



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E003 OF 2023

BENJAMIN BARASA WAFULA.....APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC

PROSECUTION & 149 OTHERS.....RESPONDENTS

(Being an Application for Review of the Ruling of Hon. Justice W. Ouko, SCJ, dated and delivered on 17th February 2023 in Supreme Court Criminal Petition No. E032 of 2022

Representation

Mr. Benjamin Barasa Wafula acting in person

RULING OF THE COURT

[1] UPON perusing the Originating Motion dated 21st February 2023 seeking among others 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 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 who contravened the Supreme Court Rules 2020; and

[2] UPON perusing the grounds adduced by the applicant in support of the orders sought where he *inter alia* contends that the petition of appeal concerns corruption within the judiciary and other arms of the state and that the 1st-15th respondents have been compromised to deny his litigations within his area of jurisdiction, where the causes of actions occurred; and

[3] UPON FURTHER considering the applicant's submissions dated 21st February 2023 wherein he *inter alia* submits that the Ruling delivered by this Court on 17th February 2023 violated Article 163 (3)(i) & (ii), (4)(a-b) and (9) of the Constitution as a single Judge bench decision cannot be the final decision in a Supreme Court comprising seven Judges. In conclusion, he urged the Court to allow the filing of his Petition of Appeal being **Supreme Court Petition No. E032 of 2022** and Notice of Motion filed on 25th July 2022; and

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

1. We take note that even though the application was brought under the wrong provisions of the law, it seeks to review the decision of a single judge.
2. The instructive provision in this context is Rule 6 (2) and (3) of the Supreme Court Rules, 2020 which provides as follows:

“(2) Any party aggrieved by a decision of the Registrar made under this rule may apply for a review to a single judge.

(3) A determination by the single judge on the decision of the Registrar shall be final.”

3. This Court having pronounced itself vide a Ruling delivered on 17th February 2023 in **Supreme Court Criminal Petition No. E032 of 2022** where the applicant sought to review the Deputy Registrar's decision dated 4th

November 2022, we find that the Court lacks jurisdiction to entertain the instant application on the ground that a determination by a single judge on the decision of the Registrar is final. As such, the decision made by the Honourable Justice W. Ouko delivered on 17th February 2023 stands. Consequently, the applicant's application is hereby dismissed.

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

ORDERS:

- a. The Originating Motion dated 21st February 2023 is hereby dismissed.*
- b. There shall be no orders as to costs.*

[6] 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

.....
S.C WANJALA
JUSTICE OF THE SUPREME COURT

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

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

I certify that this is a true copy of the original

REGISTRAR