



**Wamwere v Attorney General (Application 15 of 2015)
[2018] KESC 38 (KLR) (13 April 2018) (Ruling)**

Koigi Wa Wamwere v Attorney General [2018] eKLR

Neutral citation: [2018] KESC 38 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

APPLICATION 15 OF 2015

DK MARAGA, CJ & P, JB OJWANG, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

APRIL 13, 2018

BETWEEN

KOIGI WA WAMWERE APPLICANT

AND

THE ATTORNEY GENERAL RESPONDENT

(Being an Application seeking leave to appeal against the Court of Appeal Ruling in Civil Application No. Sup 4 of 2015 (UR 3/2015 at Nairobi [Mwera, Mwilu & Otieno-Odek JJA] dated 3rd July 2015) to the Supreme Court under Article 163 (4)(b) of the Constitution of Kenya 2010 & Sections 15 & 16 (1) of the Supreme Court Act 2011 and part 4 Rule 26(1) of the Supreme Court Rules and all enabling provisions of the law)

Application for leave to appeal on ground that the appeal raised points of law of general public importance denied

The application sought leave to appeal against part of the judgment of the Court of Appeal which granted certification but limited the questions for consideration and determination by the Supreme Court to two. The court held that no compelling reasons had been presented to the court so as to warrant a review of the grant of certification by the Court of Appeal.

Reported by Felix Okiri

Jurisdiction - appellate jurisdiction - appellate jurisdiction of the Supreme Court- leave to institute appeal at the Supreme Court – grounds for leave – where leave was granted at the Court of Appeal but it was restricted to an appeal on two questions which meant that the leave granted did not allow for a consideration of sixteen other questions that the applicants sought to raise at the Supreme Court - whether, in a review application, the Supreme Court could grant leave to appeal on grounds that the appeal raised points of law of general public importance in relation to the sixteen questions that the Court of Appeal disallowed.



Brief facts

The application sought leave to appeal against part of the judgment of the Court of Appeal which granted certification but limited the questions for consideration and determination by the Supreme Court to two. The applicant's case is that a miscarriage of justice would occur on grounds that by limiting the questions for determination to only two, the Court of Appeal had excluded 16 other questions of general public importance. The applicant further contended that the Court of Appeal could not purport to set out two new grounds which the applicant deemed irrelevant to his intended appeal to the Supreme Court.

Issues

- i. Whether the Supreme Court could grant leave to appeal on grounds that the appeal raised additional points of law of general public importance, for which the Court of Appeal did not grant leave.

Held

1. No compelling reasons had been presented to the court so as to warrant a review of the grant of certification by the Court of Appeal.
2. The application as framed went beyond the ambit of article 163(4) (b) of the Constitution and was a full blown appeal, as if the application for review therein, had been granted.

Application denied.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion dated and filed on 22nd July, 2015, which application is brought under Article 163 (4) (b) of the Constitution; Section 15 & 16(1) of the Supreme Court Act 2011 and Part 4 Rule 26(1) of the Supreme Court Rules and all enabling provisions of the law; seeking leave to appeal against part of the Judgment of the Court of Appeal which granted certification but limited the questions for consideration and determination by the Supreme Court to two; and
2. Upon reading the supporting affidavit of Koigi Wa Wamwere dated 22nd July, 2015, together with the written submissions dated 2nd September, 2015 in support thereof; and the Attorney General's submissions dated 4th November, 2015 in opposition thereto;
3. The applicant's case is that a miscarriage of justice will occur on grounds that by limiting the questions for determination to only two, the Court of Appeal has excluded 16 other questions of general public importance.
4. The applicant urges that his case satisfies the criteria set out in *Hermanus Phillipus Steyn & Giovanni Gnechi Ruscone Sup Ct. App No. 4 of 2012 (Hermanus)* and should be heard by this Court. It is the applicant's further contention that the Court of Appeal cannot purport to set out two new grounds which he deems irrelevant to his intended appeal to the Supreme Court.
5. The respondent opposes the application on the ground that, it does not fall within the ambit of Article 163(4) (b) of the Constitution. The respondent also relies upon the *Hermanus* case. It is the respondent's case that the Supreme Court is being asked to indirectly enhance the quantum of damages payable which is against the doctrine in *Hermanus*. Finally, the respondent submits that, the question



of the constitutionality or otherwise of the two stints of the applicant's detention, was not a substantive issue dealt with by the two superior Courts.

6. Having considered these submissions, by a unanimous decision of this Bench, we make the following Orders under Article 163 (5) of the Constitution, and Rules 23 and 24 of the Supreme Court Rules 2012 (as amended).

Orders	Reasons
The Notice of Motion dated 22 nd July, 2015 is hereby dismissed with costs in the cause.	(a) No compelling reasons have been presented to the Court so as to warrant a review of the grant of certification by the Court of Appeal. (b) The application as framed, goes beyond the ambit of Article 163 (4) (b) of the Constitution and is in fact, a full blown appeal, as if the application for review herein, had been granted.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF APRIL, 2018

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. C. WANAJLA

JUSTICE OF THE SUPREME COURT

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N. S. NDUNGU

JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

