



**Mukoma v Githere & 5 others (Application 11 of 2015)
[2018] KESC 25 (KLR) (19 September 2018) (Ruling)**

Rachel Wairimu Mukoma v Hannah Wambui Githere & 5 others [2018] eKLR

Neutral citation: [2018] KESC 25 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
APPLICATION 11 OF 2015
MK IBRAHIM, JB OJWANG, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ
SEPTEMBER 19, 2018**

BETWEEN

RACHEL WAIRIMU MUKOMA APPLICANT

AND

HANNAH WAMBUI GITHERE 1ST RESPONDENT

WANJIKU GITHERE 2ND RESPONDENT

HARUN THIONG'O NJIRU 3RD RESPONDENT

KAGUONGO NJIRI 4TH RESPONDENT

JOSEPH NJIRI GITHERE 5TH RESPONDENT

NJIRIRI GITHERE 6TH RESPONDENT

(Being an application for review and certification that a matter of general public importance is involved in terms of Article 163(4)(b) of the Constitution in the intended appeal from the judgment and order of the Court of Appeal (Maraga, (as he then was), Mwilu, (as she then was) & Gatembu, JJA) dated 25th July, 2014 in Nairobi Civil Appeal No. 197 of 2011)

Nature of matters that constitute matters of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction

The applicant sought to lodge an appeal at the Supreme Court for a review of the judgment and order of the Court of Appeal. The applicant stated that the intended appeal raised issues of general public interest. The court highlighted the nature of matters that constitute matters of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction.

Reported by Beryl A Ikamari



Jurisdiction - *jurisdiction of the Supreme Court - appellate jurisdiction of the Supreme Court-nature of matters that would be considered to be matters of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction-whether an issue on the use of an allegedly unintelligible record of High Court proceedings at the Court of Appeal was an issue of general public importance-Constitution of Kenya 2010, article 163(4)(b) & 163(5).*

Brief facts

The Applicant sought to lodge an appeal at the Supreme Court for a review of the judgment and order of the Court of Appeal. The Applicant stated that the intended appeal raised issues of general public interest. She explained that her rights to access to justice and fair hearing under article 48 & 50 of the Constitution were violated in that the record of the High Court proceedings used by the Court of Appeal in its deliberations and determinations was unintelligible and/or incomprehensible. She said that the intended appeal would therefore raise a question for determination relating to the powers of the Court of Appeal under section 3 of the Appellate Jurisdiction Act where the record of the High Court was unintelligible with regard to one party and it violated that party's right to appeal.

The Respondent responded by stating that the Application was not properly before the Court as it violated the procedural stipulations of rule 31 of the Supreme Court Rules 2012 and that the issues it raised, including the unintelligibility of proceedings, were not issues of general public importance but issues involving family land or property.

Issues

- i. Whether an issue concerning the use of an allegedly unintelligible record of High Court proceedings at the Court of Appeal, was an issue of general public importance which warranted the exercise of the Supreme Court's appellate jurisdiction.

Held

1. The Application did not satisfy the principles for certification that a matter was of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction. A matter of general public importance would be a matter of law or fact whose impacts and consequences were substantial, broad-based, transcending the litigation-interests of the parties and bearing upon public interest. Since the categories constituting public interest were closed, the intending Appellant had the burden to demonstrate that the matter in question had specific elements of real public interest and concern.
2. The issue of incomprehensible and/or unintelligible proceedings was not a ground for consideration for certification that a matter was of general public importance warranting the Supreme Court's intervention.

Application dismissed.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion application dated 25th June, 2014 and filed on 28th June, 2014 and brought under the provisions of Articles 163(4)(b) & (5) of the Constitution as well as Rule 24 of the Supreme Court Rules, 2012 for review of the judgment and order of the Court of Appeal in Nairobi Civil Appeal No. 197 of 2011 dated 25th July, 2014; and



2. Upon considering the affidavits by Rachel Wairimu Mukoma and James Kanyoro Njuguna both sworn on 25th June, 2014; and the 1st Respondent's Replying affidavit sworn by Hannah Wambui Githere on 24th August, 2015 and filed on 17th September, 2015; and
3. Upon reading the written submissions by the Applicant dated and filed on 23rd September, 2015 wherein the Applicant contends that the intended appeal raises issues of general public interest in that the Applicant's right to access to justice and fair hearing under Articles 48 and 50 of the Constitution had been violated; that the proceedings relied upon by the Court of Appeal in its deliberation and determination were unintelligible and/or incomprehensible; that there was a question arising for determination on the powers of the Court of Appeal under Section 3 of the Appellate Jurisdiction Act where the record of the High Court was unintelligible with regards to one party and therefore violating its right to appeal; and
4. Upon reading the 1st Respondent's submissions dated 14th October, 2015 and filed on 15th October, 2015 where it was submitted that the Applicant's application was not properly before this Court having violated the procedural provisions of Rule 31 of the Supreme Court Rules, 2012; that unintelligibility or inconsistency of the proceedings was not a ground for certification by this Court; and that the issues raised in the instant Appeal were not issues of general public importance as they involved family land and/or property; and
5. Upon further noting that the 1st Respondent contends that the issues in dispute relate to private law, i.e. family law and the right to ownership of land, which are not issues that translate to issues of general public importance to warrant the intervention of this Court;
6. And having considered the application, by a unanimous decision of this Bench, we make the following orders under Section 23(2)(b) of the Supreme Court Act and Rules 21 and 23 of the Supreme Court Rules;

Orders

- a. The Notice of Motion application dated 25th June, 2015 and filed on 28th June, 2015 is hereby dismissed, with costs awarded to the 1st Respondent.

Reasons

- a. The application does not satisfy the principles set out in the case of *Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione* SC Civil App No. 4 of 2012; (2013) eKLR where it was stated;

“Before this Court, ‘a matter of general public importance’ warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: its impacts and consequences are substantial, broad-based, transcending the litigation-interests of the parties, and bearing upon the public interest. As the categories constituting the public interest are not closed, the burden falls on the intending appellant to demonstrate that the matter in question carries specific elements of real public interest and concern.”(Emphasis added).

- b. The issue of incomprehensible and/or unintelligible proceedings is not a ground for consideration for certification that a matter is one of general public importance or to warrant intervention of this Court.
- c. Costs follow the event.



DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2018

M. K. IBRAHIM J. B. OJWANG

JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

S. C. WANJALA N. S. NDUNG’U

JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

