



THE SUPREME COURT OF KENYA

WASHINGTON MUCHIRI MUTURI v. ELIZABETH WANGARI GICHUKI

SC PETITION NO. 33 (E037) OF 2022

DATE OF JUDGMENT: 16TH JUNE 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court dismisses this appeal.

Background

The respondent filed before the High Court by way of Originating Motion, proceedings for the enforcement of the right to matrimonial home and property. Additionally, she also filed an application to amend her Originating Motion. The appellant opposed the amendment, claiming that the amendments sought to introduce a new cause of action and ousted the jurisdiction of the High Court to determine the Originating summons. The High Court allowed the application for amendment by holding that the High Court has unlimited jurisdiction under Article 165(3)(a) to determine the suit and that a declaration of rights to any property that is contested between spouses may be made as part of a petition in a matrimonial cause. The appellant then sought orders under Rule 5(2)(b) of the Court of Appeal rules to have the High Court decision stayed pending the determination of his intended appeal. The Court of Appeal upheld the High Court's finding and declined to grant the orders sought. The appellant now claims the Court of Appeal determined an issue of jurisdiction through an interlocutory application.

In the appeal before the Supreme Court, the Court listed the following two (2) issues for determination:

- i) Whether there is a substantive determination of a constitutional question by the Court of Appeal to warrant the invocation of this Court's jurisdiction under Article 163(4)(a) of the Constitution and;*
- ii) Whether this Court has jurisdiction to hear appeals arising from interlocutory orders of the Court of Appeal under Rule 5(2)(b) of the Court of Appeal Rules.*

Upon consideration of the appeal, the Supreme Court has dismissed the appeal by holding that;

- i. Article 163(4)(a) of the Constitution does not grant the Supreme Court jurisdiction to entertain appeals challenging the discretion of the Court of Appeal under Rule 5(2)(b) of the Court of Appeal Rules.**
- ii. There can be no substantive appeal before the Supreme Court if there is no judgment from the Court of Appeal in which constitutional issues have been analyzed and a determination issued.**