



Wafula v Director of Public Prosecution & 149 others (Criminal Petition E032 of 2022) [2023] KESC 16 (KLR) (Crim) (17 February 2023) (Ruling)

Neutral citation: [2023] KESC 16 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CRIMINAL
CRIMINAL PETITION E032 OF 2022
W OUKO, SCJ
FEBRUARY 17, 2023**

BETWEEN

BENJAMIN BARASA WAFULA APPLICANT

AND

**DIRECTOR OF PUBLIC PROSECUTION & 149 OTHERS & 149
OTHERS RESPONDENT**

(Being an Application for Review of the Decision of the Hon. Kasavuli, Deputy Registrar, dated and delivered on 4th November, 2022 in Supreme Court Criminal Petition No. E032 of 2022)

Discretion of the Deputy Registrar of the Supreme Court to decline the lodging of pleadings not framed in compliance with the law.

The applicant sought the review and setting aside of the decision of the Deputy Registrar declining to lodge his pleadings. The court noted that one of the roles of the Registrar was to decline pleadings that were not in accordance with the Constitution, the Act, the Rules, or the court's practice directions for filings. The court held that having read the impugned ruling of the Deputy Registrar, to the effect that the petition had not been framed in the manner prescribed by the Supreme Court Rules and further that the decision of the Court of Appeal to take out the applicant's appeal from the hearing list did not constitute a determination to warrant invocation of the court's jurisdiction under article 163(4)(b) of the Constitution, the Deputy Registrar properly and judiciously exercised his discretion in declining to lodge the applicant's petition.

Reported by Kakai Toili

Jurisdiction - jurisdiction of the Deputy Registrar of the Supreme Court - jurisdiction to decline the lodging of pleadings - whether the Deputy Registrar had the power to decline the lodging of pleadings that were not framed in compliance with the Supreme Court Rules, 2020 - whether it was a proper and judicious exercise of discretion by the Deputy Registrar to decline the lodging of pleadings not framed in compliance with the law - Supreme Court Act, 2011, section 11(1); Supreme Court Rules, 2020, rule 6(2).



Brief facts

The instant application was brought erroneously pursuant to the provisions of rule 4A(2), 31(2) and 38(4) of the Supreme Court Act, 2011 instead of section 11(1) of the Supreme Court Act and rules 6(2) of the Supreme Court Rules, 2020 in which the applicant, who was unrepresented by counsel sought, among other reliefs, an order of review and setting aside of the decision of the Deputy Registrar declining to lodge his pleadings. The applicant submitted that the Deputy Registrar denied him his right of appeal guaranteed by the Constitution of Kenya, 2010. The court further submitted that he had challenged the decision of the Court of Appeal to take out of the hearing list of February 1, 2022 Criminal Application No. E018 of 2021 and that that action was actuated by corruption within the Judiciary.

Issues

- i. Whether the Deputy Registrar of the Supreme Court had the power to decline the lodging of pleadings that were not framed in compliance with the Supreme Court Rules, 2020.
- ii. Whether it was a proper and judicious exercise of discretion by the Deputy Registrar of the Supreme Court to decline the lodging of pleadings not framed in compliance with the law.

Held

1. The application, though brought under the wrong provisions of the law and rules, sought reliefs under section 11(1) of the Supreme Court Act and rule 6(2) of the Supreme Court Rules, 2020 under which the court had jurisdiction to review the decision of the Deputy Registrar. Under rule 6, one of the roles of the Registrar was to decline pleadings that were not in accordance with the Constitution, the Act, the Rules, or the court's practice directions for filings. A party aggrieved by a decision of the Registrar could apply for a review to a single judge whose determination of the question was final.
2. Having read the impugned ruling of the Deputy Registrar, to the effect that the petition had not been framed in the manner prescribed by the Supreme Court Rules and further that the decision of the Court of Appeal to take out the applicant's appeal from the hearing list did not constitute a determination to warrant invocation of the court's jurisdiction under article 163(4)(b) of the Constitution, the Deputy Registrar properly and judiciously exercised his discretion in declining to lodge the applicant's petition. The petition of appeal was not framed in compliance with the Supreme Court Rules, 2020, and the Court of Appeal had not made any determination to require the intervention by the court.

Application dismissed.

Orders

Parties to bear their own costs.

Citations

Cases

1. Okoiti, Okiya Omtatah v Attorney General & another (Civil Application 1 of 2019; [2019] eKLR) — Explained
2. Teachers Service Commission v Kenya National Union of Teachers & 3 Others (Application 16 of 2015; [2015] eKLR) — Explained

Statutes

1. Constitution of Kenya, 2010 (Const2010) — Article 163(4)(b) — Interpreted
2. Supreme Court Act, 2011 (Act No 7 of 2011) — Section 11(1) — Interpreted
3. Supreme Court Rules, 2011 (Act No 7 of 2011 Sub Leg) — Rule 6(2) — Interpreted

Advocates

None mentioned



RULING

Representation:

Benjamin Barasa Wafula in person

1. Upon perusing this application brought erroneously pursuant to the provisions of rule 4A(2), 31(2) and 38(4) of “the Supreme Court Act, 2011” (Revised 2016), [instead of section 11(1) of the Supreme Court Act and rules 6(2) of the Supreme Court Rules, 2020] in which the applicant, who is unrepresented by counsel seeks, among other reliefs, an order of review and setting aside of the decision of the Deputy Registrar dated November 4, 2022; and
2. Upon considering the applicant’s submissions to the effect that the Deputy Registrar erred in declining to lodge his pleadings thereby effectively denying him his right of appeal guaranteed by the Constitution; that he has challenged before this court the decision of the Court of Appeal to take out of the hearing list of February 1, 2022 Criminal Application No E018 of 2021; that that action was actuated by corruption within the Judiciary; and that the impugned order of the Deputy Registrar merely upheld the said corruption.

I, Now Opine as Follows:

3. Appreciating that this application though brought under the wrong provisions of the law and rules, seeks reliefs under section 11(1) and rules 6(2) aforesaid, under which this court has jurisdiction to review the decision of the Deputy Registrar.
4. Affirming the decision of this court in Okiya Omtatab Okoiti v Attorney General & another, SC Application No 1 of 2019; [2019] eKLR, that under rule 6 aforesaid, one of the roles of the Registrar is;
(b) to decline pleadings that are not in accordance with the Constitution, the Act, these rules, or the court’s practice directions for filings. [my emphasis]

A party aggrieved by a decision of the Registrar may apply for a review to a single judge whose determination of the question is final.

5. Therefore, having read the impugned ruling of the Deputy Registrar, to the effect that the petition has not been framed in the manner prescribed by the court’s rules and further that the decision of the Court of Appeal to take out the applicant’s appeal from the hearing list did not constitute a determination to warrant invocation of the court’s jurisdiction under article 163(4)(b) of the Constitution, I am satisfied that the Deputy Registrar properly and judiciously exercised his discretion in declining to lodge the applicant’s petition.
6. Bearing in mind the principles enunciated in our decision in the case of Teachers Service Commission v Kenya National Union of Teachers & 3 others, SC Application No 16 of 2015; [2015] eKLR, that;

“(35)Moreover, the appeal before the Court of Appeal is yet to be heard and determined..... Any square involvement of this court, in such a context, would entail comments on the merits, being made prematurely on issues yet to be adjudged, at the Court of Appeal, and for which the priority date of September 22, 2015 has already been assigned. Such an early involvement of this court, in our opinion, would expose one of the parties to prejudice, with the danger of leading to an unjust outcome....”



7. Consequently, I agree with the findings of the Deputy Registrar that the petition of appeal is not framed in compliance with the [Supreme Court Rules, 2020](#) and further that the Court of Appeal has not made any determination to require the intervention by this court.
8. Accordingly, I decline to review the order of the Deputy Registrar dated November 4, 2022 and instead order that:
 - i. The notice of motion dated November 16, 2022 and filed on November 21, 2022 is hereby dismissed.
 - ii. As costs are awarded at the discretion of the court, parties shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF FEBRUARY, 2023.

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W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

