

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPLICATION NO. 31 OF 2004
(In the Matter of an Intended Appeal)

Between

FLORENCE KOMBO APPELLANT

A N D

REPUBLIC RESPONDENT

R U L I N G

The Applicant has mentioned this matter before me and sought an order directing that this file be placed before the Honourable the Chief Justice for directions. She says she informally applied and obtained an order from the trial magistrate allowing her to make a reference to the High Court.

Mr. Monda, learned State Counsel, objects to the matter being referred to the Honourable Chief Justice. According to him the application before the trial magistrate should have been made under Section 67 of the Constitution in which the trial Magistrate should have framed the issues for determination and referred the matter to the High Court.

A perusal of the application shows that the Applicant is alleging that her rights under sections 72 and 77 of the Constitution have been violated. In connection with those sections, section

84(1) of the Constitution provides:- “84(1) Subject to subsection (6), if any person alleges that any of the provisions of sections 70 to 83 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.”

Rule 6 of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2001 provides that such an application shall be heard “... by such number of Judges as the Chief Justice may, in his discretion, direct.”

As this application is not brought under Section 67 of the Constitution I overrule Mr. Monda’s objection and order that the Deputy Registrar do arrange to place this file before the Honourable the Chief Justice for directions.

DATED this 13th day of July 2004.

D.K. Maraga

Ag. JUDGE

