REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Njoki, Lenaola, & Ouko SCJJ)

PETITION NO. E031 OF 2025

-BETWEEN-

SIMON KAMAU JOHANA.....APPELLANT

VERSUS

THE SECRETARY,

TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

THE CHAIRMAN, BOARD OF GOVERNORS

MAIUNI SECONDARY SCHOOL.....2ND RESPONDENT

(Being an appeal from part of the Judgment of the Court of Appeal (W. Karanja, W. Korir & G. V. Odunga, JJ. A) in Civil Appeal No. E 315 of 2024 delivered on 2nd May, 2025)

Representation:

Simon Kamau Johana, the Appellant
(Acting in Person)

Ms. Flora Manyasa, Advocate for the 1st Respondent
(Teachers Service Commission, TSC)

Ms. Christine Momanyi, State Counsel, for the 2nd Respondent
(Office of the Hon. Attorney General)

JUDGMENT OF THE COURT

A. INTRODUCTION

[1] The Petition of appeal, dated 12th June, 2025, and filed on 16th June, 2025, under Article 163 (4) (a) of the Constitution, challenges the Court of Appeal's decision delivered on 2nd May, 2025, which upheld the High Court's dismissal of the appellant's application dated 11th October, 2023. The application sought extension of time to file a substantive application for judicial review, orders of prohibition and *certiorari* to prevent the 1st and 2nd respondents from interdicting the appellant, and to quash their decision of 12th July 2006.

B. FACTUAL BACKGROUND

[2] The appellant was, at all material times, a teacher employed by the Teachers Service Commission (TSC) and serving at Ndalani Secondary School. He was interdicted by a letter dated 21st January, 1998, by the then Provincial Education Officer, Eastern Province. On 22nd September, 1999, he appeared before the TSC Disciplinary Committee for disciplinary proceedings, which resulted in a warning letter and his transfer to Maiuni Secondary School. In 2006, while at Maiuni Secondary School, he was elected as a Kenya Union of Post-Primary Education Teachers (KUPPET) Machakos District Branch Officer for Yatta and Katangi Divisions. The appellant soon discovered that his salary had been stopped without explanation. He sought clarification and was referred to the District Education Officer (DEO) in Machakos.

[3] On 12th September, 2006, the appellant was served with an interdiction letter dated 12th July, 2006, and a charge sheet annexed thereto, which disclosed the listed charges of inciting students against the school administration, insubordination,

negligence, and neglect of duty. Noting that the letter had been withheld for 60 days, and considering his prior experiences with the 1st respondent, he engaged an advocate, Mr. Richard Mutavi Matata of *M/s R. M Matata & Co. Advocates,* and filed judicial review proceedings on 22nd September, 2006.

[4] On 6th October 2006, *Onyancha J.* granted the appellant leave to file a substantive Motion seeking judicial review orders within 21 days of the grant of leave. However, the appellant failed to file the substantive Motion and only re- surfaced, seventeen (17) years later with an application dated 9th October, 2023 and filed on 11th October 2023, seeking an extension of time to file the substantive Motion and seeking orders of prohibition and *certiorari* to restrain the 1st and 2nd from interdicting him, and to quash their decision of 12th July 2006.

C. LITIGATION HISTORY

i. Proceedings at the High Court

[5] On 11th October 2023, the appellant instituted **Misc. Application No. 162 of 2006,** seeking an extension of time to file a substantive Judicial Review Motion seeking orders of *prohibition* and *certiorari* restraining the 1st and 2nd respondents from interdicting him, and to quash their decision of 12th July 2006, and that the leave should operate as a stay of the said decision. The appellant argued that although leave had been granted on 6th October 2006, his advocates (*M/s R.M. Matata & Co*.) had failed to file the substantive Motion within 21 days as directed by *Onyancha J*. He maintained that he diligently followed up with the aforementioned advocates, but they became uncooperative, and it was only upon obtaining court proceedings that he realised that no filing had been made. He argued that the oversight was attributable to his advocates' negligence, not his own; that the respondents would not suffer prejudice if time were extended; and that he was willing to comply with any conditions the court imposed.

[6] In reply, the 2nd respondent argued that the application was misconceived, incompetent, and that it was contrary to the Law

Reform Act, which does not provide for enlargement of time in judicial review proceedings. It further argued that the application was filed after an inordinate and unjustified delay, and that the court lacked jurisdiction to grant the relief sought.

[7] The High Court *(Olel J.)* in a ruling delivered on 22nd April, 2024 held that, the application was fatally defective as the provisions the appellant relied on, that is, Section 79 G of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules, were irrelevant to the application, as the issue at hand was not about extension of time to file an appeal out of time and/or stay of execution pending appeal. The learned Judge noted that leave was granted to the appellant on 29th September, 2006, and he was given 21 days to file a substantive Judicial Review Notice of Motion, and highlighted that the appellant slept on his rights for seventeen (17) years before waking up to finally move the court in October, 2023.

[8] On *inordinate delay*, the court held that the explanation offered was weak and escapist; that the period of delay was prolonged and unjustifiable, as the appellant had failed to explain what prevented him from filing his application promptly after realizing that his advocate had not moved the court. The learned Judge also observed that the appellant slept on his rights, moved the court only as an afterthought, and was therefore undeserving of any equitable remedy.

[9] On *the request for enlargement of time*, the court held that the Law Reform Act does not permit enlargement of time once the leave period has lapsed, and that the court could not grant such relief in a vacuum without a legal basis. The court also found it unjust to reopen issues dating back 17 years, when most witnesses were no longer in service. Finally, the court held that since the interdiction challenged had taken effect in July 2006, no order of *certiorari* could issue at this late stage, as the court cannot grant orders in vain.

ii. Proceedings before the Court of Appeal

[10] Aggrieved by the High Court's decision, the appellant moved the Court of Appeal vide **Civil Appeal No. E315 of 2024** premised on six (6) grounds, which can be summarized as follows:

i. *The learned trial Judge failed to grant the appellant an opportunity to file written submissions in support of his application.*

ii. *The learned trial Judge erred in law by failing to fully appreciate the law as it relates to extension of time and thereby misdirecting himself on the same issue.*

iii. *The learned trial Judge erred in law by disregarding the reasons advanced by the appellant in support of his application for extension of time for leave to file a substantive Motion for Judicial Review orders.*

iv. *The learned trial Judge erred in law and in fact by failing to appreciate that the respondent had not rebutted the evidence/reasons presented to the trial Judge for extension of time to file a substantive application for Judicial Review orders, and instead casually dismissed the appellant's application.*

[11]The appellant therefore sought orders that:

a) *The Ruling of the High Court delivered on 22nd April, 2024, by Hon. Justice Francis Rayola Olel be set aside and/or quashed.*

b) *The said Ruling/order be replaced by an order allowing the appellant to file a substantive Motion for Judicial Review.*

[12] In its judgment delivered on 2nd May, 2025, the Court of Appeal *(W. Karanja, W. Korir & G.V Odunga, JJ. A*), recognized that the only issues that emerged for their determination were: *whether the learned Judge had jurisdiction to extend time; and if he did, then whether in dismissing the application, he exercised his discretion properly.*

[13] On *extension of time*, the appellate court held that a distinction

must be drawn between an application for extension of time to seek leave to institute a Judicial Review application and an application to extend time for filing the substantive Motion after leave had been granted. The court added that the Law Reform Act strictly limits the period for seeking leave, and does not allow extension of time, but the period for filing a substantive Motion is prescribed

under Order 53 rule 3 (1) of the Civil Procedure Rules, which, read with Order 50 Rule 6, empowers the Court to enlarge time in appropriate circumstances. Accordingly, the appellate court found that the learned Judge had jurisdiction to extend the time for filing the substantive Motion, and his holding to the contrary was erroneous.

[14] *On the learned Judge's discretionary power to enlarge time*, the appellate court held that such jurisdiction is discretionary and must be exercised in accordance with sound judicial principles. The court further maintained that litigants have a duty to follow up on their cases even after they hand them over to their advocates. Further, while in certain instances it may be unjust to hold the client responsible for an advocate's infractions, the client also bears responsibility for showing the steps he took in pursuing his case. Additionally, an applicant seeking an extension of time must place before the court relevant material on which the court can exercise its discretion in the applicant's favour. In the present case, the appellant, who delayed for seventeen (17) years, offered no sufficient explanation beyond blaming counsel and failed to demonstrate diligence in pursuing his case. In those circumstances, the appellate court found that the trial Judge had properly declined to extend the time. The court similarly found no basis to interfere with the High Court's exercise of discretion. The appellate court further added that, since the appellant had been dismissed from employment, no useful purpose would have been served by allowing the application.

[15] Ultimately, the appellate court found no basis to interfere with the High Court's decision and dismissed the appeal with costs.

iii. At the Supreme Court

[16] Undeterred, the appellant has now filed the instant appeal

challenging part of the decision of the Court of Appeal on the following four grounds *viz*:

a. *It was unfair to deny the appellant an extension and indirectly deny him a right to a dignified life as per Article 28, economic and social rights against Article 43 of the Constitution;*

b. *It was unfair not to extend time in order to look at the constitutionality of the interdiction decision when its effects are still there today;*
c. *It was unfair not to extend time in order to hold the 1st and 2nd respondents accountable for the administrative action taken on 12th July, 2006, and on the basis of technicalities against Article 23(3)(d);*
d. *Considering that the matter had commenced in accordance with Article 22(3)(d), it is unfair to stop it midway by not extending time, even having been given reasons.*

[17] Accordingly, the appellant seeks the following reliefs:

1. *The Court ought to quash or set aside the Ruling of the High Court (Olel J.) dated 22nd April, 2024 together with the Court of Appeal Judgment dated 2nd May, 2025 and replace it with an order that the matter proceed to full trial at the High Court through extension of time so that the constitutionality of the interdiction decision can be determined.*
2. *OR, provide a platform for arbitration, since, other than causing psychological trauma, it has been very exhaustive to pursue justice.*

[18] In opposing the petition of appeal, the 1st respondent filed grounds of opposition dated 8th July, 2025, while the 2nd respondent filed grounds of objection dated 8th July, 2025, wherein they both contend that the petition does not meet the jurisdictional threshold of this Court. They also contend that the dispute does not involve the interpretation or application of the Constitution and therefore does not fall within the scope of Article 163 (4) (a) of the Constitution or Section 15 A of the Supreme Court Act. Further, the respondents contend that the constitutional provisions cited by the

appellant were neither in issue nor decided by the courts below, and they therefore urge that the petition of appeal lacks merit, is misconceived and bad in law, and should be dismissed with costs.

[19] In rejoinder, the appellant argues that the Supreme Court has unlimited jurisdiction over matters already decided by the Court of Appeal, especially when they involve the interpretation or application of the Constitution. He also contends that the respondents' unfair administrative actions caused him psychological trauma, forcing him to rely on hope, which he finds unreasonable. He further emphasizes that only the Supreme Court remains capable of deterring such injustices, as the High Court and Court of Appeal judges had failed to give his case proper attention, opting instead to rely on unnecessary procedural technicalities. Additionally, he urges this Court to take firm action and deliver justice by hearing the case on its merits.

D. PARTIES' SUBMISSIONS

i. The Appellant's submissions

[20] The appellant's written submissions in support of the appeal, dated 1st August 2025 and filed on 19th August 2025, are as follows.

[21] On the issue of *inordinate delay*, he submits that the courts below failed to consider the applicability of Article 159 (2) (b) of the Constitution, and the High Court should have acted *suo moto* and without delay in dispensing justice instead of demanding action from him after 17 years. Further, the High Court and the Court of Appeal spent time discussing the delay in filing the substantive motion rather than examining the merits of the matter. He further contends that, as a result of the respondent's unfair administrative actions together with the actions of his advocate who is an officer of the court, he was traumatized as his role changed from a sole breadwinner to a dependent and had to witness his family lack the anticipated standards of health as well as having his children fail to access the expected levels of education due to his financial status.

He also attributes his failure to contest a political seat in 2012 to the respondents, as he had the potential to win any election, having held a KUPPET position in the Yatta and Katangi Divisions, which formed the larger Yatta Constituency.

[22] He urges the Court to consider, therefore, that, unlike an advocate, he has not attended any law school, and that the more time spent debating

technicalities, the more his social and emotional situation worsens. This is due to the constant need to convince the courts below to hear the matter on its merits, as the impugned letter from one Joseph Muthama Munguti maintains the status quo. Additionally, he urges the Court to invoke Article 27 of the Constitution and recognize his right to equal protection and equal benefit of the law. He also argues that the unfair administrative action in the letter dated 12th July 2006, which interdicted him, should be regarded as a historical injustice, assessed on its merits, and remedied. He contends, in that context, that, before the 2010 Constitution, the government was not focused on inherent human rights and that the previous Constitution lacked a provision similar to Article 160(1), which directs courts to be subject only to the Constitution and the law.

[23] *Regarding his advocates' negligence*, he asserts that the superior courts handled his case without regard to Section 55 of the Advocates Act, which treats advocates as officers of the court with a duty to uphold the law, promote justice, and maintain the integrity of the court system. He specifically faults the Court of Appeal judges for selectively quoting precedents that would favour their fellow lawyers and associates in the Law Society of Kenya.

[24] He further argues that the Court of Appeal failed to give him enough time to make his oral submissions, did not provide prior notice of the allocated time for oral submissions, and limited his written submissions to 12 pages. This limitation, he believes, constitutes an unfair hearing under Article 50 of the Constitution. Furthermore, he claims that the court's denial of his request for an extension of time unfairly restricted his constitutional rights under Article

24. He also asserts that, due to the lack of employment resulting from the impugned Ruling, his rights to the highest attainable

standard of health and adequate housing under Article 43 were violated.

[25] In the appellant’s view, his application for an extension of time should be granted in the interest of justice for both parties; to allow the court to complete the work that began in 2006; and because the respondents, as State agents, did not indicate any prejudice they would suffer after maintaining the status quo, noting that *Onyancha J*. did not grant a stay despite the appellant's difficulties.

[26] The appellant, lastly, argues that the Ruling of 22nd April, 2024, and the judgment of 2nd May, 2025, lack support in the Constitution or the Civil Procedure Rules, relying solely on selective precedents. He therefore urges this Court to adopt a more progressive approach to Judicial Review by moving away from the traditional restrictive perspective.

ii) The 1st Respondent's Submissions

[27] In opposing the appeal, the 1st respondent, TSC, in its written submissions dated 15th August, 2025 and filed on 25th August, 2025, submits as follows.

[28] *On jurisdiction*, the 1st respondent posits that the appeal does not lie as of right under Article 163 (4) (a) of the Constitution as it does not relate to any question of interpretation and application of the Constitution that was raised and determined by either the High Court or Court of Appeal. The 1st respondent further posits that the substratum of the appeal relates to the superior courts' exercise of discretionary power to extend time, an issue which the Court of Appeal determined without undertaking any interpretation or application of the Constitution. Further, due to the discretionary nature of any application for extension of time, the impugned decision can only be substituted on appeal if it is manifestly clear that such exercise of discretion was injudicious, wrong, and resulted from a misdirection.

[29] In light of the foregoing, the 1st respondent submits that this Court's jurisdiction is not properly invoked and the appeal fails to meet the threshold set out in the case of ***Lawrence Nduttu & 6000 others Vs Kenya Breweries Ltd & another*** (Petition 3 of 2012) [2012] KESC 9 (KLR) and should be dismissed with costs.

iii) The 2nd Respondent's submissions

[30] In opposing the appeal, the 2nd respondent, in its submissions dated 29th July, 2025 and filed on 19th August, 2025, joins issue with the 1st respondent and further argues that the appeal fails to qualify as a matter raising issues of general public importance, as the issues do not transcend the rights and

interests of the parties in the case. It further argues that the appeal seeks to bring back to life that which is already dead, and therefore, the appeal has no merit and should be dismissed.

iv) The Appellant's submissions in rejoinder

[31] In rejoinder, the appellant urges that the High Court erred in declining to grant him an extension of time to file his substantive application. This was achieved by *firstly* focusing on the 17-year delay, and ignoring the appellant's trauma, which the court termed as weak and escapist. He relies on the case of ***A Vs Hoare*** [2008] 1 AC 844 to argue that the injustice to a claimant who may have been deprived of a claim may be balanced against the injustice of a defendant who may be called to defend himself long after the fact, when crucial evidence may no longer be obtainable. The appellant further argues that the reasons for the delay are highly relevant and that a fair trial is possible long after an event. He contends that the respondents contributed to the delay by unfairly withholding his salary and that it was not possible to retain a new advocate due to lack of funds.

[32] *Secondly*, he contends that the High Court did not consider that the matter was *ex parte*, and that, as he had counsel to represent him, he was not required to appear before the court in person. The responsibility, therefore, was on his counsel and not him to explain any delay in filing the substantive Motion for Judicial Review orders. Further, that denying him extension of time was wrong as he was not privy to the information as to what transpired on 12th July, 2006, which goes against Article 35 (1) (b) of the Constitution, yet it was required for the protection of right to a dignified life pursuant to Article 28 of the Constitution, and which can only be limited in compliance with Article 24 of the Constitution.

[33] The appellant has also urged that the reasoning that his

defence was weak and escapist was unjustified, since no court records absolved his counsel of negligence, thereby depriving the appellant of a competent defence in violation of his right to a fair hearing, contrary to Article 50 of the Constitution. He further urges that Article 159 (2) of the Constitution was not given effect to, and

that the appellant continues to suffer as a result of unfair administrative action in violation of Article 47 of the Constitution, yet the courts were unwilling to perform their constitutional mandate.

[34] He relies on the case of ***Wangu Wamwere & 5 others Vs Attorney General*** [2023] KESC 3 (KLR) first to urge that even where specific constitutional provisions cannot be identified as having formed the gist of the cause at the Court of Appeal, the Court can still consider a matter where a litigant can demonstrate that the decision of the Court of Appeal led to the determination of an issue that took a trajectory of constitutional interpretation and application. It is his submission in that regard that the learned Judges erred in law in misapplying and misinterpreting the provisions of Articles 22 (2) (a), 50, 27 (1), 43, 22 (3) (b), 22(1), 28, 35 (1), 47, 159 (2)(a), (b), (d) and (e) of the Constitution as it relates to Judicial Review and national values and principles of governance that is the rule of law, human dignity, social justice, human rights, accountability, good governance, equality and equity.

[35] The appellant lastly posits that the High Court's reasoning that some witnesses may have left service, despite there being no evidence on record to support that assumption, was erroneous. He contends instead that public servants should be held accountable for their actions even after leaving service. To illustrate his position on this point, he argues that a police officer cannot justify shooting a colleague simply because he is due to retire the following month, to a headteacher who cannot misuse authority under the guise of imminent retirement.

E. ISSUES FOR DETERMINATION

[36] Having considered the respective parties' pleadings and submissions in the instant petition of appeal, this Court is of the considered view that the following issues crystallize for our

determination:

a. *Whether this Court has jurisdiction to hear and determine the appeal, and if so;*

b. *Whether the High Court has jurisdiction to extend the time to file a substantive Judicial Review application;*
c. *Whether the appellant's rights were violated; and*
d. *Whether the appellant is entitled to the reliefs sought.*

F. ANALYSIS AND DETERMINATION

i. Whether this Court has the jurisdiction to hear and determine the appeal

[37] The 1st and 2nd respondents have raised a preliminary objection on jurisdiction, contending that this Court lacks jurisdiction to hear and determine this petition as it does not involve the interpretation or application of the Constitution and therefore does not lie as of right under Article 163 (4) (a) of the Constitution. In particular, the 1st respondent submits that the issue for determination before the superior courts was narrow and specific: whether the appellant was entitled to an extension of time to file a substantive Judicial Review application seventeen (17) years after leave had been granted.

[38] The respondents further submit that the superior courts did not address any question involving the interpretation and application of the Constitution, and that the appellant's reliance on alleged violations of his rights under Articles 22 (2) (a), 50, 27 (1), 43, 22 (3) (b), 22 (1), 28, 35 (1), 47, 159 (2) (a), (b), (d) and (e) of the Constitution constitutes a departure from the case presented before the superior courts below.

[39] Article 163 (4) (a) of the Constitution states as follows:

> ***"(4) Appeals shall lie from the Court of Appeal to the Supreme Court-***
>
> **(a)** ***As of right in any case involving the interpretation or application of the***

***Constitution*."**

[40] Jurisdiction is fundamental to any cause or dispute before a court of law. As a general rule, this Court bears a duty to undertake a jurisdictional inquiry to satisfy itself that it is properly seized of the matter. In doing so, the Court

must determine whether the issues in contest involve the interpretation or application of the Constitution, and whether the constitutional question has been considered by the superior courts below and has duly progressed through the appellate process.

[41] This Court, in the case of ***Lawrence Nduttu & 6000 others Vs Kenya Breweries Ltd & another*** [2012] KESC 9 (KLR), set down the guiding principles on its Article 163 (4) (a) jurisdiction as follows:

> *"(28) The appeal must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of the Constitution. In other words, an appellant must be challenging the interpretation or application of the Constitution which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation.* ***Where the case to be appealed from had nothing or little to do with the interpretation or application of the Constitution, it cannot support a further appeal to the Supreme Court under the provisions of Article 163(4)(a)."***

[42] Further, in the case of ***Rutongot Farm Ltd Vs Kenya Forest Service & 3 Others*** [2018] KESC 27 (KLR), this Court determined that, in order to address the issue of whether the court has jurisdiction or not, the questions that need to be answered are:

> *" i. What was the question in issue at the High Court and the Court of Appeal?*
>
> ***ii.*** *Did the superior courts below dispose of the matter after interpreting or applying the Constitution?*
>
> ***iii.*** *Does the instant appeal raise a question of*

constitutional interpretation or application, which was the subject of judicial determination at the High Court and the Court of Appeal? ”

[43] We have examined the background of the dispute in the superior courts, which dates back to 22nd September 2006, when the appellant instituted Judicial Review proceedings, and was granted leave to file the substantive Motion within twenty-one (21) days. The appellant failed to comply with the court's directions and resurfaced seventeen (17) years later seeking an extension of time to file the Motion, attributing the delay to his former advocates, *M/s*
R.M. Matata & Co. Advocates, and a lack of funds arising from his interdiction by the 1st respondent.

[44] The application before the High Court, dated 11th October 2023**,** was filed under Section 79G of the Civil Procedure Act and Order 42, Rule 6 of the Civil Procedure Rules. The appellant sought an extension of time to file the substantive judicial review application, following leave granted by *Onyancha J* on 6th October 2006. The High Court dismissed the application, holding that the provisions relied upon by the appellant were irrelevant, as they pertained to appeals or to stays of execution, not to extensions for filing a substantive motion. The dismissal was based on two grounds: the inordinate delay in filing the substantive motion, and the fact that the Law Reform Act does not permit enlargement of time once the leave period has lapsed. The court further noted that reopening matters dating back seventeen (17) years would be unjust, as most witnesses were no longer in service.

[45] At the Court of Appeal, the court considered*, inter alia, whether the learned Judge had jurisdiction to extend time and, if he did, whether, in dismissing the application, he exercised his discretion properly.* The appellate court determined that the High Court had discretionary power to extend time to file a substantive Motion in a judicial review application, but found that the appellant had not offered sufficient explanation for the 17-year delay and had

failed to demonstrate diligence in pursuing his case, determining that the learned Judge had properly declined to extend jurisdiction and dismissed the appeal.

[46] Before this Court however, the appellant has brought his appeal under Article 163 (4) (a) of the Constitution and cites violation of his constitutional

rights under Articles 22 (2) (a), 50, 27 (1), 43, 22 (3) (b), 22 (1), 28, 35 (1), 47,
159 (2) (a), (b), (d) and (e) of the Constitution. He also cited Article 160 of the Constitution on the exercise of judicial authority. The appellant further argues that, by denying his application for an extension of time, the court unfairly limited his constitutional right under Article 24 and subjected him to an unfair hearing under Article 50 of the Constitution. Lastly, he argues that, due to his lack of employment, his rights to the highest attainable standard of health and to adequate housing under Article 43 of the Constitution were violated.

[47] We observe that these allegations of violations of fundamental rights and freedoms were not canvassed before the superior courts below and were raised before this Court for the first time. In any event, such arguments could only have been included and argued, if at all, in the substantive motion that was otherwise never filed, depending also on whether the leave sought included such arguments.

[48] As demonstrated in the ***Rutongot Farm Case***, this Court's jurisdiction is circumscribed, and its exercise depends on resolving one key question: what issue was before the High Court and Court of Appeal? Upon examining the pleadings and the resulting decisions, it is clear that the only issue determined by the superior courts in this case was the appellant's request for an extension of time to file Judicial Review proceedings. In our view, this issue does not fall within the scope of Article 163 (4) (a) and therefore does not warrant the intervention of this Court.

[49] From the foregoing analysis, it is our finding, that the appellant has failed to directly identify specific instances where the High Court and the Court of Appeal erred in the interpretation and application of the Constitution relevant to his case; the appellant's

case was based solely on factual issues and the application of statutes including the Law Reform Act, the Civil Procedure Code, and the Civil Procedure Rules. For this reason, this Court lacks jurisdiction to hear this appeal.

[50] Having so held, the appeal is hereby dismissed for want of jurisdiction.

F. COSTS

[51] We note that both the High Court and the Court of Appeal awarded costs to the respondents. However, in light of the nature of the issues raised by the appellant, and guided by our decision in ***Jasbir Singh Rai & 7 Others Vs Tarlochan Singh Rai & 4 Others*** [2013] KESC 20 KLR that the Court, on the need to accommodate the special circumstances of each case in the exercise of discretion on costs, we are inclined to a determination that there shall be no orders as to costs of this appeal.

[52] CONSEQUENTLY, and for the reasons aforesaid, we make the following orders:

i. ***The Petition of Appeal dated 12th June 2025 and filed on 16th June 2025 is hereby dismissed for want of jurisdiction;***
ii. ***Each party shall bear its costs of the appeal; and***
iii. ***We hereby direct that the sum of Kshs. 6,000/- deposited as security for costs upon lodging of this appeal be refunded to the appellant.***

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this **30TH** day of **JANUARY 2026**

.....

M.K. KOOME
CHIEF JUSTICE &
PRESIDENT OF THE
SUPREME COURT

..... **.....**

P.M MWILU **NJOKI NDUNGU**

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT JUSTICE OF THE SUPREME OF OF THE SUPREME COURT COURT

……

……

I. LENAOLA **W. OUKO**

JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the

original. REGISTRAR,

SUPREME COURT OF KENYA