



**Obwoye & 2 others v Independent Electoral & Boundaries Commission &
4 others; Jubilee Party & 7 others (Interested Parties) (Election Petition
Appeal E002 of 2022) [2023] KEHC 18470 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
ELECTION PETITION APPEAL E002 OF 2022**

GMA DULU, J

JUNE 15, 2023

BETWEEN

**SAMUEL OBWOGE 1ST APPELLANT
ESTHER MORAA NYABAO 2ND APPELLANT
ALICE MAOBE 3RD APPELLANT**

AND

**THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 1ST
RESPONDENT
WAFULA WANYONYI CHEBUKATI 2ND RESPONDENT
COUNTY GOVERNMENT OF TAITA TAVETA 3RD RESPONDENT
THE GOVERNOR – TAITA TAVETA COUNTY 4TH RESPONDENT
CLERK OF THE COUNTY ASSEMBLY TAITA TAVETA
COUNTY 5TH RESPONDENT**

AND

**JUBILEE PARTY INTERESTED PARTY
ORANGE DEMOCRATIC MOVEMENT INTERESTED PARTY
PAMOJA AFRICAN ALLIANCE INTERESTED PARTY
WIPER DEMOCRATIC MOVEMENT INTERESTED PARTY
UNITED DEMOCRATIC ALLIANCE INTERESTED PARTY
TUJIBEBE WAKENYA PARTY INTERESTED PARTY
PEOPLE’S EMPOWERMENT PARTY INTERESTED PARTY**



RULING

1. Before me is an application filed by way of Notice of Motion dated April 13, 2023 by the appellants/ applicants, through counsel M/s Machora Motuka & Company Advocates.
2. The application was filed under Section 1A, 1B and 3A of the Civil Procedure Act (Cap 21), and Order 45(1) and 51 of the Civil Procedure Rules 2010 and seeks the following orders:-
 1. (Spent).
 2. That the court be pleased to review, vary and/or set aside its judgment of March 14, 2023 dismissing the petitioner’s appeal with costs and the appeal dated November 4, 2022 be allowed as prayed.
 3. That costs be in the cause.
3. The application has ground on the face of the Notice of Motion that the court dismissed the appeal in its entirety with costs, that the court made a fundamental error apparent on the face of the record by misconstruing the Election Rules and Regulations on extension of time on service while rendering judgment, that the court erred in finding that the regulations only permitted extension of time on service of pleadings from seven (7) days to fifteen (15) days, that the court failed to recognize as enumerated under Rule 19(2) of the Petition Rules that time for filing and duration of hearing of election petitions were the only two instances that time can never be extended.
4. The application was filed with a supporting affidavit sworn by Samuel Obwoye the 1st applicant/ appellant on April 13, 2023 which amplifies the grounds of the application, and also depones to the provisions of Article 87 and Article 159(2)(d) of the Constitution.
5. The application was canvassed through written submissions. In this regard, the submissions of the respondents were dated earlier than those of the appellants/applicants. I have perused and considered the submissions dated May 8, 2023 filed by Hassan Osman & Associates Advocates for 1st and 2nd respondents, the submissions dated May 8, 2023 filed by Kishagha Katema Advocates for 5th respondent, and the submissions dated May 12, 2023 filed by Machora Motuka & Company Advocates for the appellants/applicants. I have to acknowledge here that counsel on both sides have relied several decided cases.
6. This is an application for review of this court’s decision. Such an application has to be considered and determined in light of the provisions of Section 80 of the Civil Procedure Act (Cap 21), which states as follows.
 - “ 80. Any person who considers himself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it deems fit.”
7. The application herein is thus validly before this court for consideration and determination. The exercise of this courts powers in review are however only limited to correcting errors on the face of the record, not to correct substantive decisions of the court, even if those decisions are wrong. Substantive



decisions or findings of the court can only be corrected on appeal by a higher court – see *Republic =v= Advocates Disciplinary Tribunal – exparte Appollo Mbonya* (2019) eKLR where it was held by the court as follows:-

“...a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and shouldn’t require an elaborate argument to be established. It will not be sufficient grounds for review that another Judge could have taken a different view of the matter, nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.”

8. What I can decipher from the appellants/applicants contention herein is that they say that this court made a substantive error in its interpretation of the Election Petition Rules in regard to extension of time to serve legal process. They are not saying that this court relied on non-existent or the wrong provisions of the law, but that the court interpreted the correct law wrongly, in their opinion.
9. In my view, there was no error on the face of the record demonstrated by the appellants/applicants that can be corrected by this court. If this court made a wrong interpretation of the applicable law as alleged, then that can only be a ground for appeal to a higher court, and not a justification for any party to come to this court to correct an alleged error on the face of the record.
10. I find no merits in the application for review herein. I dismiss the Notice of Motion dated April 13, 2023 herein, and award costs of the application to the 1st, 2nd and 5th respondents. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF JUNE 2023 VIRTUALLY AT VOI.

GEORGE DULU

JUDGE

In the presence fo:-

Mr. Motuka for appellants/applicants

Mr. Arunda for 1st and 2nd respondents

Mr. Katema for 5th respondent

Mr. Otolu – court assistant

