



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu, DCJ & VP, Ibrahim, Njoki, Lenaola, Ouko SCJJ)

APPLICATION NO. E003 OF 2023

BENJAMIN BARASA WAFULA.....APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC

PROSECUTION & 149 OTHERS.....RESPONDENT

*(Being an Application for Orders to prosecute an Originating Motion
dated 21st February 2023, as a pauper)*

Representation

Mr. Benjamin Barasa Wafula acting in person

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 27th February 2023 seeking orders for leave to be granted to the applicant to prosecute an Originating Motion dated 21st February 2023, as a pauper due to lack of funds for payment of the service fees within and outside Nairobi, totaling Kshs. 38,000/= and an order to allow the applicant to effect service online; and

[2] UPON reading the Supporting Affidavit of Benjamin Barasa Wafula sworn on 27th February 2023 where he avers that he only attained basic knowledge in paper making and due to his former employer tarnishing his reputation and his advanced

age, he has not been able to secure employment. Thus, he is financially unable to cater for the prescribed fees; and

[3] UPON perusing the grounds adduced by the applicant in support of the orders sought wherein he contends that he was employed by Pan African Paper Mills (E.A) Company Ltd from 3rd January 1983 to 23rd September 2003 when his employment was terminated after he allegedly supported the government's proposal to have Pan African Paper Mills E. A Company Ltd raise its employees' salaries, who were underpaid by 32.39%; and that, after his termination as a Quality Control Checker and Trade Unionist, his capacity to secure employment was crippled affecting his financial status; and

[4] FURTHERMORE, considering the Applicant's Originating Motion wherein he seeks *inter alia* a declaration that; **Supreme Court Criminal Petition No. E032 of 2022** was duly filed before a court of competent jurisdiction; her Ladyship the Chief Justice and President of the Supreme Court do constitute a five Judge bench to reinstate **Supreme Court Criminal Petition No. E032 of 2022** which was filed after the Criminal Division of the Court of Appeal declined to admit ***Court of Appeal Criminal Application No. E008 of 2021***; and orders transferring the 3rd and 9th up to 14th, 18th, 61st, 62nd, and 93rd respondents from their current workstations for contravening the Supreme Court Rules 2020; and

[5] UPON considering the applicant's submissions dated 27th February 2023 wherein he submits that the government allegedly grabbed his ancestral land being L.R No. Ndivisi/Muchi 1122 up to 1400 without compensation and that, the County Government of Bungoma is using the village administrator, who is a daughter of the 74th Respondent herein, to assess eligible candidates for the award of strange scholarships and bursaries cases in his area of abode; and

[6] Having considered the application and submissions before us, WE NOW OPINE AS FOLLOWS:

i) Rule 63 (2) of the Supreme Court Rules, 2020 provides as follows:

“(2) The Registrar may, where satisfied that a party lacks the means to pay the required fees, permit that the matter be lodged.”

ii) The above-quoted provision confers powers on the Registrar to entertain an application for request for waiver of fees. Any party aggrieved by the decision of the Registrar is permitted to apply for review to a single judge whose decision shall be final by dint of Rule 6 (2) and (3) of the Supreme Court Rules, 2020. The applicant has failed to invoke this procedure and instead filed a Motion directly to the Court seeking waiver of court fees to prosecute his application dated 21st February 2023. While aware that the applicant is acting in person and may not be aware of the correct procedure, we are nonetheless constrained not to grant his application for reasons detailed out below.

iii) An objective merit review of the Originating Motion dated 21st February 2023, which is the subject of the instant application, reveals that it seeks to review the decision of a single Judge emanating from a decision of the Registrar. The Deputy Registrar of this court had on 4th November 2022 dismissed the applicant’s plea to lodge his pleadings in **Supreme Court Criminal Petition No. E032 of 2022** and a single judge of this Court had on 17th February 2023 declined to review that decision. That decision is final as explained above and therefore granting the present application would be an action in vain. As a consequence, we have no jurisdiction under the above Rule to revisit that decision. In the circumstances, we find that the application lacks merit and is hereby dismissed.

[7] For the foregoing reasons, the final Orders of the Court are as follows:

ORDERS:

- a. The application dated 27th February 2023 seeking waiver of fees to prosecute an Originating Motion dated 21st February 2023 is hereby dismissed.*
- b. There shall be no orders as to costs.*

[8] Orders accordingly.

DATED and DELIVERED at NAIROBI this 16th Day of June 2023

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P.M MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
M.K IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

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

I certify that this is a true copy of the original

REGISTRAR