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this **25TH** day of **SEPTEMBER 2026**

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

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S.C WANJALA
JUSTICE OF THE SUPREME COURT

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I. LENAOLA
JUSTICE OF THE SUPREME COURT

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W. OUKO
JUSTICE OF THE SUPREME COURT

………………………………………
M. WARSAME
JUSTICE OF THE SUPREME COURT

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

REGISTRAR,
SUPREME COURT OF KENYA