REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Constitutional Petition 669 of 2009

IN THE MATTER OF: SECTION 84(1) OF THE CONSTITUTION OF THE

REPUBLIC OF KENYA

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE

FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTION 70,72,75 &
78 OF THE CONSTITUION OF KENYA

IN THEMATTER OF: THE CONSTITUTIONAL REVIEW AMENDMENT ACT, 2008

AND

IN THEMATTER OF: THE HARMONIZED DRAFT CONSTITUTION OF KENYA

BETWEEN

1. **BISHOP JOSEPH KIMANI**
2. **REV. MUSYOKA NZUI**
3. **AGNES MBINYA (also known as MUMU NGUMBI)v(Suing as officials of**

MOMBASA PASTORS FELLOWSHIP)……...…PETITIONERS

AND

THE HON. ATTORNEY GENERAL
THE COMMITTEE OF EXPERTS
THE CHAIRMAN,
PARLIAMENTARY SELECT COMMITTEE …………………RESPONDENTS

R U L I N G

The Petitioners filed this Petition in the High Court at Mombasa on 18th December 2009 under the provisions of Section 84(1) of the Constitution of the Republic of Kenya in which they set out a list of alleged contraventions of their fundamental rights and Freedoms which are enshrined and protected under Sections 70,72,75 and 78 of the Constitution.

The Petitioners are Bishops Joseph Kimani, Rev. Musyoka Nzui and Agnes Ngumbi (also known as Mumu Ngumbi) as officials of Mombasa Pastors' Fellowship.

In the Petition, the Petitioners named the Attorney General of the Republic of Kenya, the Committee of Experts and the Chairman, Parliamentary Select Committee as the Respondents.

The Petitioners have set out a list of grievances about the conduct of the Committee of Experts and the Constitution Review Process which has been going on since 22nd December 2008 under the provisions of the Constitution of Kenya Review Act, Act No. 9 of 2008. The Petitioners complain that the Committee of Experts has failed to take on board the views of the Petitioners which they had duly presented.

At the same time, the Petitioners filed an application under Certificate of Urgency for Interim Orders on the following terms:-

"1 …………………………..

2. **<u>That</u> pending the hearing and determination of the summons, inter partes, this court be pleased to issue Conservatory Orders in the following terms:-**

(a) Suspend the operation of Section 30,31,32,33 and 34 of the Constitution of Kenya Review Act, 2008.

(b) Direct that this application and the Petition be served, heard and disposed within 21 days.

3. **<u>That</u> Section 30,31,32,33 and 34 of the Constitution of Kenya Review Act 2008 be suspended pending the hearing and determination of the Petition.**

4. **<u>That</u> costs of the application be provided for."**

Besides asking the High Court to declare the aforesaid Sections of the Constitution of Kenya Review Act, 2008 null and void, the Petitioners in the alternative, asked the court to define what amounts to "contentious issues". They asked whether the following issues raised by the Petitioners could be defined to be contentious issues:-

(i) Sanctity of life

(ii) The family and the right to found a family between a biological man and a biological woman.

(iii) Separation of State and Religion.

(iv) The Kadhis Court

(v) Provisions regarding Citizenship

and which should be presented before the Parliamentary Select Committee in terms of Section 32 (1) of the Review Act.

The Attorney General subsequently raised a Preliminary Objection arguing that the High Court had no jurisdiction to determine the issues in dispute as they arose from the process undertaken under the Constitution of Kenya Review Act. It was averred that according to Section 60 A of the Constitution only an Interim Independent Constitutional Dispute Resolution Court had jurisdiction to deal with all and any matters arising from the Constitutional Review Process.

Section 60 A of the Constitution of Kenya was enacted through a Constitutional Amendment by Parliament. It provides, inter alia, as follows:-

"60 A Establishment of Interim Independent Constitution Dispute Resolution Court:

(1) Notwithstanding Section 60 there shall be an Independent Constitutional Dispute Resolution Court which have exclusive original jurisdiction to hear and determine all and only matters arising from the Constitutional review process.

(2) The judges of the Court shall be nine judges of whom –

(a) Three shall be non-citizens who are qualified to be appointed judges or have served as judges of the highest court in any jurisdiction within the Commonwealth nominated by the Parliamentary Select Committee, and

(b) Six shall be recruited through a competitive process by the Parliamentary Select Committee and upon approval by the National Assembly be appointed by the President in consultation with the Prime Minister.

(3) For the avoidance of doubt, the court is not a division of the High Court.

(4) …………………………………

(5) ………………………………………..

(6) ………………………………………

(7) ………………………………………..

(8) In the exercise of its functions under this Constitution the court shall not be subject to the direction or control of any other person or authority.

(9) ……………………………………….

(10) ……………………………………….

(11) The Court shall stand dissolved twenty four months after the commencement of this section or three months after the promulgamation of a new Constitution whichever is the earlier.

Upon hearing the Applicants and the Attorney General, as both the Committee of Experts, the Parliamentary Select Committee and any Interested Parties after due advertisement in the print media did not attend court, this court found and held inter alia as follows:-

1. *The issues raised by the Petitioners were of great public interest carrying potential ramifications that could affect the entire nation during this time when the Nation was undergoing the Constitutional review process.*
2. *The court has taken judicial notice that the Interim Independence Constitution Dispute Resolution Court (IICDRC) had yet to be constituted and empanelled as required by Section 60 A(2). The whole section 60A had come into effect yet the court had not been put into operation.*
3. *The Interim Independent Constitution Dispute Resolution under Section 60 A of the Constitution of Kenya through the Constitution of Kenya Review Act, 2008 notwithstanding provisions of Section 60 which provided for establishment of the High Court. The Interim Constitutional Court was vested with the exclusive original jurisdiction to hear and determine all matters arising from the Constitutional review process.*
4. *Section 60A read with Section 60 of the Constitution out-rightly ousted the jurisdiction of the High Court to hear and determine all and any matters arising from the Constitutional Review Process. However, given the state of affairs, the High Court could not decline to hear the Petitioner's application on grounds of lack of jurisdiction. There were existing exceptional circumstances as the Interim Independent Constitution Dispute Resolution Court was yet to be constituted.*
5. *The High Court was the ultimate custodian of the Constitution of the Kenya and it had to ensure that the Petitioner's rights to articulate their rights and ventilate their grievances with regard to the Constitutional review process were not lost due to the legal vacuum. The vacuum had not been created by the Constitution but by the inaction of the appointing authorities.*
6. *In the absence of the Intended Interim Constitutional Court Order Section 60 A, the High Court's unlimited and original jurisdiction under Section 60 of the Constitution or its powers to enforce the protective provisions set out in section 70 to 83 (inclusive) of the Constitution were still alive intact and unfettered. To exclude the Petitioners from access to justice due to the barrenness of Section 60A then would be unjust.*
7. *Enactment of Section 60 A was not intended to exclude the Petitioners from accessing the courts in search of justice. To the contrary it was their legitimate expectation that any new provisions in the Constitution would be to enhance rights and freedoms and not take away what they already had in the existing Constitution.*
8. *As a result this court must investigate the allegations made by the Petitioners that their fundamental rights and freedoms rights and freedoms have been or are likely to be violated by the Committee of Experts during the ongoing Constitutional Review Process.*
9. *The Preliminary Objection by the Attorney General is dismissed and that in the circumstances the High court of Kenya had jurisdiction to hear and determine the application and Petition herein.*

I thereafter gave directions as to the way forward in view of the urgency of the matter. The Court directed that the matter he heard on priority basis considering the time-lines and time-frames set out in the Constitution of Kenya Review Act with regard to the Constitutional Review Process.

The court further held that while the High Court is always a Constitutional court and a single judge has the power and jurisdiction to hear and determine Constitutional matters under Section 60 of the Constitution yet if a judge in his/her opinion and discretion having considered the issues for determination is of the view that the issues are of such significance, of public interest and may affect legislation or public policy and that it would be prudent for the matter to be heard by a Bench of more than one judge, then the Judge may refer the matter to the Honourable Chief Justice for directions with a view of empanelling a bench of more than one judge to deal with the matter. This is purely an administrative function for the Chief Justice who is the head of the Judiciary.

I declared that this was one such a case and referred the Petition to the Honourable Chief Justice for his consideration and directions. The Petition was then taken to Nairobi.

As events unfolded, the Interim Independent Constitutional Dispute Resolution Court was gazetted the very next day after this court's Ruling on 5/1/10 declaring it had no jurisdiction. The gazettement was on 6.1.10 the very day that I referred this file to the Honourable Chief Justice. Through a quick inquiry I have been told that subsequently the six Kenyan judges were sworn as judges of the said

court on 15th January, 2010 and the non-citizen judges from the Commonwealth on 26th February 2010. The record shows that the Honourable Chief Justice made an order on 6th May 2010 directing that the matter be placed before me for mention to give further directions in view of the new developments. The file was received at Mombasa High Court Registry on 12th May 2010 while I was away on leave. Upon my return the Deputy Registrar issued Notices to Counsel on record that the matter was to be mentioned on 28.05.2010.

On 28.5.10, counsel for the Petitioners Mr. Gikandi and Mr. Munyithya and Mr. Mwangi Njoroge Ag. Senior Principal Litigation Counsel for the Attorney General appeared before me. At the same time Mr. Balala and Mr. Abed Advocates attended court having been retained by the officials of the Council of Imams and Preachers of Kenya.

Mr. Gikandi made submissions requesting the court to re-affirm its finding that the High Court had no jurisdiction and refer the matter to the newly established Interim Independent Constitutional Dispute Resolution Court under Section 60A. Mr. Gikandi argued that the court must immediately down its tools and refer the matter to the said court or at the very least declare it had no jurisdiction and stop there. Mr. Njoroge agreed with him but submitted that it would be proper if the file was referred to the Interim Court for its own directions and action.

Mr. Balala on his part argued for his client that while court may not have jurisdiction his clients ought to be enjoined as parties before the jurisdictional issue was formerly heard and all parties made their respective representations as to the way forward. He said that his clients had a right to be heard and ought to be enjoined or added as parties before any question and in particular that of jurisdiction was heard and determined by this court. He said that technically at this stage, the court was still bound by its decision that it had jurisdiction to hear the matter. That it still had jurisdiction until it formerly declared that it did not have such jurisdiction upon the establishment of this Interim Court after the Ruling of 5th January 2010. Mr. Balala added that to deal with any matter before the joinder of his clients who had an interest in the matter would shut them out and deny them the right to be heard on this very important public interest matter. He said that his clients were leaders of a great number of Muslims in the country.

I have considered all the submissions by Counsels for all parties. I think that it is pertinent, if not necessary for this court to set out its finding on the question of jurisdiction in its ruling given on 5th January 2010. The court said inter alia as follows:

> **"……………………………………….**
>
> **It is my considered view that the language used in Section 60A of the Constitution is simple and certain. The objectives of Parliament are clear and unambiguous. I will give the words in the said provisions their "natural and ordinary meaning."**
>
> **Section 60A read with Section 60 of the Constitution out-rightly ousts the jurisdiction of the High Court to hear and determine all and any matters arising from the <u>Constitutional Review Process.</u> The Constitutional Review Process is regulated under the Constitution of Kenya Review Act, 2008. The words and language used in Sections 60 and 60A speak for themselves. All disputes arising from the Constitutional Review Process are to be referred to the Interim Independent Constitutional dispute Resolution Court which is a special court with absolute jurisdiction on such disputes but for a limited period as set out in Section 60A. Section 60 itself which confers the High Court with its unlimited original jurisdiction in virtually all matters as conferred by the Constitution and other laws has for the first time after Amendment (Act No. 10 of 2008 – s.6) provided for the curtailment of the jurisdiction of the High court within the Constitution itself. From a correct interpretation of Sections 60 and 60A and the subsequent provisions of the Constitution of Kenya Review Act, 2008. It is certain that the intention of the legislature was to totally oust the jurisdiction of the High Court. Section 60 A went even further to state that the said court was not a division of the High Court to demonstrate the object of keeping the High Court away from dealing with these matters..." …"**

In the light of the foregoing interpretation and finding and in view of the establishment of the Interim Court and its subsequent gazettement, I do hold that this previous ruling of this court can no longer hold. There is no vacuum now. The Interim Court now exists and has been put into operation. There is a Bench which has duly been sworn in. I have gathered that they have an official premises and have published their Procedural Rules.

The High Court must now withdraw from this matter and any other matter touching on any disputes arising from the Constitution Review Process including the Draft proposed Constitution of Kenya published by the Attorney General in accordance with section 34 of the Constitution of Kenya Review Act, 2008 (No.9 of 2008). The High court is now fully bound by Section 60A and it must down its pen. As

has been declared by our Court of Appeal jurisdiction in everything. Without it, a court must down its tools.

In view of this, the oral application by the Council of Imams and Preachers of Kenya is unsustainable in law. This court has no jurisdiction to take any step in this Petition. It cannot in law entertain any oral or formal application or joinder of parties or any application of any sort that attempts to sustain these proceedings. I do hold that these proceedings have now been **overtaken** by events and the petition has been arrested by the operationalization and actualization of the Interim Court.

I therefore disallow the application for joinder of Mr. Balala's clients. This court has no power to consider the same.

Should this court now refer this Petition and proceedings commenced in the High Court on 18th December, 2009 to the Interim Independent Constitutional Dispute Resolution court for its directions and further action?

This petition was filed in the District Registry of the High Court at Mombasa. It is a Constitutional reference or petition filed in the High court. The Interim Constitutional Court has been declared not to be a division of the High Court. The High court has no jurisdiction to deal with any matter touching on the Constitutional Review Process. I do hold that this court equally has no jurisdiction or order for direct that this Petition, proceedings and/or file be referred to or taken to the Interim Constitutional court. The court has its own Registry and Rules. This court cannot speak for the said court. The said court in exercise of its functions and special jurisdiction shall not be subject to the directions or control of any other person or authority (refer to Section 60A (8)).

The foregoing demonstrates the SANCTITY of the Constitution of Kenya. It must be respected and preserved at all costs. This is not an academic or theoretical jurisprudential principle or statement. It is based on an express Constitutional provision. Section 3 of the Constitution of Kenya provides and stipulates as follows:-

> **" 3 THIS CONSTITUTION IS THE CONSTITUTION OF THE REPUBLIC OF KENYA AND SHALL HAVE THE FORCE OF LAW THROUGHOUT KENYA AND, SUBJECT TO SECTION 47, IF ANY OTHER LAW IS INCONSISTENT WITH THIS CONSTITUTION SHALL PREVAIL AND THE OTHER LAW SHALL, TO THE EXTENT OF THE INCONSISTENCY, BE VOID –**
> **PROVIDED THAT THE PROVISIONS OF THIS SECTION AS TO CONSISTENCY WITH THIS CONSTITUTION SHALL NOT APPLY IN RESPECT OF AN ACT MADE TO SECTION 15 A (3)."**

Section 47 gives the power, authority and Jurisdiction to the Parliament of the Republic of Kenya, the Legislature and the only law making body in the country to alter or amend the Constitution. No other body, person or arm of the Government i.e. The Executive or the Judiciary in Kenya can purport to alter or amend the Constitution of Kenya or any provision/Clause therein.

Section47 provides inter alia, that:-

> **"47. (1) Subject to this section Parliament may alter this Constitution ……"**

The other provisions of Section 47 provides as to the mode and manner in which Parliament may alter or amend any provision of the Constitution. Parliament therefore is the Supreme Law making body and arm of Government that can make law or amend it. This preserve is not for the Executive or the Judiciary. While in law, the three bodies are deemed to be equal in terms of the doctrines and principles of separation of power in any Democratic system of Government, yet none of the other two, (the Executive or Judiciary can purport to alter or amend the law. To attempt or purport to do so would be an unconstitutional usurpation of the powers and authority of parliament.

It is for this reason that the question of JURISIDICTION for a court of law is a threshold issue which it is required to investigate at the outset of any case or proceedings suo motu or if the question/issue is taken up by any of the parties.

The other fetter, restriction or curtailment of section 3 is the provision of Section 15a (3) of the Constitution which was passed through Act No. 3 of 2008, which established and termination of the offices of the Prime Minister and Deputy Prime Ministers as transitional offices after the post-election violence following the 2007 elections and the passing of the Peace Accord of 2008 backed by the United Nations and the World Community to save Kenya from the labyrinth and state collapse and annihilation of the people of Kenya due to flawed and mismanaged electoral process.

Apart from the application of Sections 47 and Section 15A(3) explained above, the Constitution of Kenya is to prevail above any other law. Section 47 has always been in the Constitution as the Constitution while it embodies the wishes and aspirations of Kenya and still is a creature established by Parliament which under Section 30 in the Legislative Power of the Republic and consists of the President and the National Assembly. Section 15 A(3) just like Section 60 A which are Constitutional provisions transitional in nature. They are to see us through the Constitutional Review Process which is now on-going.

In view of the foregoing, all and sundry ought to appreciate the principles and law relating to JURISDICTION. Jurisdiction is only conferred to a court of law, by the Constitution first and thereafter by Acts of Parliament, or statutes. It cannot be conferred by judicial interpretation or sanctimonious jurisprudential discourse.

I have been asked by one intended party to enjoin it in these Petition and proceedings as a party to enable it articulate its intentions and rights with regard to the Petition. The other parties, the Petitioners and the Attorney General while agreeing that this court has no jurisdiction have asked this court to transfer or refer these Petitions and proceedings to the Interim Constitutional court for its directions and further action.

In view of the statements hereinabove by this court which is the High Court sitting as a Constitutional court, I hereby decline to do either or accede to either of the two requests for to do so would be a violation and breath Constitution of Kenya by this court.

In this Ruling in this very Petition, I did state that:-

> **"…………………………………………………………………………**
>
> **The Constitutional Review Process was supposed to lead to a total emancipation of Kenyans and confer on them their total inalienable rights as human beings and not to take away that which was already protected by the existing Constitution which has been found to be inadequate.**
>
> **While the Constitution is not perfect and may be inadequate, it is the best and only Constitution which we have now. Until we get a better one we must cling to it and protect it with all zeal, breath and blood.**
>
> **As a result on the foundation of Section 60 and Sections 84 of the Constitution, the High Court shall and must remain the ultimate Defender and Enforcer of the Bills of Rights of the people of Kenya as enshrined in chapter V of the Constitution of Kenya. It is hoped that any new Constitution will lift the nation and its great people to the sky in terms of the protection of fundamental rights and individual freedoms ………."**

It is for these reasons that I decline to concede to the applications or requests of all the Petitioners, the Attorney General and the Council of Imams and Preachers of Kenya. To do so would be unConstitutional and legally sacrilegious as it would not be clothed with Constitutional or legal jurisdiction. Courts must be wary to undermine the presumption of Constitutionality of legislation and it must reject any invitation to question or interpret the Constitutionality of the Constitution itself.

Firstly, the High Court itself is established by the Constitution, and in our case by Section 60 of the Constitution. How can I, sitting as a High court Judge question, disparage or sit over judgment of the very Constitution which established the High Court? The High Court itself is required to propagate and defend the presumption of Constitutionality of Legislation or Acts of Parliament until the same has been rebutted and proven on a fair trial on its merits. How then can the High Court purport to question and interpret the Constitutionality of the Constitution itself? This would be the height of judicial arrogance and usurpation of the Supremacy and legislative functions of Parliament.

As I had stated in the second Ruling in this Petition, I am guided by the words of his eminence, Chief Justice Samatta of Tanzania sitting with 2 other Justices in the case of **NDYANABO –V- ATTORNEY GENERAL (2001) 2 E.A. 485** when they said:

> **"We propose before commencing to examine the correctness or otherwise of Counsel's arguments, to allude to general principles governing Constitutional Interpretation which, in our opinion, are relevant to the determination of the issues raised by Counsel in this appeal. These principles may, in the interest of brevity, be stated as follows:- first, the Constitution of the United Republic of Tanzania is a living instrument, having a soul and consciousness of its own as reflected in the Preamble and fundamental objectives and Directive Principles of State Policy. Courts must, therefore endeavour to avoid crippling it by construing it technically or in a narrow spirit. It must be construed in time with the lofty purposes for which its makers framed it. So construed, the instrument becomes a solid foundation of democracy and the rule of law.**
>
> **………………………………………………………………………….**
>
> **………………………………………………………………………….**
>
> **Thirdly, until the contrary is proved, a legislation is presumed to be Constitutional. It is a**

sound principle of Constitutional construction that, if possible a legislation should receive such a construction as will make it operative and not inoperative. Fourthly, since, as stated a short while ago, there is a presumption of Constitutionality of legislation, save where a drawback or exclusion clause is relied upon as a basis of or Constitutionality of the legislation, the onus is upon those who challenge the Constitutionality of the Legislation, they have to rebut the presumption …"

I find the aforesaid principles enunciated by the Tanzanian Court to be apt, appropriate and relevant to the present applications by the parties herein. I now pose; if the presumption of Constitutionality of a legislation is held in such legal awe and sanctity, how can this High court be asked in effect to disregard its Constitutional jurisdictional limitations and disregard or tamper with express provisions of the Constitution itself?

The High Court in discharge of its functions, duties and confirming to its jurisdiction cannot do so in law or otherwise.

The High Court of Kenya is a legal creature of the Constitution and is therefore subject to/and inferior to the Constitution. I am of the firm view that the High Court has no legal or moral authority or power to sit on judgment or jurisprudential opinia over the Constitution of Kenya. It is only the Parliament vested with the will of the people of Kenya and the mandate to represent them and act on their behalf in accordance with the provisions of the Constitution that can purport to review, alter or amend the Constitution. Also at the appropriate time in the Constitutional development and progress of a Nation, the people of Kenya themselves can endeavour to alter the Constitution through a legally constituted Referendum. This is the ultimate instrument of legal devolution.

Lastly but not the least, a judge like my humble self holds the office of High Court judge under the provisions of Section 60 of the Constitution. The High Court is established under the said Constitutional provision and a judge is appointed under Section 61 of the Constitution.

Under Section 63 of the Constitution a High Court Judge shall only enter and assume the duties of his office when he has taken and subscribed the oath of allegiance to the Constitution. Section 63 provides as follows:-

"63 a judge of the High Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament."

I have referred to this provision as it is an important Constitutional provision. It is one of the reasons why I have made the decision in the matter to the effect that the High Court and I as the presiding Judge in this Constitutional matter is subject to the Constitution. All judges of the High Court and the Court of Appeal have subscribed and taken the Constitutional oath to protect and defend the Constitution of Kenya in the discharge of their respective duties. The applicable provision for the Court of Appeal is Section 64 (3).

On the basis of the said provisions and oaths taken no Judge ought to question the Constitutionality, legality, validity or propriety or otherwise of any Constitutional provision or the Constitution in its entirety. Equally, a judge sitting in the High Court in its interpretational functions cannot in law question the Constitution or purport to interpret or construe on any inconsistencies inter se or between various provisions of the Constitution.

On what basis can I as a Judge interpret or construe that section 60 is superior to Section 60A and therefore assume jurisdiction over matters or disputes touching on the Constitutional Review Process.

I do hereby hold that all Sections of the Constitutions of Kenya are the same and none is superior to the other. I do hold that there are and cannot be any inconsistencies between Sections of the Constitution of Kenya in the eyes of the High court and if there is such possibility then the High Court has no jurisdiction to entertain any matter inviting it to make any finding to that extent. That can only be the role of the Supreme law making body of the Legislature or Parliament or when the time comes the Referendum by the people of Kenya.

Finally and in conclusion, I decline to refer or transfer this matter to the Interim Constitutional Court for any directions, any action or otherwise. This court sitting as the High Court under Section 60, 65 and 84 does hereby down its pen for want of Constitutional jurisdiction.

What then happens to this petition and Proceedings?"

It has been overtaken by events. The Petitioners are at liberty to pursue their complaints under section 60A of the Constitution elsewhere. There must be finality in legal proceedings at any stage or level. No useful purpose shall be served by this Petition pending in the High Court Registry. It must be terminated. In this case, the best and appropriate way is to strike out the entire petition herein.

I, therefore, do hereby strike out the Petition dated 18th December 2009. In view of the circumstances of the matter and the outcome arising from the operation of the law, it is only fair that each party bears his/her/their costs respectively.

Orders accordingly.

DATED and DELIVERED at MOMBASA this 31st day of May 2010.

M.K. IBRAHIM
J U D G E

31-05-10

Coram:

Ibrahim J

Court clerk – Kazungu

Mr. Gikandi for the Applicants and also h/b for Mr. Munyithya and Mr. Tindika.

Mr. Njoroge for the Attorney General for the 1st Respondent

No Appearance for the Respondent

Mr. Khatib for the Interested Parties.

Ruling delivered in their presence.

IBRAHIM, J

Mr. Gikandi

We apply for certified copies of the Ruling and proceedings. We do not need to appeal. We wish to refer the issues to the Interim Court. Little time to the Referendum. We must move immediately. It will be rendered nugatory. My prayer is that it be certified and supplied by Wednesday or Thursday, we read.

This is a weighty matter jurisdictional issue. Section 60A. Time is of the essence. 4th August is round the corner. Money is being spent for the Referendum. Tax payers money at stake. Time is of essence.

Mr. Njoroge

We request for certified copies of proceedings and Ruling. We are comfortable with the decision of the court.

Mr. Khatib

We equally apply for the proceedings. Mr. Balala and Mr. Abed are now present in court.

Mr. Balala

We are satisfied with the decision. We need certified copies.

ORDER

Certified copies of proceedings and ruling be supplied to all parties on priority basis. The parties may be supplied with the copies handwritten ruling if necessary.

IBRAHIM, J