



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E019 OF 2024

—BETWEEN—

MINT HOLDINGS LIMITED..... APPLICANT

—AND—

KINLUCK HOLDINGS LIMITED 1ST RESPONDENT

MACHARIA NJERU..... 2ND RESPONDENT

*Being an application for review of the Ruling of the Court of Appeal in Nairobi
(Mumbi Ngugi, Tuiyott & Gachoka, JJ. A), delivered on 24th May 2024 in
Civil Application (Sup) No. 6 of 2019 denying certification and leave to appeal
to the Supreme Court*

Representation:

Ms. Purity Mureithi for the Applicant
(Purity Mureithi & Company Advocates)

Dr. Kamau Kuria, SC for the 1st Respondent
(Kamau Kuria & Company Advocates)

Mr. Kimani for the 2nd Respondent
(Macharia-Mwangi & Njeru Advocates)

RULING OF THE COURT

[1] UPON PERUSING the Originating Motion dated 6th June 2024 and filed on 22nd June 2026, brought under Article 163(4)(b) & (5) of the Constitution, Sections 15B and 23 (2B) of the Supreme Court Act, 2011 and Rules 3 and 33 of the Supreme Court Rules, 2020, seeking to review the Ruling of the Court of Appeal (**Mumbi Ngugi, Tuiyott & Gachoka, JJ. A**) delivered on 24th May 2024, declining to certify the intended appeal to this Court against the judgment of the Court of Appeal delivered on 5th April 2019 in **Civil Appeal No. 69 of 2011** as constituting matters of general public importance; certify the intended appeal as constituting a matter of general public importance and grant leave to the applicant to file an appeal to this Court; and costs in the cause; and

[2] UPON EXAMINING the grounds on the face of the application and the supporting and supplementary affidavits both sworn by *Samson Keengu Nyamweya* on 6th June 2024 and 16th July 2026 respectively, wherein the litigation history is set out in detail and it is averred that the application was lodged within the prescribed period, as evidenced by the affidavit of service dated 10th August 2024. The applicant contends that the Court of Appeal erred in law by: declining certification and leave to appeal to this Court on matters of general public importance concerning the circumstances in which registered title and ownership of land may be challenged in the absence of fraud; exceeding its lawful mandate by ordering re-transfer of the suit property; directing re-transfer without fraud having been pleaded or proved; granting an alternative relief despite the primary prayer having been allowed by the trial court; undermining the certainty and indefeasibility of title and the principles governing land administration and conveyancing; and failing to consider the applicant's twenty-four (24) years of possession, registered ownership and improvements to the suit property, and the

consequent implications for proprietary rights, investor confidence and the economy; and

[3] UPON FURTHER EXAMINING the questions of general public importance proffered by the applicant before the Court of Appeal, namely:

- i. *The scope and extent of an order for retransfer of property in a voluntary conveyance and whether the same has abrogated the protection of right to property as guaranteed under Articles 40 and 60 of the Constitution;*
- ii. *The scope of the power of the Court of Appeal in directing that a transfer of the suit property be effected forthwith in the absence of fraud which may set a dangerous precedent in the conveyancing practice;*
- iii. *Whether the scope of the power of the Court of Appeal in asserting judicial authority by ordering a retransfer of the suit property to the 1st respondent is tantamount to the court entering into the arena of conveyancing and thereby amending a voluntary sale agreement and transfer;*
- iv. *Whether the court's scope in ordering the 2nd respondent to return the amount of Kenya shillings 1,500,000/= to the applicant in the absence of such a prayer having been made by the 1st respondent in the pleadings placed before the court, is a great departure from the general principle of law that parties can only be granted special prayers pleaded and proved;*
- v. *Whether the court's scope and power in asserting judicial authority on matters not properly before the court as submitted by parties therein is tantamount to exercising jurisdiction on alien facts;*
- vi. *Whether the court's scope and power in declining to grant costs in its order of return of the sum of Kenya shillings 1,500,000/= by the 2nd respondent to the applicant is a great departure on the general principle that costs should ordinarily follow the event;*

- vii. *Whether the court can set aside a judgment premised on a principal prayer and in lieu thereof, substitute it with an alternative prayer;*
- viii. *Whether the rights of a proprietor may be defeated as provided under the law in Section 23 of the Registration of Titles Act Cap 281 (repealed) except on grounds of fraud or misrepresentation to which a party is proved to be a party to; and*

[4] UPON CONSIDERING the applicant's submissions dated 22nd June 2026, restating the grounds set out in the affidavits and urging that the application satisfies the principles for certification under Article 163 (4) (b) of the Constitution as affirmed in, *inter alia*, ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR), ***Town Council of Awendo Vs Onyango & 13 Others*** [2015] KESC 24 (KLR), and ***Ngoge Vs Kaparo & 5 Others*** [2012] KESC 7 (KLR). Specifically, that the issues raised transcend the litigation interests of the parties and have a bearing on the public interest; the order directing the re-transfer of the suit property in the absence of pleaded and proved fraud contravenes Articles 40 and 60 of the Constitution and Section 26 of the Land Registration Act 2012; and the Court of Appeal exceeded its jurisdiction by ordering rescission of a completed conveyance without the requisite conditions having been met; and

[5] FURTHER CONSIDERING the applicant's contention that the interplay between indefeasibility of title and equitable doctrines warrants authoritative determination by this Court. It cites ***Joseph N. K. Arap Ng'ok Vs Moiyo Ole Keiwua & 4 Others*** [1997] KEHC 1 (KLR), ***Wreck Motor Enterprises Vs Commissioner of Lands & 3 Others*** [1997] KECA 391 (KLR), ***Gouriet Vs Union of Post Office Workers*** [1978] AC 435, ***Car and Universal Finance Co Ltd Vs Caldwell*** [1965] 1 QB 525 and ***In the Matter of the National Land Commission*** [2015] KESC 3 (KLR), in support thereof; and

[6] NOTING the 1st respondent's replying affidavit and submissions, both dated 11th July 2026, to the effect that the application does not raise a matter of general public importance warranting certification, on grounds that: the dispute arose

from a private sale agreement for Land Reference No. 12494/10 (*the suit property*), under which the applicant was required to pay the balance of the purchase price, but failed to do so even after the suit property had been transferred and registered in its name; and the issues concerning payment of the purchase price, registration, indefeasibility of title and re-transfer are private matters between the parties and do not transcend the dispute or have a bearing on the public interest; and

[7] **FURTHER NOTING** the 1st respondent's assertion that the application offends the doctrine of finality of litigation. It relies on, *inter alia*, ***Steyn Vs Ruscone*** [supra], ***Town Council of Awendo Vs Onyango & 13 Others*** [supra], ***Macharia & another Vs Kenya Commercial Bank Ltd & 2 Others*** [2012] KESC 8 (KLR), ***Koinange Investment & Development Ltd Vs Robert Nelson Ngethe*** [2013] KECA 380 (KLR), ***Bell Vs Moi & Another*** [2013] KESC 23 (KLR), ***Dina Management Ltd Vs County Government of Mombasa & 5 Others*** [2023] KESC 30 (KLR), ***Torino Enterprises Ltd Vs Attorney General*** [2023] KESC 79 (KLR), ***Sehmi & Another Vs Tarabana Company Ltd & 5 Others*** [2025] KESC 21 (KLR), ***Shah & 7 Others Vs Mombasa Bricks & Tiles Ltd & 5 Others*** [2023] KESC 106 (KLR), and ***Jasbir Singh Rai & 3 Others Vs Tarlochan Singh Rai & 4 Others*** [2007] KECA 21 (KLR), to urge that the application be dismissed with costs; and

[8] **IN VIEW OF** the 2nd respondent's replying affidavit and submissions, both dated 10th July 2026, contending that the Motion has been lodged more than two years after delivery of the impugned ruling, contrary to Rule 33(2) of the Supreme Court Rules, 2020, and without leave of the Court; the intended appeal does not transcend the circumstances of the instant case, raises no question of serious jurisprudential consideration warranting determination by this Court and ultimately does not involve a matter of general public importance; the Court of Appeal conclusively found the applicant to have acted in breach of contract and bad faith and that reopening those findings would undermine the principle of

finality of litigation and constitute an abuse of the court process, citing ***Steyn Vs Ruscone*** [supra], ***Insurance Training & Education Trust Vs Gathondu (As Administrator of the Estate of the Late Thumbi Kariuki) & 5 Others*** [2025] KESC 58 (KLR), ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 Others*** [2021] KESC 34 (KLR), and ***Athi River Steel Plant Limited Vs Rao & 4 Others*** [2025] KESC 23 (KLR), to urge the Court to dismiss the Motion with costs; and

[9] BEARING IN MIND the facts which precipitated the dispute over the sale of the suit property by the 1st respondent to the applicant, the subject of the intended appeal, and the decisions of the superior courts. More particularly, the High Court (*Rawal, J.* (as she then was)) in a judgment dated 15th October 2009, ordered the applicant and the 2nd respondent to remit to the 1st respondent the outstanding balance of the purchase price amounting to Kshs. 5,400,000.00 as follows: the applicant to pay Kshs. 3,900,000.00 together with interest at 18% per annum with effect from 18th October 1995 and the 2nd respondent to pay Kshs. 1,500,000.00 together with interest at court rates with effect from 6th December 1995; and

[10] TAKING INTO ACCOUNT that the Court of Appeal (*Warsame J.A* (as he then was), *Musinga & Murgor JJ. A*), in a judgment dated 5th April 2019, overturned the decision of the High Court and held that the applicant's failure to pay the balance of Kshs. 5,400,000.00 within 30 days, as stipulated in clause 5 of the sale agreement, constituted a fundamental breach of contract. The court found that the applicant's continued retention of the suit property without payment of the outstanding balance amounted to bad faith, unconscionable conduct and unjust enrichment, and consequently ordered the re-transfer of the suit property to the 1st respondent. On the 2nd respondent's cross-appeal, the appellate court directed the 2nd respondent to refund the amount of Kshs.1,500,000.00 to the applicant, without interest. Ultimately, the Court of Appeal allowed the appeal, awarded costs to the 1st respondent against the applicant, and set aside the orders of the High Court; and

[11] **NOTING** that the impugned ruling declining certification of the intended appeal as raising matters of general public importance was delivered on 24th May 2024; the Originating Motion is dated 6th June 2024 and was electronically filed on 10th June 2024, but the physical copy was not availed until 22nd June 2026, more than two years after the electronic filing; and

[12] **COGNISANT** that Rule 33 (2) of the Supreme Court Rules provides that:

“Where the Court of Appeal has certified or has declined to certify a matter as one of general public importance, an aggrieved party may apply to the Court for review, within fourteen days.” [Emphasis ours]; and

[13] **WELL AWARE OF** the provisions of Rule 12 of the Supreme Court Rules, 2020, that:

“(1) Pleadings and any other document filed in the Court shall be in both printed and electronic form.

(2) A party filing any document shall ensure consistency in the printed and the electronic formats.

(3) In case of any inconsistency between the hard copy and soft copy, the hard copy shall prevail.

(3A) Pleadings and other documents shall be filed by submitting—

(a) an electronic copy thereof through such medium as may be prescribed by the Court;

(b) a print copy in the registry within forty-eight hours from the time the electronic copy under paragraph (a) has been submitted.

(4) Where a document is lodged in a sub-registry, the deputy registrar receiving the same shall transmit it to the Registry”;
and

[14] GUIDED by this Court’s pronouncement in ***Kenya Hotel Properties Limited Vs Attorney General & 5 Others*** [2021] KESC 49 (KLR) to the effect that filing of any pleading is considered complete under Rule 12(1) of the Supreme Court Rules when a party submits pleadings and documents in both printed and electronic form, failing which the pleadings will not be considered as properly filed; and

[15] FURTHER GUIDED by the principles on grant of certification and leave to appeal to the Supreme Court as settled in ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR) and ***Bell Vs Moi & Another*** [2013] KESC 23 (KLR) 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 the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;

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...”; and

[16] HAVING CONSIDERED the decisions of the superior courts, the totality of the pleadings, affidavits, and submissions by the parties herein, **WE NOW OPINE** as follows:

- i. The Originating Motion dated 6th June 2024 and filed on 22nd June 2026 is not properly before the Court. Further, the applicant has

neither sought leave to extend time nor satisfactorily explained the inordinate delay in filing the Motion;

- ii. In any event, the applicant has not concisely and satisfactorily identified any issue, the determination of which would transcend the circumstances of the matter at hand to justify a review of the Court of Appeal's ruling denying certification. Further, the applicant has not raised any substantial question of law, the determination of which would have a significant bearing on the public interest;
- iii. Consequently, we find that the applicant has not satisfied the now firmly established test for certification under Article 163(4)(b) of the Constitution. We are also not persuaded that there are matters of public interest that deserve the Supreme Court's further input;
- iv. Ultimately, we find no fault in the Court of Appeal's conclusion that the proposed issues do not meet the threshold set out in **Steyn** and **Bell** [supra].

[17] **ACCORDINGLY**, we make the following orders:

- i) ***The Originating Motion dated 6th June 2024 and filed on 22nd June 2026 is hereby dismissed.***
- ii) ***The Ruling of the Court of Appeal delivered on 24th May 2024 denying leave to appeal to this Court is hereby upheld.***
- iii) ***The costs of this application shall be borne by the applicant.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd Day of October, 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