



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KIHARA KARIUKI (PCA), OKWENGU & AZANGALALA, J.J.A)

CIVIL APPLICATION SUP. 5 OF 2015 (UR 4/2015)

BETWEEN

PETER AMOLO AKUMU GOULD.....APPLICANT

VERSUS

KENYA COMMERCIAL BANK LIMITED....RESPONDENT

(An application for leave to appeal to the Supreme Court of Kenya from the Judgment of the Court of Appeal at Nairobi (G.B.M. Kariuki, K. M’Inoti and J. Mohammed, J.J.A) dated 11th December, 2014 In Civil Appeal No. 247 of 2009)

RULING OF THE COURT

1. By way of an application through a notice of motion dated the 19th March 2015, the applicant, Peter Amolo Akumu Gould, seeks leave to appeal to the Supreme Court of Kenya against the judgment of this Court delivered on the 11th December 2014 in Civil Appeal No. 247 of 2009.
2. The dispute between the parties arose when the applicant, who had been employed by the respondent bank back in 1989, was dismissed from his employment on the 6th February 1999. The respondent claimed that the applicant had been negligent as a result of which it suffered monetary loss.

The respondent therefore paid to the applicant a sum equal to three months’ salary in lieu of notice. The respondent however refused to pay to the applicant his terminal dues and other benefits that he claimed to be entitled to.
3. The applicant sued for unlawful termination of his employment and loss of income. That suit was dismissed by the High Court. The applicant was aggrieved with the finding of the High Court and preferred an appeal to this Court. This Court, after full hearing, concluded that the applicant’s employment was terminated in accordance with his contract of employment and the law as it then stood. The appeal was therefore dismissed with costs to the respondent.
4. The applicant is still aggrieved, and now would like to prefer an appeal to the Supreme Court. He has asked this Court to certify that his intended appeal involves a question of general public importance since it is anchored on an employee’s right to be paid his pension or termination dues. He further claims that the judgment of this Court undermines the law by failing to appreciate that he was subjected to a disciplinary process that undermined the rules of natural justice and that the

learned judges in reaching their decision failed to address themselves to the issues that he raised in his memorandum of appeal.

5. The respondent opposed the application by way of grounds of opposition dated the 28th day of April 2015. The gist of the respondent's grounds is that the application was defective because the applicant had not lodged and served his notice of appeal within time; the respondent also contends that in any event, the present application does not satisfy the threshold required under Article 163(4) (b) of the Constitution of Kenya to have his intended appeal certified as raising an issue of general public importance.
6. Rule 30(3) of the Supreme Court Rules, 2012 provides that a person who intends to appeal to the Supreme Court shall:

“... lodge a notice of appeal with the Registrar of the Court against whose decision it is desired to appeal within fourteen days of the decision appealed.”

We have noted that the applicant has not filed any notice of appeal against this Court's judgment and that time provided for lodging the notice of appeal has since lapsed. Citing Article 159 of the Constitution that calls for the Court to perform justice without undue regard to procedural technicalities, the applicant seeks this Court's indulgence and asks for an extension of time to file the notice of appeal. He relies on Rule 53 of the Supreme Court Rules, 2012 which provides that:

“The [Supreme] Court may extend the time limited by these Rules, or by any decision of the Court.”

7. We have considered the submissions of the parties on this issue, and in particular those of the respondent who has urged us to dismiss this application on account of the failure of the applicant to lodge his notice of appeal within time. As can be gleaned from **rules 30(3) and 53**, which we have cited above, it is only the Supreme Court that can extend the time within which to file a notice of appeal where a party intends to appeal from this Court to the Supreme Court. This Court does not have jurisdiction to determine this particular question; it will fall on the applicant to make an appropriate application to the Supreme Court, depending on the outcome of the present one.
8. An appeal lies from this Court to the Supreme Court of Kenya under **Article 163(4)(b)** of the Constitution of Kenya, 2010, where this Court, or the Supreme Court has certified that the intended appeal involves a ***“matter of general public importance.”***
9. The factors to be considered in determining what constitutes a matter of general public importance, were laid down by this Court in **Hermanus Phillipus Steyn vs Giovanni Gnecchi-Ruscone [2012] eKLR (Civil Application No. Sup 4 of 2012)**, wherein the Court stated that :

“... [T]he importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have a more general significance. Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law and that it is for the common good that such law should be clarified so as to enable the courts to administer that law, not only in the case at hand, but also in such cases in future . It is not enough to show that a difficult question of law arose. It must be an important question of law.”

10. In **Hermanus Phillipus Steyn v Giovanni Gnecchi-Ruscone [2013]eKLR (Application 4 of 2012)**, the Supreme Court adopted the above proposition with approval and set out the governing principles in determining whether or not a matter involves a question of general public importance as follows:

- a. ***The intending appellant must satisfy the Court that the issue to be canvassed on appeal 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 determination;*
- 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. *Determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.”*

11. To support the proposition that the intended appeal involves a question of general public importance, the applicant submits that the judgment of this Court undermines the law on matters of public policy, labour relations and the commerce industry. The respondent, on its part, argues that the applicant failed to identify and formulate any matter of general public importance arising from the decision of the Court of Appeal.

12. The gravamen of the applicant’s complaint arises out of the termination of his employment by the respondent, and the respondent’s refusal to pay him some dues that he considered that he was entitled to. As eloquently enunciated by the Supreme Court in *Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione (supra)*, a matter of general public importance is one that raises substantial questions of law, and whose significance goes beyond the litigating parties so as to have a bearing on the public interest.

13. The matter between the parties herein is premised on a contract of employment between two private persons, the determination of which will not have a bearing on public policy or on any other party beyond the litigants. The law regarding contracts of employment is well settled, and we do not perceive the applicant to be raising any new issues of jurisprudential moment that would require the input of the Supreme Court. As matters now stand before us, the issues arising out of the dispute between the parties herein do not meet the threshold of a matter of general public importance. Accordingly, this application is without merit, and we order that it be and is hereby dismissed with costs to the respondent.

Dated and Delivered at Nairobi this 22nd day of April , 2016.

P. KIHARA KARIUKI, (PCA)

JUDGE OF APPEAL

H. M. OKWENGU

JUDGE OF APPEAL

F. AZANGALALA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

