



REPUBLIC OF KENYA



**Speaker of the National Assembly of Kenya & another v Njiru & 40 others (Civil Appeal (Application) E119 of 2024) [2025] KECA 106 (KLR) (24 January 2025) (Reasons)**

Neutral citation: [2025] KECA 106 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E119 OF 2024  
SG KAIRU, LA ACHODE & GWN MACHARIA, JJA  
JANUARY 24, 2025**

**BETWEEN**

**THE SPEAKER OF THE NATIONAL ASSEMBLY OF KENYA ... 1<sup>ST</sup> APPLICANT**

**HON. MOSES M. WETANGULA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KENNETH NJAGI NJIRU ..... 1<sup>ST</sup> RESPONDENT**

**MESHACK SUBA CHURCHILL ..... 2<sup>ND</sup> RESPONDENT**

**LEMPAA SUYINKA ..... 3<sup>RD</sup> RESPONDENT**

**TEDDY M. MUTURI ..... 4<sup>TH</sup> RESPONDENT**

**AMOS WANJALA ..... 5<sup>TH</sup> RESPONDENT**

**STEVEN KIHONGE NDUNG’U ..... 6<sup>TH</sup> RESPONDENT**

**SOPHIE DOLA ..... 7<sup>TH</sup> RESPONDENT**

**WINNIE THUO ..... 8<sup>TH</sup> RESPONDENT**

**ENG. VICTOR NG’ANG’A ..... 9<sup>TH</sup> RESPONDENT**

**SIMON LOKOMA ..... 10<sup>TH</sup> RESPONDENT**

**CAROLINE MOGAKA ..... 11<sup>TH</sup> RESPONDENT**

**FRANCIS KENYA MWANGI ..... 12<sup>TH</sup> RESPONDENT**

**KENYA KWANZA COALITION ..... 13<sup>TH</sup> RESPONDENT**

**THE NATIONAL ASSEMBLY OF KENYA ..... 14<sup>TH</sup> RESPONDENT**

**REGISTRAR OF POLITICAL PARTIES ..... 15<sup>TH</sup> RESPONDENT**

**HON. KIMANI ICHUNG’WA ..... 16<sup>TH</sup> RESPONDENT**



HON. OWEN BAYA .....	17 <sup>TH</sup> RESPONDENT
HON. SYLVANUS OSORO .....	18 <sup>TH</sup> RESPONDENT
HON. NAOMI JILLO WAKO .....	19 <sup>TH</sup> RESPONDENT
HON. SABINA CHEGE .....	20 <sup>TH</sup> RESPONDENT
INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC) .....	21 <sup>ST</sup> RESPONDENT
THE HON. ATTORNEY GENERAL .....	22 <sup>ND</sup> RESPONDENT
HON. KANINI KEGA .....	23 <sup>RD</sup> RESPONDENT
ANNE NDERITU .....	24 <sup>TH</sup> RESPONDENT
KENYA REVENUE AUTHORITY .....	25 <sup>TH</sup> RESPONDENT
CABINET SECRETARY THE NATIONAL TREASURY AND ECONOMIC PLANNING .....	26 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC ALLIANCE .....	27 <sup>TH</sup> RESPONDENT
AMANI NATIONAL CONGRESS .....	28 <sup>TH</sup> RESPONDENT
FORD KENYA .....	29 <sup>TH</sup> RESPONDENT
AZIMIO LA UMOJA ONE KENYA COALITION .....	30 <sup>TH</sup> RESPONDENT
JUBILEE PARTY OF KENYA .....	31 <sup>ST</sup> RESPONDENT
LAW SOCIETY OF KENYA .....	32 <sup>ND</sup> RESPONDENT
HON. OPIYO WANDAYI .....	33 <sup>RD</sup> RESPONDENT
HON. ROBERT MBUI .....	34 <sup>TH</sup> RESPONDENT
HON. JUNET MOHAMED .....	35 <sup>TH</sup> RESPONDENT
KATIBA INSTITUTE .....	36 <sup>TH</sup> RESPONDENT
MAENDELEO CHAP CHAP PARTY .....	37 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC MOVEMENT .....	38 <sup>TH</sup> RESPONDENT
MOVEMENT FOR DEMOCRACY AND GROWTH (MDG) PARTY .....	39 <sup>TH</sup> RESPONDENT
USAWA KWA WOTE PARTY .....	40 <sup>TH</sup> RESPONDENT
ROOTS PARTY .....	41 <sup>ST</sup> RESPONDENT

*(Being an application for stay of further proceedings pending the hearing and determination of the appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Ngaah, Chigiti (SC) & Mugambi, JJ.) dated 26th January 2024 in HC. Petition No. E202 of 2023)*



## REASONS

1. In their application dated 14<sup>th</sup> February 2024, the applicants, The Speaker National Assembly of Kenya and Hon. Moses M. Wetangula sought, in the main, an order for stay of further proceedings in Nairobi High Court Petition No. E202 of 2023, *Keneth Njiru & Others v. Kenya Kwanza Alliance & Others*, pending the hearing and determination of their appeal from a ruling of the High Court delivered in that suit on 26<sup>th</sup> January 2024.
2. Having heard counsel on the application on 19<sup>th</sup> June 2024, we, in accordance with Rule 34(7) of the *Court of Appeal Rules*, gave our decision at the close of the hearing declining to grant the order of stay of the proceedings before the High Court and reserved the reasons for doing so. We now do so.
3. The parties were represented by learned counsel as follows: Mr. Fred Ngatia, SC appeared with Ms. Guserwa for the applicants. Mr. Kibe Mungai appeared for the 1<sup>st</sup> to 12<sup>th</sup> respondents. Mr. Mbarak held brief for Mr. Murugara for the 13<sup>th</sup> and 27<sup>th</sup> respondents and for Ms. Nganyi for the 14<sup>th</sup> respondent. Mr. Omagwa held brief for Mr. Kibanga for the 15<sup>th</sup> and 24<sup>th</sup> respondents. Mr. Millimo appeared for the 16<sup>th</sup> to 19<sup>th</sup> respondents. Mr. Manyara appeared for 20<sup>th</sup> and 23<sup>rd</sup> respondents. Ms. Wanjiru for the 22<sup>nd</sup> and 26<sup>th</sup> respondents. Mr. Ngethe for the 29<sup>th</sup> respondent. Mr. Ochieng Oginga for the 30<sup>th</sup>, 33<sup>rd</sup>, 34<sup>th</sup>, and 35<sup>th</sup> respondents. Mr. Malidzo Nyawa for the 36<sup>th</sup> respondent. Mr. Mbatai held brief for Mr. Issa for the 38<sup>th</sup> respondent.
4. The background to the application, in brief, is that the 1<sup>st</sup> to 12<sup>th</sup> respondents filed a petition before the High Court seeking numerous reliefs, among them, declarations: that Azimio La Umoja One Kenya Coalition Party is the Minority Party in the National Assembly; that Kenya Kwanza Alliance is the Minority Party in the National Assembly; and that the 2<sup>nd</sup> applicant is not qualified to be Speaker of the National Assembly. Other prayers were for declarations that the *Finance Act*, 2023 and the *Appropriation Act*, 2023 are unconstitutional; and that the employment of Tax Assistants by the Kenya Revenue Authority is unconstitutional.
5. The applicants raised preliminary objections to the action contending that the High Court lacked jurisdiction to entertain the petition on grounds that it was *sub judice*; that the petition was fatally defective on ground of enjoining unrelated causes of action and unrelated parties rendering it impossible to hold a fair trial and that the occupants of the office of Speaker and Majority Leader of National Assembly are immune to suits. Having heard the parties, the High Court in its said ruling of 26<sup>th</sup> January 2024 dismissed the objections and directed that the matter proceeds to hearing.
6. Aggrieved, the applicants filed a Notice of Appeal dated 26<sup>th</sup> January 2024 on which the present application dated 14<sup>th</sup> February 2024 is hinged.
7. In support of the application, Mr. Ngatia in highlighting the applicants' written submissions submitted that the appeal, which is already filed, is arguable as the 1<sup>st</sup> to 12<sup>th</sup> respondents' petition contains at least eighteen causes of action without any common question; that in addition to misjoinder of causes of action there is also misjoinder of parties; that in the circumstances a fair trial is impossible; that under Article 25(c) of the *Constitution*, the right to fair trial cannot be limited; that unless the High Court proceedings are stayed, the damage is irreversible and the appeal will be rendered nugatory.
8. Mr. Mbarak on his part in supporting the application submitted that a ruling of the Speaker on Majority and Minority party in the National Assembly was rendered; that should the proceedings



- before the High Court proceed, and the ruling of the Speaker is overturned and this Court ultimately finds that the High Court lacked jurisdiction, precious time will have been wasted.
9. Mr. Milimo submitted that the petition before the High Court offends the doctrine of exhaustion; that procedures under the *Political Parties Act* were not exhausted and the impugned ruling is contradictory in that regard; that the threshold for the grant of the orders sought is met; and that the application should be allowed.
  10. The application was also supported by Mr. Ngethe, Mr. Manyara, Mr. Omagwa and Ms. Wanjiru.
  11. Mr. Kibe Mungai in opposing the application was supported by Mr. Ochieng Oginga, Mr. Ndegwa Njiru, Mr. Nyawa in urging that courts should uphold the right to fair hearing; that in this case, all the parties will be heard before the High Court; that there is a fundamental question before the High Court whether the ruling of the Speaker of the National Assembly on the Majority and Minority parties accords with the *Constitution* and the High Court is the correct forum to determine that question and it should be permitted to do so; that any party aggrieved by any decision the High Court might render in that regard would then be at liberty to challenge it. It was submitted that the intended appeal cannot, in those circumstances, be rendered nugatory.
  12. Having considered the application, the affidavits in support and in opposition, and the rival written and oral submissions we concluded, having regard to the principles in *Stanley Kangethe Kinyanjui v Toney Ketter and 5 others* [2013]eKLR, that the applicants' appeal is indeed arguable. Mindful that an arguable appeal is not one that must necessarily succeed but one worthy of consideration by the Court, there is for instance the issue whether the High Court erred in declining to strike out the petition on grounds of misjoinder of parties and causes of action with respect to which issue we were referred to English decisions of the House of Lords and Court of Appeal in *Smurthwaite and Others v. Hannay and Others* (1894) AC 494 and *Stroud v. Lawson and Others* (1898)2 QB respectively as well as a decision of the Supreme Court of the Democratic Socialist Republic of Sri Lanka.
  13. On the nugatory aspect, this Court, in its decision in *Meta Platforms, Inc. & Another v. Samasource Kenya EPZ Limited t/a Sama & 185 Others; Central Organization of Trade Unions Kenya & 8 Others (Interested Parties)* (Civil Application E178 of 2023) [2023] KECA 999 (KLR) observed that:

“Where an interlocutory order does not finally dispose of the case, the court should be slow to stay proceedings because of an aggrieved party. This is so because such an order could be made the subject of appeal if it ultimately becomes necessary following the final judgment. It saves time and expense to proceed with the case. It is the duty of every court to eliminate situations which may unnecessarily cause delay in the administration of justice. However, if a successful appeal will put an end to the proceeding in the trial court, prudence dictates that a stay of proceedings be granted.”
  14. In the present case, we considered that the decision the subject of appeal is interlocutory; that it was represented to us during the hearing of the application that parties had already filed submissions with respect to the petition before the High Court and what remained was the highlighting of those submissions; and that any party aggrieved by the decision of the High Court on the petition would have a right and opportunity to challenge it on appeal. We concluded that no exceptional circumstance had been demonstrated to warrant the stoppage of proceedings before the High Court.
  15. Those then are the reasons we dismissed the applicants' application dated 14<sup>th</sup> February 2024 with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY 2025.**



**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original,

*signed*

**DEPUTY REGISTRAR.**

