

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Civil Case 230 of 2000

PETER DENIS MBWALI

JOHN KIPSIGEI KITUR.....2ND PLAINTIFF

AND

KENYA LITERATURE BUREAU.....DEFENDANT

RULING

Before delivering this judgment Mr Nzamba Kitonga asked me to satisfy myself of the propriety of delivering the judgment written and signed by Justice Nambuye.

Justice Nambuye is the subject of removal proceedings under the *Vetting of Judges and Magistrates Act (Act 2 of 2011)*. The act was enacted pursuant to **section 23(1)** of the *Sixth Schedule* to the Constitution. Under **section 21** of the Act, a judge is deemed to be removed once a decision of the Board is rendered but the section is subject to **section 22** which gives the judge a right of review.

Until the judge exercises the right of review and a decision is rendered thereon, the judge is not deemed to be removed as the person is still a judge under the Constitution.

I take judicial notice of the fact that Justice Nambuye's review proceedings are still pending. At any rate there is no decision on the review that has been published. In the circumstances, I am satisfied that I can deliver judgment on the Judge's behalf.

Article 48 of the Constitution protects access to justice and it is proper in the circumstances that parties waiting for judgment should not be kept out of their decisions for an unreasonably long time.

DATED at **NAIROBI** this 21st day of September 2012

D.S. MAJANJA

JUDGE