



**Wafula v Director of Public Prosecution & 149 others (Application E003 of 2023) [2023] KESC 48 (KLR) (Civ) (16 June 2023) (Ruling)**

Neutral citation: [2023] KESC 48 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
CIVIL**

**APPLICATION E003 OF 2023**

**PM MWILU, DCJ & V-P, MK IBRAHIM, NS NDUNGU, I LENAOLA & W OUKO, SCJJ**

**JUNE 16, 2023**

**BETWEEN**

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

**AND**

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

*(Being an Application for Orders to prosecute an  
Originating Motion dated 21st February 2023, as a pauper.)*

**The decision by a single judge of the Supreme Court in a review of a decision by the Registrar of the Supreme Court to deny waiver of fees was final and not subject to a second review.**

*The applicant had been denied waiver of fees by the Registrar of the Supreme Court and review of said decision was unsuccessful. The applicant filed a second application for review where the Supreme Court held that it did not have the jurisdiction to determine a second review for a decision to deny an application for waiver of fees.*

Reported by John Ribia

***Jurisdiction*** – jurisdiction of the Supreme Court – application for review of decision to reject application for waiver of costs – where an applicant filed a second review - whether the Supreme Court had the jurisdiction to consider a second review for a decision to deny an application for waiver of fees - rules 6 (2) and (3), and 62(3)

**Brief facts**

The plaintiff had filed an application for waiver of fees that had been dismissed by the Registrar of the Supreme Court. Aggrieved the plaintiff filed for review before a single judge of the Supreme Court that was dismissed. Further aggrieved, the plaintiff filed the instant application.

**Issues**

Whether the Supreme Court had the jurisdiction to review a decision by a single judge of the Supreme Court in a review of a decision by the Registrar of the Supreme Court to deny waiver of fees.



## Held

1. Rule 63(2) of the conferred powers on the Registrar to entertain an application for a request for waiver of fees. Any party aggrieved by the decision of the Registrar was permitted to apply for review to a single judge whose decision shall be final by dint of rule 6(2) and (3) of the . The applicant had failed to invoke that procedure and instead filed a motion directly to the court seeking waiver of court fees to prosecute his application. While aware that the applicant was acting in person and may not have been aware of the correct procedure, the Supreme Court was constrained not to grant his application.
2. The instant application sought to review the decision of a single judge emanating from a decision of the Registrar. The Deputy Registrar of the Supreme Court had dismissed the applicant's plea to lodge his pleadings and a single judge of the Supreme Court declined to review that decision. That decision was final. Granting the instant application would be an action in vain. The Supreme Court had no jurisdiction to revisit that decision. The application lacked merit.

*Application dismissed.*

## Orders

*No order as to costs.*

## Citations

## Statutes

1. Supreme Court Rules, 2020 (Act No 7 of 2011 sub leg) — Rule 6(2)(3); 63(2); — Interpreted

## Advocates

None mentioned

## RULING

Representation: Mr Benjamin Barasa Wafula acting in person

1. Upon perusing the notice of motion dated February 27, 2023 seeking orders for leave to be granted to the applicant to prosecute an originating motion dated February 21, 2023
2. Upon reading the supporting affidavit of Benjamin Barasa Wafula sworn on February 27, 2023 where he avers that he only attained basic knowledge in paper making and due to his former employer tarnishing his reputation and his advanced age, he has not been able to secure employment. Thus, he is financially unable to cater for the prescribed fees; and
3. Upon perusing the grounds adduced by the applicant in support of the orders sought wherein he contends that he was employed by Pan African Paper Mills (EA) Company Ltd from January 3, 1983 to September 23, 2003 when his employment was terminated after he allegedly supported the government's proposal to have Pan African Paper Mills EA Company Ltd raise its employees' salaries, who were underpaid by 32.39%; and that, after his termination as a Quality Control Checker and Trade Unionist, his capacity to secure employment was crippled affecting his financial status; and
4. Furthermore, considering the applicant's originating motion wherein he seeks *inter alia* a 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 division of the 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>, 18<sup>th</sup>, 61<sup>st</sup>, 62<sup>nd</sup>, and 93<sup>rd</sup> respondents from their current workstations for contravening the [Supreme Court Rules 2020](#); and



5. Upon considering the applicant’s submissions dated February 27, 2023 wherein he submits that the government allegedly grabbed his ancestral land being LR No Ndivisi/Muchi 1122 up to 1400 without compensation and that, the County Government of Bungoma is using the village administrator, who is a daughter of the 74<sup>th</sup> respondent herein, to assess eligible candidates for the award of strange scholarships and bursaries cases in his area of abode; and
6. Having considered the application and submissions before us, we now opine as follows:
  - i. Rule 63(2) of the *Supreme Court Rules, 2020* provides as follows:
 

“(2) The Registrar may, where satisfied that a party lacks the means to pay the required fees, permit that the matter be lodged.”
  - ii. The above-quoted provision confers powers on the Registrar to entertain an application for request for waiver of fees. Any party aggrieved by the decision of the Registrar is permitted to apply for review to a single judge whose decision shall be final by dint of rule 6(2) and (3) of the *Supreme Court Rules, 2020*. The applicant has failed to invoke this procedure and instead filed a motion directly to the court seeking waiver of court fees to prosecute his application dated February 21, 2023. While aware that the applicant is acting in person and may not be aware of the correct procedure, we are nonetheless constrained not to grant his application for reasons detailed out below.
  - iii. An objective merit review of the originating motion dated February 21, 2023, which is the subject of the instant application, reveals that it seeks to review the decision of a single judge emanating from a decision of the Registrar. The Deputy Registrar of this court had on November 4, 2022 dismissed the applicant’s plea to lodge his pleadings in Supreme Court criminal petition No E032 of 2022 and a single judge of this court had on February 17, 2023 declined to review that decision. That decision is final as explained above and therefore granting the present application would be an action in vain. As a consequence, we have no jurisdiction under the above rule to revisit that decision. In the circumstances, we find that the application lacks merit and is hereby dismissed.
7. For the foregoing reasons, the final orders of the court are as follows:

**Orders:**

- a. The application dated February 27, 2023 seeking waiver of fees to prosecute an originating motion dated February 21, 2023 is hereby dismissed.
- b. There shall be no orders as to costs.
8. 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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**K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**



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**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

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**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**W.OUKO**  
**JUSTICE OF THE SUPREME COURT**

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

