



**Kidero & another v Independent Electoral and Boundaries Commission & 4 others  
(Election Petition E001 of 2022) [2022] KEHC 15829 (KLR) (26 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15829 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
ELECTION PETITION E001 OF 2022  
RE ABURILI, J  
NOVEMBER 26, 2022**

**BETWEEN**

**EVANS ODHIAMBO KIDERO ..... 1<sup>ST</sup> PETITIONER**

**ELIJAH ODONDI KODOH ..... 2<sup>ND</sup> PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY RETURNING OFFICER, HOMABAY COUNTY FREDRICK  
APOPA ..... 2<sup>ND</sup> RESPONDENT**

**GLADYS ATIENO NYASUNA WANGA ..... 3<sup>RD</sup> RESPONDENT**

**JOSEPH OYUGI MAGWANGA ..... 4<sup>TH</sup> RESPONDENT**

**ORANGE DEMOCRATIC MOVEMENT PARTY ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. On November 18, 2022, this court delivered a three pronged ruling covering three applications dated September 29, 2022, October 4, 2022 and October 30, 2022. Prior to that date, the court had on October 28, 2022 heard the oral highlights on the applications dated September 29, 2022 and October 4, 2022. On the said even date, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents sought leave of court to file an application seeking to strike out some new affidavits and parts of the further affidavit evidence filed by the Petitioners in their further affidavits pursuant to the directions of this court given on October 7, 2022. The court directed that such application should be filed and served simultaneous with the written submissions within five days of October 28, 2022 upon which the petitioners would have 5 days of the date of service to file and serve their responses and written submissions and that a ruling on the said



application would be delivered simultaneous with the rulings on the applications dated September 29, 2022 and October 4, 2022 respectively.

2. The court while giving directions on the already filed and argued applications and the yet to be filed application was conscious of the tight schedule and timelines for the hearing and determination of the main election petition as stipulated in law and all parties agreed to that arrangement for the hearing.
3. The court was equally aware that parties were required to file their pleadings, documents as well as the responses through the Judiciary e-portal but that the parties had earlier on been directed that whenever they filed their documents through the e-filing system, they must also and as soon as possible, file the hard copies into court. The date of filing and compliance with the given timelines would then be taken to be the date of the e-filing.
4. The main reason for requiring the filing of hard copy documents is because there is intermittent power outage and internet instability in this part of the country and I take judicial of that fact, having served in the region for now close to five years now. Furthermore, the delivery of this very ruling should have been yesterday morning but owing to the total blackout from November 24, 2022 afternoon extending right into the night, it was impossible for me to sit in darkness and prepare the ruling whether handwritten or otherwise.
5. In addition, this court is aware that where there is no internet or power, or where the equipment fail or malfunction, then it would be difficult to read the e-filed documents hence the need to have hard copies as backup so that there is no excuse for the court failing to deliver on its mandate within the stipulated timelines. It must at all times be appreciated that even the most sophisticated or automated systems at times flop.
6. Further to the above requirements, this court went further and advised the parties counsel right from the onset and reminded them from time to time that in order to enable the court work efficiently, the court had created a special email address [annextures@gmail.com](mailto:annextures@gmail.com) specifically dedicated to receiving only soft copy word format pleadings, affidavits and or word documents as already officially filed by the parties, so that the court does not have to rewrite the parties' pleadings or affidavits which are normally filed in pdf formats and therefore not capable of being edited during judgment or ruling writing.
7. All these measures have been applied by this court as an innovation to expedite delivery of justice hence the efficiencies that are experienced and appreciated by those parties and their counsel who appear and or litigate before the court.
8. The law also enjoins all parties and their counsel to be active participants in aiding the court to administer justice expeditiously, efficiently and effectively. In doing so, the parties and their counsel are also expected to adhere to the directions or practice directions that the court may issue from time to time. Where parties act in good faith and comply with the court's directions which are in no way meant to be punitive but intended to aid in the fair, just and expeditious delivery of justice, the principles and objectives of Article 159 of *the Constitution* and which all courts and tribunals are enjoined to adhere to in administering justice are fulfilled.
9. In the instant petition, the court upon giving necessary directions and setting the ruling date for the already filed and argued as well as the yet to be filed applications, it retired to consider the filed applications as it awaited the parties to comply with the directions given. In the intervening period, I observe that the other parties' counsel who had filed the pleadings and affidavits via e-portal also filed the hard copies of their e-filed documents and further forwarded their word documents as filed into court to the aforementioned email address [annextures@gmail.com](mailto:annextures@gmail.com) upon being reminded as the court realized that they were taking too long to forward the same and which documents the court



accessed and considered in the rulings aforesaid. Regrettably, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' counsel did not comply with the filing of hard copies of the e-filed documents and neither did he send the word documents to the [annextures@gmail.com](mailto:annextures@gmail.com) as requested by the court.

10. As a result, this court was unable to access the e-filed documents or even the hard copies which were to be filed by Mr Olendo counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The court was also unable to access the e-filed documents due to low internet in Siaya High Court as at the time that it was writing the delivered rulings. The court, upon delivering the 3 rulings, has learnt, from the now filed application by Mr Olendo Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that indeed, it considered the applications dated September 29, 2022 and October 30, 2022 but left out the replying affidavit and written submissions filed by Mr Olendo advocate on behalf of his clients. However, the court did consider the oral submissions which were predicated on the replying affidavit and the written submissions and this was not by design but owing to the above scenario as explained by this court.
11. It is the above situation that brings us to where we are in this matter, where the 1<sup>st</sup> and 2<sup>nd</sup> respondents have by their application dated November 23, 2022 seek from this court the following orders:
  1. That this Application be certified urgent in the first instance;
  2. That pending hearing and determination of this Application the Honourable court be pleased to stay the execution of the orders it made vide the ruling of November 18, 2022;
  3. That the Honourable court be pleased to set aside and review the orders it made vide the ruling of November 18, 2022;
  4. That costs of this application be in the cause.
12. The said application is predicated on the following grounds which are also replicated in the supporting affidavit sworn by Mr Raymond Olendo advocate for the applicants:
  - a. That there is a grievous error and mistake apparent on the face of the record of the court's ruling of November 18, 2022 (herein 'the Impugned Ruling');
  - b. That the Impugned Ruling in its entirety imputes and expressly states that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file at all any response or submissions to the Applications dated September 29, 2022 and October 30, 2022 (hereinafter 'the Two Applications') that are part of the subject of the ruling;
  - c. That the Impugned Ruling did not at all consider the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' filed Replying Affidavits or Responses and Written Submissions to the Two Applications that are the subject matter of the Impugned Ruling;
  - d. That it is apparent that the court arrived at decision that was not well informed and did not consider all the facts before and therefore bringing to question the merits of the Impugned Ruling;
  - e. That the error and mistake in the Impugned Ruling has gravely abridged and violated the 1<sup>st</sup> and 2<sup>nd</sup> Respondents constitutional rights;
  - f. That the Impugned Ruling imputes the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' advocates as pedestrians advocate who were not doing the work they were employed to do of safeguarding the rights and interests of their clients in the Petition;



- g. That the Impugned Ruling grievously tarnishes the reputation and standing of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent’s Advocates;
- h. That the objectives of the Rules espouse the facilitation of the just, expeditious, proportionate and affordable resolution of elections petitions as sought by the Applicants;
  - i. That the Applicants are earnestly seeking to assist the court to further the objectives of the Rules;
- J That this court has inherent powers to prevent a miscarriage of justice such as the one visiting upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;
- k. That this Application has been prompted by the Impugned Ruling and therefore warranted;
- l. That the law requires this court to hear and determine all interlocutory matters that come before it and to decide all matters that come before it without undue regard to technicalities;
- m. That it is in the interest of justice and fairness that application is allowed.

### Determination

13. I have considered the application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the grounds in support and the supporting affidavit.
14. The main issue now is whether this court should review and or set aside its ruling delivered on November 18, 2022 on account of the complaints raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein. To resolve the above issue, I must first examine the legal and constitutional provisions and the court record further.
15. The question of whether this Election Court has the jurisdiction to review its own orders was considered in a similar situation arising in the case of *Godfrey Masaba v IEBC & 2 others [2013] eKLR*, where the Election Court was called upon to review its orders on account that it had not considered the replying affidavit and written submissions filed by the applicant
16. H. Omondi J (as she then was) stated as follows, extensively, and I will heavily rely on this holding in my determination that:
  - “21. Having read both the *Elections Act*, 2011 and the Elections (Parliamentary and County Elections) Petition Rules 2013 I can confirm that they make no provision for review of an Election court's orders.  
Secondly the Election (Parliamentary and County) Petition Rules are complete and the only instances that the Civil Procedure Rules are invoked are as provided under Rule 15 (7) of the Election (Parliamentary and County) Rules.
  22. The question which arises is whether the failure to expressly provide for review of the courts orders negates the application of this remedy in the appropriate circumstances?



23. Article 35(2) of *the Constitution* guarantees every person the right to correction or deletion of untrue or misleading information that affects the person. Article 20(3)(a) on the other hand, enjoins a court when applying a provision of the Bill of Rights, to develop the law to the extent that it does not give effect to a right or fundamental freedom.
24. By failing to make provision for the court to review its orders in the appropriate circumstances, especially where there is a mistake or error apparent on the face of its record that needs to be corrected or deleted in order to set the record straight, it would appear that the *Elections Act*, 2011 and the Rules made thereunder offends the spirit and letter of Article 20(3)(a) as read with Article 35(2) of *the Constitution*.
25. For this reason notwithstanding lack of any express provisions for review in the Election Act and the Rules made thereunder, I hold the view that an election court would, in the appropriate circumstances, review its orders if in so doing, it would give effect to a right or fundamental freedom that the law in question had failed to recognize or give effect to.
26. There are decisions to the effect that an election court has power, in exercise of its inherent power, to review its orders. For instance in *Mohamed Ali Mursal v Saadia Mohamed & 2 others (2013) e KLR* SN Mutuku J, conceded that An Election Court has power to review its orders and invoked Order 45 of the Civil Procedure Rules in resolving the matter before her. Similarly, in *Nuh Nassir Abdi v Ali Wario & 2 others (2013) e KLR* EP No 6 of 2013 GV Odunga J, observed:-
- “A decision whether or not to vary, set aside or review earlier orders was an exercise of judicial discretion and the court could only exercise such discretion if so to do would serve useful purpose...”
27. It is apparent that an election court has power to review its order if doing so would serve a useful purpose in the just determination of the issue before it.”
17. The learned Judge, now Judge of Appeal then went on to determine the circumstances under which an election court would review its orders and stated as hereunder:
- “On what grounds or circumstances can an election court review its orders?
28. Although Order 45(1) of the *Civil Procedure Rules* is not one of the portions applicable to Election Petitions under the Elections (Parliamentary and County Elections) Petitions Rules, 2013, the conditions set therein give rational parameters for review of an order of an election court.
29. Owing to the special nature of election disputes not all the tests under Order 45(1) may be applicable in an application for review of the orders of an Election Court, I hold the view that an Election court should readily review its orders on account of some mistake or error apparent on the face of the record. The court would fail in its mandate of administering justice to parties, if, because the Rules of Procedure don't clothe it with power to correct its mistake or error, it allows wrong or misleading record to stand.



30. Having found that an election court can in the appropriate circumstances review its orders, I turn to question (iii) which is:
18. As to whether the applicants had established a case for review of the orders thereto, the learned judge had this to say further:
- “ 31. In the instant application the applicants seek review of this court’s order for costs on the ground that there is an error apparent on the face of its record and which error is prejudicial to them and their advocates.
32. The applicants, as a matter of right and in the spirit and letter of Article 35(2) are entitled to correction or deletion of untrue or misleading information. The key words here are untrue or misleading information.
33. Is there an error apparent on the face of the record? Did the court err by making a finding that the 1st and 2nd respondent did not file a response to the petition?
34. This question needs to be answered carefully because the court can only be faulted if by the time it wrote the ruling, the 1st and the 2nd respondents’ response formed part of the court’s record. If it did not, it must be demonstrated that the court or its agents were responsible for the non-availability of the response in the court file.
35. It is significant that although the applicants contend that they had filed their response way before the court wrote its ruling and within the time ordered by the court, the said response was not in the court record when this court wrote its ruling. In fact it’s because the applicants response was conspicuously missing in the court file that this court awarded them lesser costs compared to the 3rd respondent.
36. There are only two possible explanations to the question of availability or otherwise of the response as at the time this court was writing the ruling
- I. That through a mistake of the court’s staff, the response was not placed on the court file when the response was filed; or
- II. That the response was filed after the ruling was delivered in reaction to the court’s order for costs;
37. Regarding the first possibility, the only reasonable explanation for availability of the response in the court file is that it was placed in the court file after the delivery of the ruling. For this to have happened, the applicants must have either complained about the finding of the court at the registry, prompting some officer at the registry to trace and place it in the file. Unfortunately, there is no evidence to prove this happened.
38. Regarding the 2nd scenario, it is possible that the response was filed after the ruling was delivered in reaction to what are termed as the court’s adverse orders. Although the response bears a seal of the court imposed on May 13, 2013, the response is neither assessed by an officer of this court as is the case with all other documents filed in court nor is there evidence of payment of filing fee. The promises to send original receipts to the Deputy Registrar never
- ”



materialised I entertain doubt whether the response was filed on the indicated date or whether the right procedure was used in filing of the response.”

19. I have extensively cited the above decision because it is in parimateria with the application before me and just like in the instant case scenario, the applicants’ counsel in the cited case submitted that:
  - “9. ...the court’s finding to the effect that the 1st and 2nd respondent did not file a response is an error apparent on the face of the record. That the finding by the court negatively impacts on the Firm of Wekesa and Simiyu & Company Advocates as they will be seen as not properly discharging their duties. Further that the award of costs to the 1st and 2nd respondent was affected by the said finding as the court would have apportioned costs on 50:50 basis among the respondents or even awarded the 1st and 2nd respondent more for defending two respondents.”[emphasis added]
20. In determining this application, I shall bear in mind the above holding. Article 159 of *the Constitution* obligates the court to administer justice without undue regard to procedural technicalities. On the other hand, Section 80(1) (d) of the *Election Act, 2011* allows an Election Court to decide all matters before it. Further, Section 80(3) of the Act thereof allows the election court to decide all interlocutory matters. In addition, Section 2 of the *Election Act* defines an Election Court and gives it jurisdiction similar to those given to the Court in civil and criminal cases.
21. On the application dated September 29, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> respondents impugn this court’s ruling of November 18, 2022 on account that the same did not take into consideration the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ replying affidavit and written submissions.
22. I have considered the said replying affidavit sworn by the second respondent herein Mr Fred Apopa sworn on the October 13, 2022 as well as the 1<sup>st</sup> and 2<sup>nd</sup> respondents written submissions dated October 25, 2022. I observe that the two documents mirror the oral submissions made by Mr Olendo in open court on the October 28, 2022, in opposition to the petitioners’ application dated September 29, 2022. The said oral submissions were highlights of the written submissions and the replying affidavit filed by the 2<sup>nd</sup> respondent on his own behalf and on behalf of the 1<sup>st</sup> respondent.
23. In addition, from the e logs annexed to this application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and dated November 23, 2022, as obtained from the judiciary e-filing website, I note that the replying affidavit sworn by one Mr Fred Apopa sworn on the October 13, 2022 as well as the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ written submissions dated October 25, 2022 were filed on the October 25, 2022.
24. This court also recalls that on the October 7, 2022, the court issued directions regarding filing of responses to the Petitioner’s application dated September 29, 2022, directing that all the Respondents had 7 days of October 11, 2022 to file and serve their responses to the said application. A calculation of the said days takes the final date for the respondents to file their responses to the petition dated September 29, 2022 to the October 18, 2022.
25. From the judiciary e-filing log attached herein and relied on by the 1<sup>st</sup> and 2<sup>nd</sup> respondent, they admittedly filed their replying affidavit and written submissions on the October 25, 2022, which was 7 days past the last date for filing, contrary to the directions of the court given in open court and in the presence of all the parties. Although no party raised the issue of the late filing of the said responses, I observe that there was no leave of court sought and obtained to admit the said responses as filed out of the stipulated timeframes.



26. Further to the above, the court openly directed the parties to share the filed responses and all necessary pleadings with the judge through the email [annextures@gmail.com](mailto:annextures@gmail.com), but the 1<sup>st</sup> and 2<sup>nd</sup> respondent's advocate admittedly failed to do so.
27. Further, Rule 5(2) of the Election Petition Rules 2017 provides that:
- “ A party to a petition or an advocate for the party shall assist an Election Court to further the objective of these rules and from that purpose, to participate in the processes of the Election Court and to comply with the directions and orders of the Election Court.”
28. For the aforesaid reasons and whereas it is true that this court did not refer to the replying affidavit and written submissions filed by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, it is clear that the court cannot, in the first instance, be blamed for being in error regarding the responses filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to the petitioners' application dated September 29, 2022, out of time and without leave of court to admit them as duly filed.
29. This Court has discretion to extend time but cannot do so without a specific request by a party requiring the intervention. Even as at the time that the parties were arguing that application on October 28, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> respondents' counsel knew that the replying affidavit and written submissions in opposition to the petitioners' application dated September 29, 2022 were filed out of time but the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not make any formal request to expand the time for admission of those two documents. It follows that legally, those documents ought not to be part of this court's record. However, as shall be seen in the paragraph below, this court already heard oral submissions on the same, and without any objection from the other parties especially the petitioners, that is now water under the bridge.
30. Nonetheless, it is apparent from the ruling of November 18, 2022 that his court considered and indeed, took into account the oral submissions made by Mr Olendo, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, which oral submissions the court notes that they mirrored the replying affidavit sworn by Mr Fred Apopa on the October 13, 2022 as well as the 1<sup>st</sup> and 2<sup>nd</sup> respondents' written submissions dated October 25, 2022, which this court has now accessed and perused upon being filed in hard copy format on November 22, 2022 and after the delivery of the impugned ruling.
31. It cannot, therefore, be true as complained by the applicants' counsel that this court's failure to refer to the filed replying affidavit and written submissions described above renders the advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondents a joy rider or pedestrian advocate to these proceedings and petition. I hasten to add that Mr Olendo advocate has and is defending his clients in these proceedings with all the vigor and that therefore that lapse on his part cannot be interpreted and should not be interpreted to mean that he is or has shown any form of incompetence before this court in the manner that he is representing the interests of the 1<sup>st</sup> and 2<sup>nd</sup> respondents who represent the public in these proceedings and petition.
32. Turning to the application dated October 30, 2022, the court on the October 28, 2022 directed that the intended application by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall be filed together with written submissions of not more than four pages font 12, 1.5 spacing, within 5 days of that day and that on the part of the Petitioners, they had 5 days of the date of service to file and serve their Replying affidavit together with written submissions of not more than 4 pages font 12, 1.5 spacing.

The court indeed trusted the parties and it also trusted its own judgment that if the parties complied with the directions of the court, it would burn the midnight oil, coupled with the fact that the court is handling two other



33. courts, and render a well-reasoned and balanced decision on all the filed and argued and the yet to be filed application by November 18, 2018.
34. I have examined the e-filings logs filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents which show that the responses and submissions to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' application dated October 30, 2022 were filed on the 11th of November 2022 by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, fully supporting the 3<sup>rd</sup> and 4<sup>th</sup> respondents' application seeking to strike out some evidence filed in the further affidavits filed by the petitioners pursuant to the directions given by this court on October 7, 2022.
35. Regrettably, at this stage, despite the court's inability to refer to that replying affidavit and written submissions for the reasons advanced above, the court is not in a position to determine when the 1<sup>st</sup> and 2<sup>nd</sup> respondents were served with the said application dated October 30, 2022 by the 3<sup>rd</sup> and 4<sup>th</sup> respondents as per the directions given on October 28, 2022, as the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not disclosed to this court in their affidavit, the date that they were served with the application dated October 30, 2022 so that the five days for their filing of their replying affidavit and submissions could start running. It follows that this court cannot establish whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents complied with the court's directions as to the timelines for the filing of their responses and submissions.
36. However, the court notes that it openly reminded the parties to forward their filed pleadings to the email [annextures@gmail.com](mailto:annextures@gmail.com) in word format but once again the 1<sup>st</sup> and 2<sup>nd</sup> respondents' advocate admittedly failed to do so. He has only managed to comply with that request when he filed the application herein on November 23, 2022 which he also forwarded in word format to the said email address on November 23, 2022.
37. Therefore, in as much as the replying affidavit and written submissions were in the e-portal, as explained above, this court did not deliberately or by any design fail to consider the replying affidavit and submissions filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents as the same were not placed before the court in compliance with the court's directions, for ease of access.
38. The 1<sup>st</sup> and 2<sup>nd</sup> respondents indeed filed their documents via e-filing system which this court has found are in the portal. However, the said documents were never dispatched to me in hard copy formats or via the email provided by me for purposes of facilitating writing of the rulings expeditiously as requested of the parties and in addition, this court was not enabled to access the portal to establish which documents had been filed and which ones had not. In my frantic effort to receive the filed copies, I called the Deputy Registrar Hon Joy Wesonga who reminded the parties by calling them and all the other parties except the 1<sup>st</sup> and 2<sup>nd</sup> respondents' counsel send the hard copies and word format documents.
39. Notwithstanding all the above, this court has carefully considered the responses filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to both the applications dated September 29, 2022 as filed out of time on October 25, 2022 without leave of court as well as the application dated October 30, 2022 and notes that the replying affidavits and submissions as filed mirror the oral submissions made on October 28, 2022 by their counsel Mr Raymond Olendo while the 1<sup>st</sup> and 2<sup>nd</sup> respondents' replying affidavit and written submissions to the application dated October 30, 2022 wholly supported the grounds and depositions by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents in their quest to have some affidavit evidence filed by the petitioners in the further affidavits expunged from the record.
40. I am therefore persuaded that had the court then been seized of the said filed documents at the time that it was writing the three rulings, it would have reached the same verdict or result as it did and therefore I find no reason that would make me alter the findings and or holding in the ruling delivered on the November 18, 2022. I further find that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not been denied



the opportunity to be heard and that the failure by the court to consider their said affidavit and written submissions has not prejudiced them at all as their positions were well articulated in the oral submissions highlighting the replying affidavit and written submissions to the application dated September 29, 2022, in as much as the same were on record without leave of court and the replying affidavit and written submissions filed by the 3<sup>rd</sup> and 4<sup>th</sup> respondents.

41. The upshot of the above is that the application dated November 23, 2022 by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is declined and dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT HOMABAY THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2022**

**R E ABURILI**

**JUDGE**

