



**Karoki v Karatina Municipal Council & another (Civil Application
3 of 2015) [2018] KESC 53 (KLR) (18 July 2018) (Ruling)**

Kanyi Karoki v Karatina Municipal Council & another [2018] eKLR

Neutral citation: [2018] KESC 53 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

CIVIL APPLICATION 3 OF 2015

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

JULY 18, 2018

BETWEEN

KANYI KAROKI APPLICANT

AND

KARATINA MUNICIPAL COUNCIL 1ST RESPONDENT

THOMAS THINWA KAROKI 2ND RESPONDENT

*(Being an application for review of the decision of the Court of Appeal
(Visram, Koome & Odek, JJA) given at Nyeri on 1st October, 2014 dismissing
the applicant's application for certification that the matter herein is one of
general public importance warranting a further appeal to the Supreme Court)*

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 – criteria for grant of certification – public interest - what were the requirements to be fulfilled before a matter could be certified as a matter of general public interest.

Brief facts

The trial court awarded the applicant damages for personal injuries he suffered in a road traffic accident. The respondents were allowed to file their appeal against that decision out of time but the applicant had since May 1999 challenged the competence of that appeal. Both the High Court and the Court of Appeal dismissed the applicant's claims. The Court of Appeal declined to grant the applicant certification to appeal to the Supreme Court against its decision, aggrieved by that decision the applicant filed the instant application seeking a review of the said decision declining grant of certification. The application was premised on the grounds that the Court of Appeal failed to appreciate that the matter which the applicant sought to an appeal was one of general public importance which transcended the circumstances of the parties' case.



Issues

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 of a matter as of public interest 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 it was 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 issue in the instant matter of the competence of the respondent's appeal in the High Court was not one of general public importance which transcended the circumstances of the instant case. It did not therefore meet the set out criteria for certification.

Application dismissed.

Orders

- i. *Application dismissed.*
- ii. *Costs to the Respondents.*

Citations

Statutes

1. Constitution of Kenya, 2010
2. Supreme Court Act

Advocates

None mentioned

RULING

1. The litigation giving rise to this application emanates from the decision of the Principal Magistrate's Court at Nyeri (PMCC No. 231 of 1994) awarding the applicant damages for personal injuries he suffered in a road traffic accident. The respondents were allowed to file their appeal against that decision out of time but the applicant has since May 1999 challenged the competence of that appeal. Both the High Court and the Court of Appeal have dismissed the applicant's claims.
2. In its ruling delivered at Nyeri on October 1, 2014, the Court of Appeal (Visram, Koome & Odek, JJA) declined to grant the applicant certification to appeal to this Court against its decision delivered on 17th June 2014. On 1st April 2015, the applicant file this application under Article 163(4)(b) and (5) of the Constitution; Section 15 of the Supreme Court Act, 2011 as well as Rules 24, 31(1), 35(3) and 53 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 matter the applicant seeks a decision of this Court is one of general public importance which transcends the circumstances of this particular case.
3. As this Court stated in the case of *Hermanus Phillipus Steyn v Giovanni Gnechchi-Ruscione*, 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, applicant seeking such 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 it is 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."



6. 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 issue in this matter of the competence of the respondent's appeal in the High Court is not one of general public importance which transcends the circumstances of this particular case. It does not therefore meet the criteria set out in the above cases. In the circumstances, we find no merit in this application and we accordingly dismiss it with costs to the respondents.

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

JUSTICE OF THE SUPREME COURT

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N.S. NDUNG'U

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

