



Glencore Energy (Uk) Ltd v Kenya Pipeline Company Ltd (Civil Application 16 of 2016) [2018] KESC 33 (KLR) (18 July 2018) (Ruling)

Glencore Energy (UK) Ltd v Kenya Pipeline Company Ltd [2018] eKLR

Neutral citation: [2018] KESC 33 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 16 OF 2016**

DK MARAGA, CJ, PM MWILU, DCJ & V-P, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

JULY 18, 2018

BETWEEN

GLENCORE ENERGY (UK) LTD APPLICANT

AND

KENYA PIPELINE COMPANY LTD RESPONDENT

Requirements to be fulfilled before a matter could be certified as a matter of public interest.

Reported by Kakai Toili

Appeals – appeals from the Court of Appeal to the Supreme Court – certification of appeals from the Court of Appeal to the Supreme Court – certification of appeals - criteria to certify appeals – public interest - what were the requirements to be fulfilled before a matter could be certified as a matter of public interest

Brief facts

The Court of Appeal declined to grant the Applicant certification to appeal to the Court against its decision. Aggrieved by the Court of Appeal decision the Applicant filed the instant Application seeking a review of the said decision on the grounds that the Court of Appeal failed to appreciate that the matters in respect of which the Applicant sought a decision of the Court were substantial points of law which were of general public importance and transcended the circumstances of the instant case.

Issues

- i. What were the requirements to be fulfilled before a matter could be certified as a matter of public interest?

Held

- 1. An applicant seeking certification had to satisfy the Court that the issue to be canvassed on appeal was one the determination of which transcended the circumstances of the particular case. If the Applicant’s Appeal was based on a point of law, he had to demonstrate that such point was a substantial one, the determination of which would have a significant bearing on the public interest. The decisions of the two courts below were based on each of those courts’ interpretation of the provisions of the Private



Transportation and Storage Agreement between Triton Petroleum Company Limited (Triton) and the Respondent and the Collateral Financing Agreement between Triton and the Applicant. Those were not issues of general public importance which transcended the circumstances of the instant case. They did not therefore meet the set out criteria.

2. The determinations by the two courts below of the legal issues of whether there was bailment by attornment, whether incorporation by reference was part of the law of Kenya and the alleged unconstitutional deprivation of property as framed by the Applicant were based upon the peculiar facts of the case and each of the two courts' said interpretation of the two private agreements. They were therefore not substantial points of law the determination of which would have had a bearing on public interest.

Application dismissed

Orders

Costs to the Respondent.

Citations

1. *Hermanus Phillipus Steyn v Giovanni Gneccchi-Rusccone* Appl No 4 of 2012- (Followed)
2. *Kaparo & 5 others v Ngoge* [2012] 2 KLR 419- (Followed)

East Africa

Statutes

1. Constitution of Kenya, 2010 article 163(4) (b) (5) – (Interpreted)
2. Supreme Court Rules, 2012 (Act No 7 of 2011 Sub Leg) rule 31 – (Interpreted)

RULING

1. In its ruling delivered at Nyeri on 17th June 2016, the Court of Appeal (Githinji, Azangalala & Mohamed, JJA) declined to grant the applicant certification to appeal to this Court against its decision delivered on 17th June 2016. On 1st July 2016, the applicant filed this application under Article 163(4) (b) and (5) of the Constitution and Rule 31 of the Supreme Court Rules, 2012 seeking a review of the Appellate Court's said decision declining to grant certification.
2. The application is premised on the grounds that the Appellate Court failed to appreciate that the matters in respect of which the applicant seeks a decision of this Court are substantial points of law which are of general public importance and transcend the circumstances of this particular case.
3. As this Court stated in the case of Hermanus Phillipus Steyn v Giovanni Gneccchi-Rusccone, Sup. Ct. Appl. No. 4 of 2012 [2013] eKLR, a decision it had also made in Peter Oduor Ngoge v. Hon. Francis Ole Kaparo & 5 Others [2012] eKLR (Supreme Court Petition No. 2 of 2012) and reiterated in many other subsequent decisions, an applicant seeking certification "must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case...." If the applicant's appeal is based on a point of law, he "must demonstrate that such point is a substantial one, the determination of which will have a significant bearing on the public interest."
4. Upon consideration of the facts in this matter alongside the said principles governing the grant of certification to appeal to this Court, we agree with the written submissions by counsel for the respondent and find that the decisions of the two courts below were based on each of those court's interpretation of the provisions of the private Transportation and Storage Agreement between Triton Petroleum Company Limited (Triton) and the Respondent and the Collateral Financing Agreement between Triton and the applicant. These are not issues of general public importance which transcends



the circumstances of this particular case. They do not therefore meet the criteria set out in the above cases.

5. The determinations by the two courts below of the legal issues of whether there was bailment by attornment; whether incorporation by reference is part of the law of Kenya; and the alleged unconstitutional deprivation of property as framed by the applicant were based upon the peculiar facts of the case and each of the two courts' said interpretation of the two private agreements. They are therefore not substantial points of law the determination of which will have a bearing on public interest. In the circumstances, we find no merit in this application and we accordingly dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2018

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D.K. MARAGA P.M. MWILU

CHIEF JUSTICE & PRESIDENT DEPUTY CHIEF JUSTICE & VICE

OF THE SUPREME COURT PRESIDENT OF THE SUPREME COURT

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S. C. WANJALA N.S. NDUNG'U

JUSTICE OF THE SUPREME COURT 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

