



Baraza v Tribunal Investigating the Conduct of Hon. Deputy Chief Justice & Vice-President of the Supreme Court of the Republic of Kenya (Petition 7 of 2012) [2012] KESC 3 (KLR) (17 October 2012) (Ruling)

Nancy Makokha Baraza v Tribunal Investigating the Conduct of Hon. Deputy Chief Justice & Vice-President of the Supreme Court of the Republic of Kenya [2012] eKLR

Neutral citation: [2012] KESC 3 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION 7 OF 2012
WM MUTUNGA, CJ & P, PK TUNOI, JB OJWANG, SC WANJALA & NS NDUNGU, SCJJ
OCTOBER 17, 2012**

BETWEEN

HON. LADY JUSTICE NANCY MAKOKHA BARAZA APPLICANT

AND

THE TRIBUNAL INVESTIGATING THE CONDUCT OF HON. DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT OF THE REPUBLIC OF KENYA PUBLIC OF KENYA RESPONDENT

The Supreme Court's schedule would not be based on the convenience of counsel

The matter at hand was an application for adjournment of the hearing of an appeal on the ground of absenteeism of the appellant's counsel. The appellant's counsel was on a retreat in Europe that had been organized by the Law Society of Kenya. Whereas the Supreme Court allowed the application, it also held that the courts schedule would not be based on the convenience of counsel and all counsel appearing before the Supreme Court needed to take heed. The appellant's counsel was charged to personally pay the costs.

Reported by Njeri Githang'a Kamau

Civil Practice and Procedure – adjournment - application for adjournment - appellant's advocate having been absent to prosecute the appeal without briefing another counsel to argue the matter - where the matter was of public interest - whether the application could be allowed

Advocates - etiquette - etiquette in adjournment application - appellant's advocate having been absent to prosecute the appeal without briefing another counsel to argue the matter - where the matter was of public interest - whether the application could be allowed



Brief facts

The matter at hand was an application for adjournment of the hearing of an appeal on the ground of absenteeism of the appellant's counsel. The appellant's counsel was on a retreat in Europe that had been organized by the Law Society of Kenya

Issues

Whether the Supreme Court would allow an application for adjournment of the hearing of an appeal on ground of absenteeism of the appellant's counsel.

Held

1. The reasons for the counsel's absence to prosecute the appeal, and her failure to fully brief any other counsel to argue the matter smacked of arrogance, disrespect and negligence on her part.
2. The court would not allow counsel to treat it with disrespect or arrogance. The matter was one of public interest and the Supreme Court in giving counsel the hearing date of the appeal was fully aware of that fact. The courts schedule would not be based on the convenience of counsel and all counsel appearing before the Supreme Court needed to take heed.
3. The advocate would personally pay the costs of the adjournment.

Application for adjournment allowed.

Orders

- i. *Appeal to be heard at 10.00 a.m. on October 23, 2012.*
- ii. *The court would not entertain further applications for adjournment.*
- iii. *If the appellant wished to respond to the respondent's submissions, then this had to be done on or before Monday, October 22, 2012.*
- iv. *The advocate for the appellant was to personally pay the costs of the adjournment.*

Editorial notes

The appellant, Nancy Makokha Baraza, the Hon. Deputy Chief Justice & Vice-President of the Supreme Court of the Republic of Kenya resigned on October 18, 2012 hence abating the appeal.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. When this appeal came up for hearing this morning, Mr. Solomon Wamwayi, holding brief for Mrs. Guserwa, Counsel for the appellant, has told this Court that his singular instructions are to seek an adjournment because Mrs. Guserwa is on a retreat in Europe that has been organized by the Law Society of Kenya. Mr. Murgor, Learned Counsel for the Respondent has opposed the application.
2. When this matter came up for mention on October 9, 2012 before my brother Judge Ojwang and my sister Judge Ndungu, Mrs. Guserwa told them that the appeal has to be determined expeditiously. In her words the.....“matter is hanging on the head of my client. If your Lordships are able to fit us within your schedule, within reasonable time, we are not averse to having the matter heard expeditiously.” We observe that Mr. Wamwayi has reinforced this position by saying that the sword of Damocles is



hanging over the appellant's head. Mr. Murgor stated as follows: "If it is the wish of my learned friend that this appeal be disposed off as soon as possible, we completely support that position. In fact we are instructed to support the position of the expeditious disposal of the petition of appeal."

3. On the basis of that record it is clear to us that Mrs. Guserwa 's reasons for her absence today to prosecute this appeal, and her failure to fully brief Mr. Wamwayi or any other Counsel to argue this matter this morning smacks of arrogance, disrespect and negligence on her part. This Court will not allow Counsel to treat it with disrespect or arrogance. This matter is one of public interest and the Court in giving Counsel today's date for the hearing of the appeal was fully aware of this fact. This is the Supreme Court of Kenya, the apex Court in this nation. Our schedule shall not be based on the convenience of Counsel. Let this message be heard loud and clear by Counsel who will appear before this Court.
4. Mr. Murgor has rightly opposed the application and we note he is ready to proceed to argue this appeal.
5. We have considered rejecting this application on the basis of this background and on these grounds. We realize, however, that it is not Mrs. Guserwa who is seeking justice in this Court. We shall give justice to the appellant and make the following orders:
 - 1) The application for adjournment is hereby allowed.
 - 2) This appeal shall be heard at 10.00 a.m. on October 23, 2012.
 - 3) This Court shall not entertain further applications for adjournment.
 - 4) If the appellant wishes to respond to the Respondent's submissions then this must be done on or before Monday, October 22, 2012.
 - 5) Mrs. Guserwa will personally pay the costs of the adjournment.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF OCTOBER, 2012.

W. MUTUNGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT OF KENYA

P. K. TUNOI

JUDGE OF THE SUPREME COURT OF KENYA

J. B. OJWANG

JUDGE OF THE SUPREME COURT OF KENYA

S.C. WANJALA

JUDGE OF THE SUPREME COURT OF KENYA

N.S. NDUNGU

JUDGE OF THE SUPREME COURT OF KENYA

