

**REPUBLIC OF KENYA**  
**SUPREME COURT OF KENYA**  
**MISC. APPLICATION NO. 1 OF 2018**

*(Coram: Ibrahim, SCJ)*

**REV. BRETHREN NEMWEL MOMANYI .... APPLICANT/PETITIONER**

**-VERSUS-**

**SENIOR RESIDENT MAGISTRATE HON.**

**SK NJORO ..... RESPONDENT**

**RULING**

**[1]** This is an application under certificate of urgency filed on 19<sup>th</sup> March, 2018 seeking review of the decision of the Registrar of the Court rendered on 2<sup>nd</sup> March, 2018 in which the Hon. Registrar declined to admit for filing in this Court the applicant's Certificate of Urgency dated 2<sup>nd</sup> March 2018, a Notice of Motion dated 1<sup>st</sup> March 2018; and a Verifying Affidavit dated 1<sup>st</sup> March 2018.

**[2]** The Hon. Registrar invoked her powers under Rule 4A of the Court Rules and declined to accept the documents on the basis of *'failure to comply with Article 163 of the Constitution, the Supreme Court Act, 2011 and Rules 23, 24, 26 and 33 of the Supreme Court Rules 2012'*. The applicant is aggrieved by that decision and has preferred the present application pursuant to Rule 4A(2) of the Court Rules.

**[3]** Upon perusal of the Motion and upon hearing the applicant, who appeared in person, in chambers, it emerged that he is aggrieved by the action of Registrar of the Court as he deems it as denying him redress before this Court yet his constitutional rights are being denied because of impunity and conflict of personal interests by the Hon. S. K. Njoro, SRM Kisii.

**[4]** The applicant submitted that he was charged in *Criminal Cause No. 921 of 2012* with incitement, which matter is still pending and has been handled by several magistrates at Kisii Law Courts. He wanted the matter transferred to a

neutral location as he opined that justice will not be served at Kisii as the Kisii Bar-Bench had met and resolved that he should never be allowed to transact business at Kisii Law Courts.

[5] Consequently, he filed *Misc. Application No. 47 of 2017* at the High Court in Kisii in which he sought the case to be transferred. It was his submission that the judge hearing this application ordered the prosecution to file its written submissions, but the prosecution has disregarded that order to-date. As a consequence, he averred that the application cannot be heard. He made another application to the High Court to stay the Lower Court's proceedings to await the outcome of the above application. When he appeared before the High Court, the matter was set for hearing on 5<sup>th</sup> April, 2018 and the Judge advised him to make an application for adjournment in the lower court, which he did.

[6] He submitted that when a new magistrate, SRM, S.K. Njoro came to Kisii, the file was re-assigned to him by the Chief Magistrate. He contended that Hon. S. K. Njoro was inclined to continue hearing the matter notwithstanding the above scenario. The matter was to be heard on 14<sup>th</sup> March, 2018 but the applicant was sick. He sent his wife and two members of his Steering Committee with hospital documentations but the court, Hon. S. K. Njoro, disregarded them holding that the applicant had absconded court. The case was adjourned and set for mention on 28<sup>th</sup> March, 2018 and a warrant of arrest issued.

[7] Aggrieved by this turn of events, he decided to come to the Supreme Court under Article 50(1) of the Constitution for redress. I asked the applicant if he has been to the Court of Appeal to which he replied in the negative. As to why he decided to directly approach the Supreme Court from the Magistrate Court, it was his contention that the Supreme Court is charged with interpreting the Constitution and that while other courts disregard the Constitution, the Supreme Court upholds it.

[8] First, I would like to state that the nature of an application to a single judge under Rule 4A(2) of the Court Rules, is for the applicant to demonstrate that the Registrar in exercise of her powers acted ultra-vires her mandate. This rule is not an avenue for a party to argue the intended application or appeal that was declined filing by the Registrar. The merits of the application can only be argued before the Court once and if the same is accepted and duly filed. Hence in the application before me, the applicant was under a duty to demonstrate how the Registrar erred in declining to accept his documents for filing and nothing more. I note that the applicant has not cast any aspersions on the decision of the Registrar.

[9] It is settled that the jurisdiction of this Court is provided for by the Constitution. A party who desires to come to this Court must explicitly state which jurisdiction of the Court he invokes. This was well stated in the case of *Michael Mungai v Housing Finance Co. (K) Ltd & 5 other* [2017] eKLR, thus:

***“[14] The powers of this Court have to be exercised within and in accordance with a specific jurisdiction as provided for in Article 163(3) of the Constitution. One cannot ask the Court to exercise its powers in a carte blanche manner. A litigant’s plea must be precise and targeted...Each of the jurisdictions of the Court has a definite outcome that is predictable: an appeal may lead to an affirmation or overturning of the decision being appealed against; while a reference will definitely lead to an advisory opinion being rendered or declined. Consequently, any matter that comes before this Honourable Court has to be focused and targeted. One must have a cognizable cause of action and a litigation trajectory that can be well traced within the judicial hierarchy in case of an appeal.”***

**[10]** The intended Notice of Motion dated 1<sup>st</sup> March, 2018 does not state which jurisdiction of the Court it is intended to invoke. The applicant in his submission states that he approaches the Supreme Court because it is charged with interpretation of the Constitution. While it is true that the Supreme Court interprets the Constitution, the court with the original jurisdiction of interpreting the Constitution is the High Court as provided for by Article 165. I hasten to add that all courts as creatures of the Constitution and must uphold it. And without deciding any factual issue alleged by the applicant, I disabuse the allegation that other courts disregard the Constitution.

**[11]** Be that as it may, the jurisdiction of this Court is not to intervene in matters before other courts as the applicant intends to invite this Court to do. The judicial system has mechanisms to address perceived acts of injustices and grievances through applications for review or appeal to higher courts and the only way this Court will be engaged is when properly moved via an appeal from the Court of Appeal. The subject matter raised in the Notice of motion dated 1<sup>st</sup> March 2018 which the Registrar declined to admit for filing is not an appeal from the Court of Appeal. On his own admission, the applicant admitted so. Clearly, a litigant cannot be allowed before this Court in total disregard of the judicial hierarchy. There is no legal route of direct appeals to the Supreme Court.

**[12]** While the applicant may have a prima facie case with the manner in which his matter is being prosecuted at Kisii Law Courts, the path of redress through the Courts is well defined in law. This Court follows the law and it will not usurp other courts' jurisdiction, even at the pestering of litigants. The Court will wait until matters reach it through the judicial hierarchy of courts.

**[13]** The upshot is that I find no fault in the decision of the Hon. Registrar rendered on 2<sup>nd</sup> March 2017. The learned Registrar was apt when she observed that: *“the issues raised in this application albeit vague concerns a matter emanating from the Magistrate Court Kisii and the High Court Kisii without*

*being canvassed in the Court of Appeal.”* As we held in **Mungai** case, there is clearly no cognizable cause of action worth the time of the Supreme Court. I would like to add that the review window granted by Rule 4A(2) is not to be abused. It is not a matter of cause that whenever the registrar of the Court declines to admit documents for filing, a party has to appeal to a single judge as a matter of cause, save for very deserving cases.

[14] Consequently, I dismiss this application and make no order as to costs.

***Orders accordingly.***

**Dated and Delivered this 21<sup>st</sup> Day of March, 2018.**

.....

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

I certify this is a true  
copy of the Original

**REGISTRAR  
SUPREME COURT OF KENYA**

