



**Mugo v Magistrates and Judges Vetting Board & 2 others (Civil Appeal
(Application) 97 of 2019) [2023] KECA 1164 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1164 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 97 OF 2019
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

HON. LADY JUSTICE MURUGI GETERIA MUGO APPELLANT

AND

MAGISTRATES AND JUDGES VETTING BOARD 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

THE JUDICIAL SERVICE COMMISSION 3RD RESPONDENT

*(An appeal from the Ruling and order of the High Court of Kenya at
Nairobi (B. Thurania Jaden, Wakiaga, G.W. Ngenye-Macharia, J. Mativo
& J. Onyiego, JJ.) dated 27th September, 2018 in Petition No. 325 of 2013)*

RULING

1. The applicant, Hon. Lady Justice Murugi Geteria Mugo has by Motion brought under rules 44, 46(1), 89(1) and 90 of the [Court of Appeal Rules, 2022](#) applied for leave to file a Supplementary Record of Appeal out of time “for the proper determination of the appeal”; that the annexed Supplementary Record be deemed as filed and served and that I grant leave to amend the heading of Record and Memorandum of Appeal to reflect the correct name of the 1st respondent, The Magistrates and Judges Vetting Board (sic). In grounds in support of the Motion and in her supporting affidavit the applicant says that she has recently discovered that certain critical documents of the impugned Judgment were inadvertently left out of the Record of Appeal rendering the same incomplete; that Supplementary Record of Appeal is intended to correct that inadvertence; that it is in the interest of justice that the applicant files the missing documents through a Supplementary Record of Appeal; that the matter relates to the determination of the applicant’s tenure as a Judge of the High Court of Kenya and is of great importance to the parties and to the rule of law; that striking out the appeal due to missing documents will not facilitate the just, expeditious, proportionate resolution of the appeal and that it



is proper that the name of the 1st respondent be corrected. The documents that were omitted in the Record of Appeal are said to be a certified copy of the decree issued pursuant to the ruling of the High Court on September 27, 2018; a certified copy of the conservatory order made on June 24, 2013; a copy of the 1st and 2nd respondents replying affidavit sworn by one Reuben Chirchir on September 6, 2013 and a copy of a further affidavit of November 5, 2017. The applicant says that she has been unable to get an explanation from her previous lawyers why those documents were omitted from Record of Appeal; that she had obtained those documents from the High Court upon request; that she had no recollection of having sworn a further affidavit – that there was a possibility that documents had been mixed up at the High Court. Of the 1st respondent she says that the proper name is “The Judge and Magistrates Vetting Board”.

2. I have not seen any replying affidavit from the respondents who were served with a Hearing Notice on September 11, 2023 at 2.20 p.m. where parties were notified to file written submissions within limited time as stated in the Notice. I wish the respondents had responded because I would have wished to hear what they would have said of the 1st respondent. The Judges and Magistrates Vetting Board whose existence today as a legal entity I entertain a doubt. That issue is not however before me today.
3. I have seen and considered the applicant’s written submissions and the cases cited to assist me in determining this application.
4. What the applicant prays for is for leave to file a Supplementary Record of Appeal and that she be granted leave to amend the heading of the proceedings.
5. The applicant says that certain named documents were omitted when Record of Appeal was filed. She has not been able to get an explanation from previous lawyers why those documents were omitted when Record of Appeal was filed. The applicant obtained those documents when she applied for them from the High Court. I am satisfied that this is a reasonable explanation for the said omission and I can in any event not see how the respondents would be prejudiced when documents that were before the High Court are placed before this Court on appeal for a proper determination of the issues in contention. The same goes for the application to amend the heading of the appeal.
6. I allow the Motion dated June 20, 2023 by granting leave to the applicant to file Supplementary Record of Appeal out of time; the Supplementary Record of Appeal be and is hereby deemed as duly filed and served subject to payment of appropriate court fees if not paid and I grant leave to amend the heading of the Record and
7. Memorandum of Appeal to reflect the correct name of the 1st respondent. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

