



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Ouko, SCJ in Chambers)

CRIMINAL PETITION NO. E032 OF 2022

— BETWEEN —

BENJAMIN BARASA WAFULA.....APPLICANT

—AND—

**DIRECTOR OF PUBLIC PROSECUTION &
149 OTHERS.....RESPONDENTS**

(Being an Application for Review of the Decision of the Hon. Kasavuli, Deputy Registrar, dated and delivered on 4th November, 2022 in Supreme Court Criminal Petition No. E032 of 2022)

Representation:

Benjamin Barasa Wafula in person

RULING OF THE COURT

[1] UPON perusing this application brought erroneously pursuant to the provisions of Rule 4A (2), 31(2) and 38(4) of “the Supreme Court Act”, 2011 (Revised 2016), [instead of Section 11(1) of the Supreme Court Act and Rules 6(2) of the Supreme Court Rules, 2020] in which the Applicant, who is unrepresented

by counsel seeks, among other reliefs, an order of review and setting aside of the decision of the Deputy Registrar dated 4th November, 2022; and

[2] UPON considering the applicant's submissions to the effect that the Deputy Registrar erred in declining to lodge his pleadings thereby effectively denying him his right of appeal guaranteed by the Constitution; that he has challenged before this Court the decision of the Court of Appeal to take out of the hearing list of 1st February, 2022 **Criminal Application No. E018 of 2021**; that that action was actuated by corruption within the Judiciary; and that the impugned order of the Deputy Registrar merely upheld the said corruption.

I, NOW OPINE AS FOLLOWS:

[3] APPRECIATING that this application though brought under the wrong provisions of the law and rules, seeks reliefs under Section 11(1) and Rules 6(2) aforesaid, under which this Court has jurisdiction to review the decision of the Deputy Registrar.

[4] AFFIRMING the decision of this Court in *Okiya Omtatah Okoiti v. Attorney General & Another*, SC Application No. 1 of 2019; [2019] eKLR, that under Rule 6 aforesaid, one of the roles of the Registrar is;

(b) to decline pleadings that are not in accordance with the Constitution, the Act, these Rules, or the Court's practice directions for filings". [my emphasis]

A party aggrieved by a decision of the Registrar may apply for a review to a single judge whose determination of the question is final.

[5] THEREFORE, having read the impugned Ruling of the Deputy Registrar, to the effect that the Petition has not been framed in the manner prescribed by the

Court's Rules and further that the decision of the Court of Appeal to take out the Applicant's appeal from the hearing list did not constitute a determination to warrant invocation of the Court's jurisdiction under Article 163(4)(b) of the Constitution, I am satisfied that the Deputy Registrar properly and judiciously exercised his discretion in declining to lodge the Applicant's petition.

[6] BEARING in mind the principles enunciated in our decision in the case of *Teachers Service Commission v. Kenya National Union of Teachers & 3 Others*, SC Application No. 16 of 2015; [2015] eKLR, that;

“[35] ...Moreover, the appeal before the Court of Appeal is yet to be heard and determined.... Any square involvement of this Court, in such a context, would entail comments on the merits, being made prematurely on issues yet to be adjudged, at the Court of Appeal, and for which the priority date of 22nd September, 2015 has already been assigned. Such an early involvement of this Court, in our opinion, would expose one of the parties to prejudice, with the danger of leading to an unjust outcome....”

[7] CONSEQUENTLY, I agree with the findings of the Deputy Registrar that the petition of appeal is not framed in compliance with the Supreme Court Rules, 2020 and further that the Court of Appeal has not made any determination to require the intervention by this Court.

[8] ACCORDINGLY, I decline to review the order of the Deputy Registrar dated 4th November 2022 and instead order that:

(i) The Notice of Motion dated 16th November, 2022 and filed on 21st November, 2022 is hereby dismissed.

(ii) As costs are awarded at the discretion of the Court, parties shall bear their own costs.

DATED and DELIVERED at NAIROBI this 17th Day of February, 2023.

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

**I certify that this is a true copy
of the original**

REGISTRAR
SUPREME COURT OF KENYA

