

**IN THE COURT OF  
 APPEAL AT NAIROBI  
 CIVIL APPEAL (APPLICATION) E031 OF  
 2026 (CORAM: KORIR, ONG’UDI &  
 OKONG’O JJ.A.) BETWEEN**

**ATTORNEY GENERAL.....APPLICANT**

**AND**

**KATIBA INSTITUTE.....1<sup>ST</sup>  
 RESPONDENT**

**PUBLIC SERVICE COMMISSION.....2<sup>ND</sup>  
 RESPONDENT**

**DAVID NDII.....3<sup>RD</sup> RESPONDENT**

**MONICA JUMA.....4<sup>TH</sup>  
 RESPONDENT**

**JAOKO OBURU.....5<sup>TH</sup>  
 RESPONDENT**

**MAKAU MUTUA.....  
 ....6<sup>TH</sup> RESPONDENT**

**HARRIET  
 CHIGAI.....7<sup>TH</sup> RESPONDENT**

**ALI  
 MAHAT SOMANE.....8<sup>TH</sup> RESPONDENT**

**ABDI GULIYE.....9<sup>TH</sup>  
 RESPONDENT**

**DOMINIC  
 MENJO.....10<sup>TH</sup> RESPONDENT**

**SYLVIA KANG’ARA.....11<sup>TH</sup>  
 RESPONDENT**

**EDWARD  
 KISIANG’ANI.....12<sup>TH</sup> RESPONDENT**

**JOSEPH BOINNET.....13<sup>TH</sup>  
 RESPONDENT**

**SYLVESTER KASUKU.....  
 ....14<sup>TH</sup> RESPONDENT**

**NANCY LAIBUNI.....15<sup>TH</sup>**  
**RESPONDENT KENNEDY**  
**OGETO.....16<sup>TH</sup> RESPONDENT**  
**AUGUSTINE CHERUIYOT.....17<sup>TH</sup>**  
**RESPONDENT**  
**HENRY KINYUA.....18<sup>TH</sup> RESPONDENT**  
**JOE AGER.....19<sup>TH</sup>**  
**RESPONDENT**  
**KARISA NZAI.....20<sup>TH</sup> RESPONDENT**

**MOHAMMED HASSAN.....21<sup>ST</sup> RESPONDENT**  
**STEVEN OTIENO.....22<sup>ND</sup> RESPONDENT**  
**CHRISTOPHER DOYE NAKULEU.....23<sup>RD</sup> RESPONDENT**  
**SALARIES AND REMUNERATION**  
**COMMISSION.....24<sup>TH</sup>**  
**RESPONDENT**

*(Being an application for stay of execution of the Judgment of the High Court at Nairobi (Hon. Justice Bahati Mwamuye) delivered on 22<sup>nd</sup> January 2026*

*in*

***High Court Constitutional Petition No. E317 of 2025)***

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### **RULING OF THE COURT**

1. The Applicant herein has moved this Court through an application dated 27<sup>th</sup> January 2026, brought under Articles 25, 47 and 50 of the Constitution and sections 3, 3A & 3B Appellate Jurisdiction Act, The Judicature Act and Rule 5(2)(b) of the Court of Appeal Rules seeking orders, inter alia:

- i. Spent.***
- ii. Pending the hearing and determination of this application and the intended appeal there be a stay of the judgment and orders of Hon Justice Bahati Mwamuye made on 22<sup>nd</sup> January, 2026 in High Court Constitutional Petition No. E 317 of 2025, Katiba Institute -VS- Attorney General and 2 others pending the hearing and determination of the intended appeal.***
- iii. Pending the hearing and determination of the application and the intended appeal, the court of appeal be pleased to issue an order suspending the declaration of unconstitutionality of the creation of the Office of Presidential***

**Advisors.**

**iv. Withdrawn.**

**v. The costs of this application be provided for.**

2. The application is premised on the grounds on its face as well as the affidavit of Arthur A. Osiya, the Principal Administrative Secretary in the Executive Office of the President, sworn on even date. He stated that unless a conservatory order staying the execution of the judgment and orders of 22<sup>nd</sup> January 2026 in Nairobi Constitutional Petition No. E312 of 2025 is granted pending the hearing and determination of the intended appeal, the appeal if successful will be rendered nugatory.
3. He further stated that the impugned judgment and consequential orders had technically rendered the Executive Office of the President inoperative and ineffective. He added that issuance of conservatory orders of stay is to preserve the substratum of the appeal and it is in the public interest that the orders sought be granted.
4. The 2<sup>nd</sup> Respondent supported the application through a replying affidavit sworn on 10<sup>th</sup> February 2026 by its Secretary/Chief Executive Officer, Paul Famba. He stated that it is in the interest of justice that stay of execution is granted for several reasons among them being that the advisors affected by the impugned judgment were engaged in

advising the President on critical matters of national security, foreign relations, economic policy, intergovernmental coordination and constitutional affairs. Thus, their abrupt removal without hand-over posed a grave risk to continuity and the ability of the President to perform his functions.

5. Opposing the application, the 1<sup>st</sup> Respondent in its replying affidavit sworn by its litigation manager, Emily Kimana, on 16<sup>th</sup> February 2026 stated that the Applicant's application is not merited since it had not met the test for grant of stay orders. That the Applicant had not shown how it will suffer irreparable harm, how the appeal will be rendered nugatory and whether the public interest favours the grant of the relief sought.
6. She further stated that no gap in the executive will be occasioned by failure to grant stay and instead, there will be duplication of functions and wastage of public resources if the former advisors are allowed to step back into office. She added that it is the 1<sup>st</sup> Respondent and Kenyans who will be prejudiced if stay orders are granted.

7. When the application came up for hearing on 23<sup>rd</sup> February 2026, the learned Solicitor General, Mr. Mose led learned counsel Mr. Mutinda, Deputy Solicitor General; learned counsel Mr. Thande Kuria, Chief State Counsel; and learned counsel Mr. Wachira, Deputy Chief State Counsel for the Applicant. Learned counsel Mr. Malidzo Nyawa and Ms. Mokku appeared for the 1<sup>st</sup> Respondent while learned counsel Mr. Odukenya represented the 2<sup>nd</sup> Respondent. Learned counsel Mr. Issa led learned counsel Mr. Somane and learned counsel Mr. Nura for the 3<sup>rd</sup> to 23<sup>rd</sup> Respondents. There was no appearance for the 24<sup>th</sup> respondent.
8. Counsel agreed to rely on their respective written submissions save for the 2<sup>nd</sup> Respondent's counsel who opted to rely on their replying affidavit. In addition, all counsel made oral highlights at the plenary.
9. Relying on the submissions dated 10<sup>th</sup> February 2026, counsel for the Applicant appreciated that to succeed in an application like the one before the Court, the Applicant must satisfy the two-limb test which requires demonstrating that the intended appeal is arguable meaning that it is not frivolous and that it would be

rendered nugatory if the stay

is denied. The decisions of the Court in **Reliance Bank Limited (in liquidation) vs. Norlake Investments Limited (Application No. Nai. 93 of 2002** and **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR** were cited to highlight the twin principles and that an arguable appeal need only raise a single bona fide issue worthy of judicial determination. Additionally, **Kassam & 11 Others v Mwangi & 12 Others [2025] KECA 511 (KLR)** was cited for the proposition that the Court's discretion to grant a stay is wide and should be exercised to preserve the efficacy of the appellate process.

10. Regarding the first limb, learned counsel submitted that the appeal is arguable because the High Court allegedly misapplied principles of constitutional interpretation. Further, that the President's advisors were appointed in strict compliance with **section 27 of the Public Commission Act** as well as **Regulation 27 of the Public Service Commission Regulations**. Referring to the decision of the House of Lords in **Minister of Home Affairs (Bermuda) v Fisher (1980) AC 319**, counsel submitted that the hallmark of constitutionalism is to curb

arbitrariness and limit discretion

but not to subject the decision makers to a "*tyranny of tabulated legalism*" that ignores the margin of discretion afforded to the President. The decision in **Pharmaceutical Manufacturers of SA: In re Ex Parte President of the Republic of South Africa 2000 (2) SA 674 (CC)** was relied on in arguing that the minimum threshold for executive action is rationality, and courts should not substitute their own opinions for those of the authorized functionary if the decision is objectively rational. Furthermore, counsel challenged the High Court's issuance of dispositive orders against "Interested Parties" without appreciating the import of **Regulation 27 of Public Service Commission Regulations** which confers a wide discretion upon the President to appoint staff personal to his office. Counsel cited the holding of the Supreme Court in **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR** for the proposition that interested parties are not typically the proper subjects of final relief.

11. Counsel further asserted that the High Court expanded the doctrine of public participation beyond its proper scope. Citing the decision in **British American Tobacco**

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**v Cabinet Secretary for the Ministry of Health [2019] eKLR**, he argued that public participation must be contextual and proportionate and that not every executive decision requires the same procedural threshold. Counsel submitted that the appeal also questions the proportionality of the remedies granted. On this he made reference to the decision in **Mitu-Bell Welfare Society v Kenya Airports Authority [2021] eKLR**, where the Supreme Court emphasized that constitutional remedies must be context-sensitive and mindful of the practical consequences. Counsel cited the decision in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR** and submitted that the High Court failed to adequately weigh public interest and institutional stability. Counsel pointed out potential internal inconsistencies in the judgment, noting that in **Judicial Service Commission v Speaker of the National Assembly [2013] eKLR** the Court observed that consistency between judicial findings and orders was fundamental to sound judicial reasoning.

12. On the second limb, counsel argued that immediate execution of the judgment would cause irreparable harm

to

governance and operations in the office of the President. Citing the decision in the Australian High Court case of **Federal Commission of Taxation v Myer Emporium Ltd [1986] 160 CLR 220**, he submitted that special circumstances herein justify the departure from the rule that a successful litigant is immediately entitled to the fruits of litigation. Urging the Court to stay the impugned judgment, counsel cited the decision in **Public Service Commission & 72 Others v Okiya Omtatah & 4 Others [2021] KECA 392 (KLR) (CAS 1)**, where a stay order was granted because the officers were already in office and their abrupt removal would cause institutional disruption. Counsel distinguished the present case from **Attorney General v Matindi & 55 Others [2023] KECA 1475 (KLR) (CAS 2)**, where a stay was denied because the appointees had not assumed office, meaning there was no existing institutional framework to preserve. Counsel for the applicant concluded by submitting that failure to stay the judgment would leave the Office of the President without institutional capacity, rendering any eventual appellate success meaningless.

13. Supporting the application, counsel for the 2<sup>nd</sup> Respondent while relying on their replying affidavit dated 10<sup>th</sup> February 2026, orally submitted that when the advisors were appointed, they were given duties to execute. That they were equally facilitated in terms of the government resources. Further, that if the impugned judgment is to be implemented, the said advisors will not have an opportunity to a handover supposing they had to. He added that there is a risk that the government properties may not be accounted for. Lastly, on the issue of the arguability of the appeal, counsel concurred with the Applicant's arguments on the issue and urged the Court to issue stay orders.
14. Equally supporting the application, counsel for the 3<sup>rd</sup> to 23<sup>rd</sup> Respondents through submissions dated 20<sup>th</sup> February 2026 argued that the Court has the necessary jurisdiction to grant the stay order sought under **Rule 5(2) (b) of the Court of Appeal Rules**. To justify the need to grant an order of stay, counsel argued that the intended appeal is arguable and not frivolous. He cited the decision in **Kwale International Sugar Company Limited v EPCO Builders Limited & 2 Others [2020] KECA 499 KLR** to

define an arguable appeal as one

raising issues that deserve serious consideration and determination by the Court. He further submitted that the grounds of appeal include: the High Court's alleged misinterpretation of **Article 132(4) of the Constitution** regarding the President's power to appoint advisors; the failure to consider unchallenged statutory frameworks; and, contradictory findings regarding the role of the Salaries and Remuneration Commission (SRC).

15. Counsel emphasized the nugatory test, citing the holding in **Ahmed Musa Ismael vs. Kumba ole Ntamorua & 4 Others [2014] KECA 689 (KLR)** that a stay is essential to preserve the integrity of the appellate process, ensuring that a successful appeal does not become a mere academic ritual or a pyrrhic victory due to irreversible harm or loss occurring in the interim. He argued that without stay, the disruption to the President's office and the professional prejudice to the advisors would be permanent.
16. Further cited were the decisions in **Kenya Revenue Authority vs. Robert Anyisi & Nairobi County Government [2020] KECA 720 (KLR)** and **Njuguna S. Ndungu vs. Ethics & Anti-Corruption Commission**

**& 3**

**Others [2015] eKLR**, with counsel submitting that the Court's inherent jurisdiction allows it to stay the implementation of a judgment in the interest of justice even if it is perceived as a negative order.

17. Counsel urged the Court to apply the principle of proportionality, as discussed in **Sicpa Securities Sol. SA vs Okiya Omtata Okoiti & 2 Others [2018] KECA 613 (KLR)** and **Kenya Pipeline Company Limited v Stanley Munga Githunguri [2011] eKLR** which requires the Court to balance the competing interests of the parties while pursuing the overriding objective of justice. Citing the Supreme Court's decision in **Cabinet Secretary for the National Treasury and Planning & 4 Others v Okiya Omtatah Okoiti & 53 Others, SC Petition No. E031 of 2024 (Consolidated) (Ruling dated 5<sup>th</sup> September 2024)** and **Munya v Kithinji & 2 others (supra)**, counsel argued that in matters involving public interest and governance stability, the Court must weigh the need for executive continuity against other rights. He also made reference to the U.S. Supreme Court case of **Maryland vs Alonzo Jay King, 133 S. Ct. 1 (2012)** and submitted that restraining a State from

effectuating its

statutes constituted a form of irreparable injury. The Court was therefore urged to allow the Applicant's application.

18. Through submissions dated 18<sup>th</sup> February 2026, counsel for the 1<sup>st</sup> Respondent in opposition to the application asserted that a stay of execution for a declaration of constitutional invalidity was an exceptional relief that should be granted only in limited cases. He cited the decision in **National Assembly & 47 others v Okoiti & 169 others (Civil Application E577, E581, E585 & E596 OF 2023)** to highlight that such jurisdiction is narrow. He contends that this case is not merely about the employment of 21 individuals, but fundamentally about the value assigned to the Constitution in the struggle between law and politics.
19. Regarding the legal test for granting a stay of execution, counsel adverting to the holding in **Dennis Njue Itumbi v Law Society of Kenya & 55 others (Civil Application E126 OF 2023) [2023] KECA 593 (KLR)** and **Stanley Kangethe Kinyanjui v Tony Ketter & 5 others (supra)** submitted that an arguable appeal is not one that must necessarily succeed but one that deserves a full hearing. He conceded that the intended appeal is

arguable as it is not frivolous and raises

bona fide points for consideration. However, counsel emphasized that establishing the arguability of an appeal is insufficient on its own to warrant the issuance of an order staying execution.

20. Anchoring his opposition to the application on the nugatory limb, counsel argued that the Attorney-General had failed to demonstrate that the appeal would be rendered worthless without a stay. Citing the decision in **Lake Victoria South Water Service Board v Seline Akoth Oyiengo [2020] KECA 249 (KLR)**, counsel asserted that the Applicant had failed in his duty to show irreversible harm. He further argued, relying on the holding in **Reliance Bank Limited v Norlake Investment Limited (supra)**, that the Court must balance the conflicting claims of both parties. He characterized the Applicant's claim of disruption to the executive as scaremongering without evidence. Reliance was placed on the decisions in **National Assembly v Okioti (supra)** and **Cabinet Secretary, National Treasury & Economic Planning & 3 others v Benjamin & 10 others (Civil Appeal (Application) E323 OF 2025) [2025] KECA 1959 (KLR)**, in

contending that it was upon the Applicant to provide concrete

evidence of imminent disruption rather than alleging speculative gaps in service.

21. Counsel pointed out that the executive has functioned effectively within the constitutional framework since 2010 without these contested offices. It was his argument that the High Court already determined that these positions created a risk of duplication of functions being performed by cabinet secretaries and the Applicant. Invoking the decision in **Attorney-General v Matindi & 55 others (supra)**, counsel questioned why the destiny of the people of Kenya would supposedly rely on 21 individuals whose offices were found to be constitutionally unsound. It was further argued that if the judgment is stayed and the appeal eventually fails, the public cannot be compensated for the services rendered in violation of the Constitution.
22. Counsel cited the Supreme Court's decision in **Munya v Kithinji & 2 others (supra)** and argued that public interest is an essential cornerstone in constitutional applications. He further cited the decision in **Attorney-General & 2 others v Magare-Gikenyi & 231 others [2025] KECA 1767 (KLR)** and submitted that public interest is better served by putting

unconstitutional actions on hold until they are proven to pass the legal muster. Counsel concluded by submitting that allowing unconstitutional offices to remain staffed would undermine the entire normative framework of the Kenyan governance system and thus the application for a stay should be dismissed.

23. We have read and considered the impugned judgment, the submissions on record and the law. The issue for determination is whether the application is merited.

24. The application before us seeks a stay of execution of the judgment delivered on 22<sup>nd</sup> January, 2026, in High Court Constitutional Petition No. E 317 of 2025. The application requires the exercise of this Court's discretion under **Rule 5(2)(b) of the Rules**. The jurisdiction of this Court under the said Rule is original, independent and discretionary. However, we must exercise this discretion judiciously and rationally and not out of impulsiveness or sympathy.

25. **Rule 5(2) (b) of the Rules** provides as follows:

***“Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may-  
in any civil proceedings where a notice of appeal has been lodged in accordance with***

***rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.”***

26. The principles for granting orders under **Rule 5(2)(b) of the Rules** are well settled. For instance, in **Trust Bank Limited and Another v. Investech Bank Limited & 3 Others [2000] eKLR**, the Court delineated the jurisdiction as follows:

***“The jurisdiction of the Court under Rule 5(2)(b) is original and discretionary and it is trite law that to succeed an Applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous and secondly that unless he is granted a stay the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case...”***

27. It follows therefore, that for an Applicant to succeed under the said Rule, he/she must satisfy the Court on two conditions. First, that the appeal or intended appeal is arguable and not frivolous; and, second, that in the absence of stay of execution, the appeal, if successful, will be rendered nugatory.
28. The parties are in agreement that an arguable appeal is not one that will necessarily succeed, but one that raises

at least a bona fide point deserving consideration by the Court. It is

also settled that even a single bona fide ground of appeal is sufficient to satisfy the arguability test.

29. In addition to these considerations, the Supreme Court in its decision in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others (supra)**, after acknowledging the twin principle regarding arguability and the nugatory aspect of the application, stated inter alia:

***“However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:***

***(iii) that it is in the public interest that the order of stay be granted.”***

***This third condition is dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through the Constitution. This Court has already ruled that election petitions are both disputes in personam and disputes in rem. While an election petition manifestly involves the contestants at the poll, the voters always have a stake in the ultimate determination of the dispute, hence the public interest.”***

30. It is the Applicant’s contention that the impugned judgment and consequential orders had technically rendered the executive office of the President inoperative and ineffective. Further, there is a real risk that in the absence of critical advisors to the President being in

office and executing their respective functions, the Applicant's intended appeal will be

rendered nugatory and the damage occasioned by the impugned judgment would be irreparable. In addition, the Applicant contends that the High Court failed to adequately weigh public interest and institutional stability. In their submissions, it was argued that the said advisors were appointed by the President in strict compliance with **section 27 of the Public Commission Act as well as Regulation 27 of the Public Service Commission Regulations.**

31. Mr. Odukenya, counsel for the 2<sup>nd</sup> Respondent supported the application and argued that the advisors were engaged in advising the President on critical matters of national security, foreign relations, economic policy, Intergovernmental coordination and constitutional affairs. Further, that their abrupt removal without hand-over poses a grave risk to continuity and the ability of the President to perform his functions. The 3<sup>rd</sup> to 23<sup>rd</sup> Respondents equally supported the application.
32. The 1<sup>st</sup> Respondent on its part, argued that the Applicant had not shown how it would suffer irreparable harm or how the appeal would be rendered nugatory, and whether the public interest favoured the grant of the

relief sought. The

1<sup>st</sup> Respondent further argued, there will be no gap in the executive by failure to grant a stay, and that one cannot claim to suffer loss in respect of a public office.

33. From the Applicant's arguments highlighted above, and the concession by the 1<sup>st</sup> Respondent's counsel, it is not disputed that the intended appeal is arguable and merits the consideration of the Court. The contested issue is whether the appeal will be rendered nugatory if the impugned court orders are not stayed. The trial court in the impugned judgment issued among other orders, a declaration that the creation of the various offices of the 3<sup>rd</sup> to 23<sup>rd</sup> Respondents as advisors to the President was unconstitutional.

34. In determining whether the intended appeal or appeal, if it were to succeed, would be rendered nugatory should an order of stay be declined, the question to be answered is whether or not what is sought to be stayed if allowed to happen is reversible, and if not, whether damages will reasonably compensate the party aggrieved, see **Stanley Kangethe Kinyanjui v. Tony Ketter & 5 Others (supra)**. And as was held in **Trust Bank Limited & Another v. Investech Bank Limited & 3**

**Others (supra),** the Court

when considering an application for stay should be alive to the facts and circumstances of each case.

35. In a situation where there are competing public interest positions, as is the case in the application before us, it becomes necessary to conduct a proportionality evaluation in order to determine whether the orders sought should issue or not. On the one hand, the Applicant and the Respondents in support of the motion argue that failure to grant stay of the impugned judgment will paralyse the executive functions and cause administrative disruption in the office of the President. Further, that the immediate removal of the advisors will lead to serious consequences like creation of instability or constitutional uncertainty especially where handing over of the offices has not been done. The decision of this Court in **CAS 1** was cited in support of these arguments.
36. On the other hand, the 1<sup>st</sup> Respondent contends that notwithstanding that the Applicant's intended appeal is indeed arguable, staying the impugned judgment will allow continued unconstitutional activities. The 1<sup>st</sup> Respondent relied on the decision of this Court in **CAS 2** to advance its

position.

37. We have considered the authorities cited by the parties before us, and in particular the decisions of the Court in **CAS 1** and **CAS 2**. In **CAS 2**, the Court while declining an application to stay a judgment that had declared the office of the Chief Administrative Secretary unconstitutional held that:

***“If, for example, after hearing the appeals this Court finds that the offices were created constitutionally, there will be constitutional certainty and the Applicants will assume office and start rendering service. If, on the other hand, the Court finds that the offices were created in violation of the Constitution, we cannot fathom how the public can be compensated or how it can be comforting to tell the people of Kenya that, after all, service has been rendered to you, never mind it is service in violation of the Constitution. Where purported service is rendered in violation of the Constitution, it does not require rocket science to fathom that it is not legitimate service beneficial to the public. Service rendered in violation of the Constitution is no service at all in the eyes of the law.”***

However, the Court in **CAS 1** stayed the High Court’s judgment which had declared the same office of Chief Administrative Secretary unconstitutional. There, the argument of the Applicants was that ***“if the relief sought is not granted, the disruption of Government***

***operations***

***and the resultant effect of service delivery to the people of Kenya are neither reversible nor capable of being compensated by an award of damages.”***

The Court agreed with the Applicants and held that it was in the public interest to stay the judgment.

38. As correctly submitted by counsel for the Applicant, we have before us a situation similar to that which prevailed when the orders in **CAS 1** were granted by the Court. The 3<sup>rd</sup> to 23<sup>rd</sup> Respondents before us were already in office by the time their offices were declared unconstitutional. This is unlike in **CAS 2** where the Chief Administrative Secretaries were yet to assume office. The 3<sup>rd</sup> to 23<sup>rd</sup> Respondents were already rendering services to the public by the time the impugned judgment was delivered and there is a likelihood of disruption of the functions of the Office of the President should the application be declined. As regards the submission by the 1<sup>st</sup> respondent that there will be a duplication of roles should the 3<sup>rd</sup> to 23<sup>rd</sup> Respondents be allowed to continue serving, we are of the opinion that that is an issue for determination in the substantive appeal. In the circumstances, we are convinced that the Applicant has

satisfied the two limbs for the grant of the order sought. An order is therefore issued staying the execution of the impugned judgment pending the hearing and determination of the intended appeal.

39. Considering that the intended appeal raises issues of great public interest, we recommend to the President of the Court that the intended appeal should be heard on a priority basis.

40. The costs of this application shall abide by the outcome of the intended appeal.

It is so ordered.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March, 2026.**

**W. KORIR**

.....  
**JUDGE OF APPEAL**

**H. ONG'UDI**

.....  
**JUDGE OF APPEAL**

**S. OKONG'O**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

**Signed \_**

**DEPUTY**  
**REGISTRAR.**