

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
AT NAIROBI

(Coram: Maraga: CJ & President, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

APPLICATION NO. 15 OF 2015

—BETWEEN—

KOIGI WA WAMWERE..... APPLICANT

—AND—

THE ATTORNEY GENERALRESPONDENT

(Being an Application seeking leave to appeal against the Court of Appeal Ruling in Civil Application No. Sup 4 of 2015 (UR 3/2015 at Nairobi [Mwera, Mwilu & Otieno-Odek JJA] dated 3rd July 2015) to the Supreme Court under Article 163 (4)(b) of the Constitution of Kenya 2010 & Sections 15 & 16 (1) of the Supreme Court Act 2011 and part 4 Rule 26(1) of the Supreme Court Rules and all enabling provisions of the law)

RULING

1. UPON PERUSING the Notice of Motion dated and filed on 22nd July, 2015, which application is brought under Article 163 (4) (b) of the Constitution; Section 15 & 16(1) of the Supreme Court Act 2011 and Part 4 Rule 26(1) of the Supreme Court Rules and all enabling provisions of the law; seeking leave to appeal against part of the Judgment of the Court of Appeal which granted certification but

limited the questions for consideration and determination by the Supreme Court to two; **AND**

2. UPON READING the supporting affidavit of Koigi Wa Wamwere dated 22nd July, 2015, together with the written submissions dated 2nd September, 2015 in support thereof; and the Attorney General's submissions dated 4th November, 2015 in opposition thereto;

3. The applicant's case is that a miscarriage of justice will occur on grounds that by limiting the questions for determination to only two, the Court of Appeal has excluded 16 other questions of general public importance.

4. The applicant urges that his case satisfies the criteria set out in *Hermanus Phillipus Steyn & Giovanni Gnechi Ruscone* Sup Ct. App No. 4 of 2012 (*Hermanus*) and should be heard by this Court. It is the applicant's further contention that the Court of Appeal cannot purport to set out two new grounds which he deems irrelevant to his intended appeal to the Supreme Court.

5. The respondent opposes the application on the ground that, it does not fall within the ambit of Article 163(4) (b) of the Constitution. The respondent also relies upon the *Hermanus case*. It is the respondent's case that the Supreme Court is being asked to indirectly enhance the quantum of damages payable which is against the doctrine in *Hermanus*. Finally, the respondent submits that, the question of the constitutionality or otherwise of the two stints of the applicant's detention, was not a substantive issue dealt with by the two superior Courts.

6. HAVING CONSIDERED THESE SUBMISSIONS, by a unanimous decision of this Bench, we make the following Orders under Article 163 (5) of the Constitution, and Rules 23 and 24 of the Supreme Court Rules 2012 (as amended).

ORDERS	REASONS
<i>The Notice of Motion dated 22nd July, 2015 is hereby dismissed with costs in the cause.</i>	<i>(a) No compelling reasons have been presented to the Court so as to warrant a review of the grant of certification by the Court of Appeal.</i> <i>(b) The application as framed, goes beyond the ambit of Article 163 (4) (b) of the Constitution and is in fact, a full blown appeal, as if the application for review herein, had been granted.</i>

DATED and DELIVERED at NAIROBI this 13th Day of April, 2018

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D. K. MARAGA
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

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

.....
N. S. 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,
SUPREME COURT OF KENYA