



REPUBLIC OF KENYA
Court of Appeal at Nairobi
Criminal Application 4 of 2012
IN THE COURT OF APPEAL
AT NAIROBI

ELIZABETH CHELANGAT APPELLANT

AND

REPUBLIC RESPONDENT

(Application for grant of leave to appeal from the Court of Appeal to the Supreme Court of Kenya under Rule 2 (1), 22, 53 & 55 of the Supreme Court Rules S. 15 (1) (2) and 3 of the Supreme Court Rules and S. 3 (2) 3 (A) & 3 (B) of the Appellate Jurisdiction Act and Articles 163, 22, and 26 of the Constitution of the Republic of Kenya in CRIMINAL APPEAL NO. 442 OF 2010)

RULING OF THE COURT

The applicant, Elizabeth Chelangat was employed by the City Council of Nairobi as an *askari* in the Inspectorate Department prior to being charged with soliciting for a benefit contrary to **Section 39 (3) (a)** as read with **Section 48 (1)** of the Ant-Corruption and Economic Crimes Act, Act No. 3 of 2003. It was alleged that she had impounded a motor vehicle belonging to Godfrey Miani Chege (Chege) for contravening the City Council by-laws. When Chege sought the release of the vehicle, the applicant demanded from him Kshs. 20,000/= as a bribe. Chege promptly reported this to the Kenya Anti Corruption Commission (KACC). With Kshs. 10,000/= issued to him by KACC to entrap the applicant, Chege returned to her. As the applicant and a colleague were about to receive the money they were arrested and subsequently charged as explained above. The applicant denied the charge but the learned trial magistrate was persuaded that the case against her was proved beyond any reasonable doubt and upon conviction sentenced her to a fine of Kshs. 20,000/= or three months imprisonment in default.

Her appeal to the High Court was dismissed by Khaminwa, J. Again aggrieved by that decision she brought a second appeal to this Court. This Court (Omolo, O'Kubasu and Nyamu, JJA) found no merit in the appeal and in dismissing it concluded that:-

“On our own consideration of the entire case, we are satisfied that the appellant was convicted on very sound evidence of the complainant, his daughter and the officers from KACC who were rather overzealous in arresting the appellant, and in their zeal burst into the office too early before the appellant had taken the money. But it must be remembered that the appellant was charged with soliciting and not receiving. The evidence of soliciting, was, in our view, overwhelming. As regards the sentence, all we can say is that the appellant was lucky to escape with a mere fine of Kshs. 20,000/= and in default three months imprisonment.”

With that, one would have expected the matter to rest there. But unrelenting, the applicant now intends to challenge the above decision in the Supreme Court. Pursuant to that intention, she has brought the present motion dated the 14th day of September 2012 and filed on the 17th day of September 2012 for:-

- i) leave of this court to appeal to the Supreme Court, and
- ii) the enlargement of time to enable her file the appeal.

The respondent has filed grounds of opposition to the application arguing that the application is defective in its form, and incompetent as it does not seek '*certificate*' of this Court in terms of Rule 22 of the Supreme Court Rules; that this Court lacks jurisdiction to grant the orders sought.

The application is expressed to be brought under **Articles 22, 26 and 162** of the Constitution, **Sections 3 (2) 3A and 3B** of the Appellate Jurisdiction Act and **Rules 2 (1), 22, 53 & 55** of the Supreme Court Rules. For the purpose of this application, except for **Rule 53** (extension of time), the rest of the cited provisions are inapplicable. The jurisdiction of the Supreme Court on appeals from this court is clearly set out in Article **163 (4)** of the Constitution thus:-

“4) Appeals shall lie from the Court of Appeal to the Supreme Court—

(a) as of right in any case involving the interpretation or application of this Constitution; and

(b) in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5). “ (Emphasis supplied).

The word used in the above provision is “*certifies*” and not “*leave*”. But as both the Supreme Court and this Court have recently stated in Lawrence Ndutu & 6000 others V. Kenya Breweries Ltd & Ano. SC Petition No. 3 of 2012 and Hermanns Phillipus Steyn V. Giovanni Guecchi – Ruscone, Civil Application No. Sup. 4 of 2012 (UR 3/2012), the words “*leave of the court*” and “*certification by the Court*” bear the same legal meaning and that it is the certification by the Court which constitutes leave. With that objection disposed of, we turn to consider whether this application satisfies the requirements of **Article 163 (4)** aforesaid.

Arguing the application before us, learned counsel for the applicant appeared to base his submissions on **Article 163 (4) (a)** and specifically that the question they wish to raise in the Supreme Court is with regard to the “*interpretation or application*” of the Constitution on the ground that the applicant is entitled, under **Article 50** to a fair trial, which includes her right to seek relief up to the highest court in the land; that the applicant is also entitled to a right to employment. When reminded that for that relief the applicant did not require leave of this court, counsel appeared to have a second thought and contended that the application also raises a matter of general public importance as there are (or may be) others out there who are in the applicant’s situation.

It is now established on the authority of Hermanus Phillipus Steyn (supra) that for a matter to qualify to be of general public importance, the 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.

The Court in that case explained that:-

“Where the matter involves a 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.”

In other words, only cardinal issues of law or of jurisprudential moment deserve the input of the Supreme Court. We do not find such issue (s) to exist in the intended appeal to the Supreme Court. We decline to certify this matter as sought in the application and accordingly dismiss the application with

costs.

Dated and delivered at Nairobi this 24th day of May 2013.

P. KIHARA KARIUKI

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PRESIDENT, COURT OF APPEAL

P.M. MWILU

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JUDGE OF APPEAL

W. OUKO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

/mgkm