



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR NO. 295 OF 2012 (AS CONSOLIDATED)

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY
HON. LADY JUSTICE JEANNE GACHECHE.**

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE VETTING OF JUDGES AND MAGISTRATES ACT NO. 2 OF 2011

HON LADY JUSTICE JEANNE W GACHECHE APPLICANT

AND

THE VETTING OF JUDGES AND MAGISTRATES BOARD1ST RESPONDENT

JUDICIAL SERVICE COMMISSION..... 2ND RESPONDENT

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THE ATTORNEY GENERAL INTERESTED PARTY

RULING

1. What triggered today's proceedings was a decision made by the Supreme Court in Petition Nos. 13A, 14 and 15 all of 2013 delivered on 5th November, 2014 in which the said Court directed *inter alia* that:

The respective Superior Court Divisions or Stations having to adjudicate upon matters of any of the following categories shall list them for mention within 15 days of the date hereof, and shall dispose of them forthwith, in accordance with the terms of this judgement and these orders, that is to say:

(i) Alleged lack of jurisdiction or merit on the part of the Vetting Board;

(ii) Alleged want of exclusive competence of the Vetting Board to determine the suitability of a Judge or Magistrate to continue in service;

(iii) Any contest to the vetting Board's process (or outcome thereof) for determining the suitability of a Judge or Magistrate in service.

2. Pursuant to the said order, this matter together with the related matters were mentioned before **Hon. Mr Justice Lenaola**, who was appointed by the **Hon. The Chief Justice** to preside over the five Judge bench empaneled to hear and determine the same on 21st November, 2014 on which date directions were given.

3. When the matter came up before us this morning we heard learned counsel for the parties on the mode of proceeding and in our view the following issues fall for determination:

- 1) Whether the proceedings which took place on 21st November, 2014 was the mention contemplated by the Supreme Court in the above decision to be undertaken within 15 days.
- 2) Whether the hearing of this matter ought to be adjourned.
- 3) What issues will fall for determination at the hearing.
- 4) What should be the mode of hearing.
- 5) When should the matter be heard.

4. On the first issue, we are clear in our mind that the Supreme Court did not direct that the pending matters be heard and disposed of within the fifteen days. What the said Court ordered was that the matter be mentioned within the said period for purposes of proceeding with the disposition. Such disposition in our view could take place either on the same day or any date soon thereafter. On 21st November, 2014 the matter was listed before **Lenaola, J** who gave appropriate directions. Accordingly, it is our view that it was unnecessary at that point in time that the matter be mentioned before the full bench as empaneled. We therefore hold that today's sitting was not the mention contemplated by the Supreme Court when it directed that the matter be mentioned within 15 days. That mention took place on 21st November, 2014 hence there is no need to refer this matter to the Supreme Court to extend time.

5. On the second issue we have considered the submissions made by learned counsel including the fact that other matters which are related to these matters are not before us. We accordingly are of the view and hold that the application for adjournment of today's hearing is merited.

6. On the third issue, we direct that the issue which will fall for determination in these matters is the issue identified by **Lenaola, J** on 21st November, 2014 with respect to import and impact of the Supreme Court judgement delivered on 5th November, 2014 on the proceedings pending before the High Court.

7. On the fourth issue we direct that the hearing will be conducted by way of oral and/or written submissions at the option of counsel for the parties and that no affidavit will be admitted at the hearing.

8. Lastly, we direct that the matter be heard on 22nd January, 2015 at 10.am.

9. It is so ordered.

Ruling read, signed and delivered in court this 15th day of January 2015

I LENAOLA

JUDGE

MUMBI NGUGI

JUDGE

P NYAMWEYA

JUDGE

G V ODUNGA

JUDGE

W MUSYOKA

JUDGE