



**Wafula v Director of Public Prosecution & 149 others (Application  
E003 of 2023) [2023] KESC 43 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KESC 43 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
APPLICATION E003 OF 2023  
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ  
JUNE 16, 2023**

**BETWEEN**

**BENJAMIN BARASA WAFULA ..... APPLICANT**

**AND**

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

*(Being an Application for Review of the Ruling of Hon. Justice W. Ouko, SCJ, dated and delivered on 17th February 2023 in Supreme Court Criminal Petition No. E032 of 2022.)*

**A determination by a single judge on the decision of the Registrar is final**

*The instant application sought the review of a decision of a single judge of the court in an application where the applicant sought to review the Deputy Registrar's decision. The court held that it lacked jurisdiction to entertain the instant application on the ground that a determination by a single judge on the decision of the Registrar was final.*

Reported by Kakai Toili

***Jurisdiction*** - jurisdiction of the Supreme Court - jurisdiction of a single judge of the Supreme Court - whether a determination by a single judge on the decision of the Registrar was final.

**Brief facts**

The instant application sought among other orders a declaration that: Supreme Court Criminal Petition No E032 of 2022 was duly filed before a court of competent jurisdiction and that the Chief Justice should constitute a five-judge bench to reinstate Supreme Court Criminal Petition No E032 of 2022. The applicant contended that the petition of appeal concerned corruption within the Judiciary and other arms of the state and that the 1<sup>st</sup>-15<sup>th</sup> respondents had been compromised to deny his litigation matters within his area of jurisdiction, where the causes of actions occurred. The applicant submitted that the ruling delivered by the court on February 17, 2023 violated articles 163 (3)(b)(i) and (ii), (4)(a-b) and (9) of the Constitution as a single judge bench decision could not be the final decision in a Supreme Court comprising seven judges.

**Issues**

Whether a determination by a single judge on the decision of the Registrar was final.



## Held

1. Even though the application was brought under the wrong provisions of the law, it sought to review the decision of a single judge. The court having pronounced itself vide a ruling delivered on February 17, 2023 in Supreme Court Criminal Petition No E032 of 2022 where the applicant sought to review the Deputy Registrar's decision dated November 4, 2022, the court lacked jurisdiction to entertain the instant application on the ground that a determination by a single judge on the decision of the Registrar was final. As such, the decision made by the single judge delivered on February 17, 2023 stood.

*Application dismissed.*

## Orders

*No orders as to costs*

## Citations

## Statutes

None referred to

## Advocates

None mentioned

## RULING

### Representation

Mr. Benjamin Barasa Wafula acting in person

- [1] Upon perusing the originating motion dated February 21, 2023 seeking among others declaration that: Supreme Court Criminal Petition No E032 of 2022 was duly filed before a court of competent jurisdiction; her Ladyship the Chief Justice and President of the Supreme Court do constitute a five Judge bench to reinstate Supreme Court Criminal Petition No E032 of 2022 which was filed after the Criminal Court of Appeal declined to admit Court of Appeal Criminal Application No E008 of 2021; and orders transferring the 3<sup>rd</sup> and 9<sup>th</sup> up to 14<sup>th</sup>, 61<sup>st</sup>, 62<sup>nd</sup> and 93<sup>rd</sup> respondents who contravened the [Supreme Court Rules 2020](#); and
- [2] Upon perusing the grounds adduced by the applicant in support of the orders sought where he *inter alia* contends that the petition of appeal concerns corruption within the judiciary and other arms of the state and that the 1<sup>st</sup>-15<sup>th</sup> respondents have been compromised to deny his litigations within his area of jurisdiction, where the causes of actions occurred; and
- [3] Upon further considering the applicant's submissions dated February 21, 2023 wherein he *inter alia* submits that the ruling delivered by this court on February 17, 2023 violated article 163(3)(i) & (ii), (4)(a-b) and (9) of the [Constitution](#) as a single Judge bench decision cannot be the final decision in a Supreme Court comprising seven Judges. In conclusion, he urged the court to allow the filing of his petition of appeal being Supreme Court Petition No E032 of 2022 and notice of motion filed on July 25, 2022; and
- [4] Having considered the application and submissions before us, we now opine as follows:
  1. We take note that even though the application was brought under the wrong provisions of the law, it seeks to review the decision of a single judge.



2. The instructive provision in this context is rule 6(2) and (3) of the Supreme Court Rules, 2020 which provides as follows:

“(2) Any party aggrieved by a decision of the Registrar made under this rule may apply for a review to a single judge.

(3) A determination by the single judge on the decision of the Registrar shall be final.”

3. This court having pronounced itself vide a ruling delivered on February 17, 2023 in Supreme Court Criminal Petition No E032 of 2022 where the applicant sought to review the Deputy Registrar’s decision dated November 4, 2022, we find that the court lacks jurisdiction to entertain the instant application on the ground that a determination by a single judge on the decision of the Registrar is final. As such, the decision made by the Honourable Justice W Ouko delivered on February 17, 2023 stands. Consequently, the applicant’s application is hereby dismissed.

[5] For the foregoing reasons, the final orders of the court are as follows:

**Orders:**

- a. The originating motion dated February 21, 2023 is hereby dismissed.
- b. There shall be no orders as to costs.

[6] Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE 2023**

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**P.M MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

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**M.K IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**S.C WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**



**JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR**

