



Gichana, The Clerk, Nairobi City County Assembly v Ngwele & 3 others (Civil Appeal (Application) E255 of 2021) [2022] KECA 423 (KLR) (4 March 2022) (Ruling)

Neutral citation: [2022] KECA 423 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E255 OF 2021
RN NAMBUYE, A MBOGHOLI-MSAGHA & KI LAIBUTA, JJA
MARCH 4, 2022**

BETWEEN

EDWARD OMBWORI GICHANA, THE CLERK, NAIROBI CITY COUNTY ASSEMBLY APPLICANT

AND

**MUVENGEI JACOB NGWELE 1ST RESPONDENT
SPEAKER, NAIROBI CITY COUNTY ASSEMBLY 2ND RESPONDENT
NAIROBI CITY COUNTY ASSEMBLY SERVICE BOARD 3RD RESPONDENT
NAIROBI CITY COUNTY ASSEMBLY 4TH RESPONDENT**

(An appeal against the entire Judgment and Decree of the Employment and Labour Relations Court (M. Onyango, J.) dated 16th October, 2020 in Nairobi ELRC Petition No. 194 of 2019)

RULING

1. On 14th day of February, 2022, the Notice of Motion dated 23rd November, 2021 came before us for hearing and determination. The motion is brought under Articles 48, 50 and 159 of *the Constitution* of Kenya, 2010, section 3A of the *Appellate Jurisdiction Act*, Cap 9, Rules 31, 35, 42 and 57(2) of the *Court of appeal Rules, 2010* and all other enabling provisions of law.
2. In his motion, the applicant substantively sought ten (10) prayers. Prayers 1, 2, 3 and 4 were sought ex parte. These became spent upon the conclusion of the inter partes hearing of the application. Prayers 6 and 7 meant to forestall the hearing of the appeal are also spent as the appeal was fully heard partially through a compromise endorsed by the advocates for parties in the appeal and duly filed in court, and partially on merit its merits. The substantive appeal is currently pending delivery of judgment on 1st



April, 2022. The prayers left for our consideration on their merits are therefore 5, 8, 9 and 10. These read:

“5. This Honourable court be pleased to grant leave to the proposed 3rd respondent to be joined in the proceedings.

.....

8. The Honourable Court be pleased to vary or rescind its own decision of 4th June, 2021 in Civil Application No. E351 of 2020 Clerk Nairobi County Assembly vs. Speaker Nairobi City County Assembly and the Nairobi City County Service Board so as to expunge the proposed 3rd respondent’s name from the record and any consequential orders arising therefrom.

9. To make any necessary, incidental or consequential orders.

10. Costs in the cause.”

3. The application is supported by grounds set out on its body, a supporting affidavit of Edward Ombwori Gichana, the applicant herein, together with annexures thereto and applicant’s written submissions dated 26th November, 2021.

4. The application is opposed vide a replying affidavit sworn by Muvengi Jacob Ngwele, (the appellant) sworn on 3rd December, 2021 together with annexures thereto,; written submissions and legal authorities dated the same date of 3rd December, 2021; a replying affidavit sworn on 3rd December, 2021 by Adah Onyango the acting Clerk of the Nairobi City County Assembly on behalf of the 2nd respondent together with annexures thereto and written submissions dated 4th February, 2022; and, lastly, opposed by written submissions filed by the 1st respondent dated 6th December, 2021.

5. When called out, learned counsel, Mr. Kokebe Kevin with learned counsel, Bryan Khaemba and learned counsel, Ashioya held brief for Mr. Ochich for the applicant. Learned counsel, Dr. Muthomi Thiankolu and learned counsel, Vincent Oloo Odhiambo appeared for the appellant/1st respondent, learned counsel, Mr. Guandaru Thuita appeared for the 2nd respondent, while learned counsels Mr. Erick Theuri and Mr. Eric Kivuva appeared for the 3rd respondent.

6. The application was canvassed virtually through rival pleadings, written submissions and legal authorities filed and fully adopted and highlighted orally by learned counsel of the respective parties herein in support of their respective positions.

7. We have considered the record in totality with regard to the above. On the same date of 14th February, 2020, we granted orders as follows:

1. The applicant’s application dated 23rd November, 2021 be and is hereby dismissed.

2. Reasons for the ruling to be delivered on 4th March, 2022.

3. Orders as to the costs of the application to be pronounced in the reasoned ruling.

8. We reserved the reasons for the ruling which we now proceed to render hereunder.

9. The background to the application in summary is that the 1st respondent herein, Muvengi Jacob Ngwele, (hereinafter the 1st respondent litigating under the title of Clerk, Nairobi County Assembly filed in the Employment and Labour Relations Court, Nairobi (hereinafter ELRC) Petition No. 194 of 2019 against the Speaker, Nairobi City County Assembly (hereinafter the 2nd respondent) and Nairobi City County Assembly Service Board (hereinafter the 3rd respondent). His complaint was



- that he had been irregularly, illegally, unprocedurally and unlawfully removed from his position as Clerk to the Nairobi City County Assembly as more particularly set out in the petition.
10. On 16th October, 2020, the petition contested by the 2nd and 3rd respondents respectively and another was dismissed in a judgment delivered by the ELRC (M. Onyango, J.) following a hearing.
 11. Aggrieved, the 1st respondent filed a notice of appeal on which he anchored the notice of motion dated 5th November, 2020 under Rule 5(2)(b) of the Court of Appeal Rules, seeking a stay of execution of the above judgment of the ELRC, an injunction to restrain the 2nd and 3rd respondents from advertising, short listing, or appointing a substantive holder of the office of the Clerk of the Nairobi County Assembly pending the filing, hearing and determination of the appeal. His application was supported by grounds on its body, contents of supporting affidavits with annexures thereto, written submissions and case law. It was opposed by the 2nd and 3rd respondents herein through rival pleadings written submissions and case law.
 12. The application aforesaid was heard by this court (Nambuye, Karanja, & Warsame, JJ.A.) leading to the ruling of this Court delivered on 4th June, 2021. The observations leading to the conclusions reached in the said ruling of 4th June, 2021 were that the issue as to how the 1st respondent was removed from his position as Clerk to the Nairobi City County Assembly was hotly contested by the respective rival parties to the application. An issue had also arisen about the legality and integrity of the judgment delivered by the ELRC on 16th October, 2020. The 2nd and 3rd respondents herein were indicated on the record as having filed an application seeking review of the said judgment which was then pending hearing at that point in time. The court also appreciated that there was also serious contest as to how Edward Obwori Gichana, the applicant herein, had been picked to replace the 1st respondent.
 13. On the totality of the assessment and reasoning in the said ruling, this Court found the threshold for granting relief under Rule 5(2)(b) of this Court's Rules fully satisfied. Second, the court was also of the opinion that it was in the best interest of justice to all parties therein to preserve the substratum of the dispute pending appeal, namely, the position of the Clerk of the Nairobi City County Assembly. The court therefore issued an injunction restraining both Mr. Edward Gichana Ombwori and Jacob Muvengi Ngwele from exercising the powers, privileges and responsibilities of the office, Clerk, Nairobi County Assembly; and a stay of execution of the judgment of the ELRC (M. Onyango, J.) dated 16th October, 2020; an order restraining the 2nd and 3rd respondents from advertising, shortlisting, recruiting or appointing a substantive holder of the office of the Clerk of the Nairobi City County Assembly, all pending the determination of the intended appeal together with an attendant order that the costs of the application to abide the outcome of the appeal.
 14. An application dated 15th June, 2021 and made under Articles 48, 50 and 159(1),(2), (a) and (b) of *the Constitution* of Kenya, 2010, Rule 31 and 57(2) of the Court of Appeal Rules 2010, and all other enabling provisions of law, was brought in the name of the Clerk of Nairobi City County Assembly seeking the discharge, rescission and or review of the ruling and orders of this Court issued on 4th June, 2021, Edward Ombwori Gichana, the Clerk of the Nairobi City County Assembly be admitted as a party to the proceedings in the application and in the main appeal together with an attendant order that costs be provided for. That application was withdrawn by consent of the advocates for the respective parties therein on 22nd November, 2021 in favour of the directions issued for expedition of the hearing of the main appeal to crystallize the issue in controversy.
 15. It is against the above background that the applicant herein, Mr. Edward Ombwori Gichana is now before this Court, in the application dated 23rd November, 2021 seeking the reliefs set out above. He relies on Rule 57(2) of the Court of Appeal Rules, and the following case laws, namely, the case of *Chris Mabinda t/a Nyeri Trade Centre v Kenya Power & Lighting Co Ltd* [2005] eKLR for the holding,



inter alia, that “this court has residual jurisdiction to review, vary or rescind its decision in exceptional circumstances”; the case of *Isaac vs. Robertson* (1984) 3 All ER 140 in which the privy council was categorical that “it had jurisdiction to reverse its decision if the circumstances warrant especially in instances where there is demonstration of a breach of natural justice”; the case of *Macharia M. Sande vs. Kenya Co-operative Creameries Limited* Mombasa C.A No. 154 of 1992 (UR) and [Nairobi City Council vs. Thabiti Enterprises Limited](#) [1995 – 1998] 2 E. A 231 both cited with approval in the case of [Nguruman Limited vs. Shompole Group Ranch & Another](#) [2014] eKLR for the holding, *inter alia*, that a Judge has no power to decide any issue not raised before him in the respective pleadings. He also relies on the case of *Taylor and Another vs. Lawrence and Another* (2003) QB 52, 8 in which the Court of Appeal of England ruled, *inter alia*, that “it had an implicit jurisdiction to correct wrong decisions, reopening proceedings which it had already heard and determined if it was clearly established that a significant injustice had probably occurred and there was no alternative effective remedy”.

16. In light of the above cited case law, he submits that he has satisfied the prerequisites for granting the reliefs sought. According to him, he has sufficiently demonstrated firstly, that the court has residual power to revisit the impugned orders of 4th June, 2021, review and discharge and or otherwise set these aside. Secondly, the grounds put forth in support of his application meet the threshold for granting the relief of review, rescission and or otherwise discharge the impugned order of 4th June, 2021. Crucial consideration is the applicant’s assertion that the court in the impugned ruling erroneously enjoined him from discharging the functions of Clerk Nairobi County Assembly notwithstanding that on 25th January, 2021 it had denied him audience and or the right to be heard allegedly for the reason that he was not a party to those proceedings. Likewise, on 25th November, 2021 the court also denied him audience and directed him to join the main appeal to crystalize his rights.
17. Further, that as at the time of the delivery of the impugned ruling, it was only him who was in office and not Jacob Ngwele. By enjoining him from discharging the functions of the office of the Clerk of the Nairobi City County Assembly without according him an opportunity of being heard, the court occasioned him great prejudice as following the issuance of the said impugned ruling, he was not only barred from his office but also removed from the payroll by the Acting Clerk on the pretext that she was acting on a court order, a situation not contemplated by the court which only required him to step aside. He therefore urges this Court to grant the relief sought.
18. In opposition to the applicant’s application, the 1st respondent faults the application for the reason that the same is frivolously and vexatiously filed with the sole objective of derailing, stalling and/or slowing down the expeditious disposal of the appeal. The applicant is also undeserving of this Court’s exercise of its discretion in his favour for his failure to disclose that his illegal and irregular appointment as Clerk of Nairobi City County Assembly was declared null and void by the trial court in its case management directions issued on 5th August, 2020 in Petition No. 194 of 2019.
19. Neither has he also disclosed that his attempt to join the proceedings before the ELRC was dismissed nor that he filed a notice of appeal to this Court intending to appeal against the ELRC’s orders of 5th August, 2020 which was struck out by this Court in a ruling delivered on 18th December, 2020.
20. Lastly that neither the [Civil Procedure Act](#) and Rules made thereunder nor the [Appellate Jurisdiction Act](#), Cap 9 Laws of Kenya and the Court of Appeal Rules, 2010 made thereunder provide for admission of a party who was not a party to the proceedings before the trial court to proceedings at the appellate stage. Neither does this Court have mandate to impose a respondent on him against whom he is seeking no relief at this appellate stage. He therefore urges this Court to dismiss the application with costs to him.



21. In opposition to the application, the 2nd respondent relies on the Supreme court decision in the case of *Francis Karioko Muruatetu & Another vs. Republic & 5 Others* [2016] eKLR for the holding, inter alia, that “in an application for joinder, one must demonstrate their stake in the matter, the prejudice to be suffered in case of non-joinder and a demonstration that the case and or submission the applicant intends to make before the court and the relevance of those submissions to the issues in controversy in the litigation”; the case of *Elizabeth Nyambura Njuguna & Another (suing as the Legal representatives of Njuguna Mwaura Mbogo) vs. E. K. Banks Limited & 2 others; Edward Kings Onyancha Maina (Interested Party)* [2019] eKLR, in which this Court rejected a similar application where the trial court had rejected an application for joinder as in the court’s view allowing the application would have been tantamount to allowing the rejected application through the back door; the case of *Attorney General vs. Kenya Bureau of Standards & Another* [2018] eKLR in which the court ruled that in an application of this nature, the court must evaluate whether the joinder is intended to convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings. Lastly, the case of *Mubammad Swazuri vs. Afrison Export Limited & another; National Land Commission & 9 others (Interested Parties)* [2020] eKLR, in which this Court declined an application for joinder because there was nothing useful that the party intended to be joined was to bring to the proceedings.
22. In light of the enunciations in the case law highlighted above, the 2nd respondent invites this Court to reject the applicant’s plea for joinder to the appeal for the reason that the applicant is attempting to have a second bite at the cherry after a similar move was rejected firstly, by the trial court; and, secondly, by this Court when he attempted to appeal against the trial court’s order declining to admit him to the proceedings before the trial court. He has also not demonstrated the value he will be bringing to the proceedings at this appellate stage. The joinder also seeks to convolute issues in controversy in the appeal as according to the 2nd respondent, issues relating to review of the orders made in this Court’s Civil Application No. E351 of 2020 cannot be canvassed in the main appeal because the issues in the said application are not only distinct from those intended to be canvassed in the main appeal but also arose after those in the main appeal had already crystallized.
23. The trial court’s ruling that the applicant was not a necessary party in the issues in controversy in ELRC Petition No. 194 of 2019 that gave rise to this appeal has never been set aside. The applicant has also explicitly pleaded in his grounds in support of the application that his interest is solely to overturn the order in the ruling of 4th June, 2021. He therefore has no interest in the appeal. Accordingly, joinder of the applicant to the appeal in the circumstances demonstrated above would not bring any value to the overall determination of the issues raised in the appeal as, in their opinion, the applicant’s focus is on extraneous issues, which have no relevance to the issues in controversy in the appeal. If he were allowed to agitate them in the appeal, these would merely cloud the real issues in controversy in the appeal; and urged this court to dismiss the application.
24. The 3rd respondent on the other hand relies on the case of *Hamisi Yawa & 36,000 Others vs. Tsangwa Ngala Chome & 19 Others* [2018] eKLR on the prerequisites for joinder, namely granting that joinder is discretionary on the part of the Court, and intended to be exercised only in circumstances where there is demonstration that the intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral; that the intended party’s presence would enable court to resolve all the matters in the dispute; that the intended party would suffer prejudice in case of non-joinder; and lastly, that the joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings; and the case of *Nguruman Limited vs. Shampole Group Ranch & Another* [2014] eKLR and the case of *Chris Mabinda t/a Nyeri Trade*



Centre vs Kenya Power & Lighting Co Ltd [supra] both on the threshold for the exercise of the Court's mandate to review, vary and rescind its order.

25. In light of the above threshold the 3rd respondent submits that reasons proffered by the applicant for seeking joinder to the appeal do not meet the threshold in the above highlighted case law. Both the *Appellate Jurisdiction Act* and the Court of Appeal Rules do not provide for the procedure to admit a person not party to the proceedings in the trial court as a respondent in the Court of Appeal. The applicant has not also demonstrated any stake in the appellate proceedings as the dispute before this court on appeal is purely an employment dispute between the 1st respondent who is the appellant herein and the 2nd and 3rd respondents. The 3rd respondent also reiterates the position taken above by the 1st and 2nd respondents that the applicant is not a necessary party to the appeal for reasons put forth by these two parties as already highlighted.
26. The 3rd respondent therefore similarly prays for the application to be dismissed to pave the way for the appeal to be heard on its merits.
27. Our invitation to intervene on behalf of the applicant has been invoked under the provisions of law cited in its heading. Article 48 deals with access to justice, Article 50 with fair hearing while Article 159 deals with the non-technicalities principle. The parameters for invocation and application of this principle have now been crystallized by case law. We take it from *Jaldesa Tuke Dabelo vs. IEBC & Another* [2015] eKLR; *Raila Odinga and 5 Others vs. IEBC & 3 Others* [2013] eKLR; *Lemanken Arata vs. Harum Meita Mei Lempaka & 2 Others* [2014] eKLR; *Patricia Cherotich Sawe vs. IEBC & 4 Others* [2015] eKLR among numerous others for the principles/propositions, *inter alia*, that:

“the exercise of the jurisdiction under Article 159 of *the Constitution* is unfettered especially where procedural technicalities pose an impediment to the administration of justice save that Article 159(2)(d) of *the Constitution* is not a panacea for all procedural ills. Secondly, that the principle unclutches the court from being subservient to procedural technicalities.”
28. Sections 3A and 3B not cited by the applicant enshrines the overriding objective principles of this Court which has also been crystallized by case law. We take it from *City Chemist (NBI) Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya Kasabuli vs. Orient Commercial Bank Limited* Civil Appeal No. Nai 302 of 2008 (UR No. 199 of 2008); among numerous others that the overriding objective principle donates power to the court to dispense justice with greater latitude.
29. Rule 42 is merely procedural. There is no basis for either setting it out or interrogating it. The substantive provisions for accessing the reliefs sought are Rules 31, 35 and 57(2) of the Court of Appeal Rules. These provide:
 - 31) On any appeal the Court shall have power, so far as its jurisdiction permits, to confirm, reverse or vary the decision of the superior court, or to remit the proceedings to the superior court with such directions as may be appropriate, or to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs.
 - 35)(1) A clerical or arithmetical mistake in any judgment of the Court or any error arising therein from an accidental slip or omission may at any time, whether before or after the judgment has been embodied in an order, be corrected by the Court, either of its own motion or the application of any interested person so as to give effect to what the intention of the Court was when judgment was given.
 - (2) An order of the Court may at any time be corrected by the Court, either of its own motion or on the application of any interested person, if it does not correspond with the judgment it



supports to embody or, where the judgment has been corrected under sub-rule (1), with the judgment as so corrected.

- 57(2) An order made on an application to the Court may similarly be varied or rescinded by the Court.
30. Our construction of the above substantive Rules is that Rule 31 donates the general power to this Court in the exercise of its mandate as an appellate court. The power is not absolute. It is exercisable only in so far as the Court's jurisdiction permits namely, "to confirm, reverse or vary the decision of the superior court, or to remit the proceedings to the superior court with such directions as may be appropriate, or to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs". None of the above elements for the exercise of this Court's mandate under the said Rule include mandate to add to or substitute parties on appeal.
31. Rule 35 deals with correction of errors. The threshold for the exercise of that mandate is limited to a clerical or arithmetical mistake in any judgment of the court or any error arising therein from an accidental slip or omission. Our take on the interpretation of the above provision is that it arises where there is need to give effect to what the intention of the court was when the judgment or order was given. It also denotes a situation where the party allegedly affected either as a party or interested party must be one with a stake in the proceedings giving rise to the judgment or ruling sought to be corrected.
32. We have applied our construction of the above Rules with regard to the remainder of the prayers the applicant is seeking from the seat of justice herein, in light of the totality of the rival positions as assessed above and now proceed to pronounce ourselves as follows.
33. Starting with prayer 5 on joinder, the threshold we are obligated in law to apply is that set in the case of *Hamisi Yawa & 36,000 others [supra]*.
34. The appellant's complaint and which we think is his major reason in seeking to join the appeal is solely on what he set out in paragraph 14 of his written submissions thus:
- "14. Since the impugned ruling, the applicant has not only been barred from his office, but has also been removed from the payroll by the Acting Clerk, a situation this Honourable court had not anticipated. The impugned ruling only required the applicant to step aside, however, the Ag. Clerk unilaterally and on pretenses to be acting on a court order, made the unlawful decision to deny him his salary and medical care. We reiterate that the applicant gained his employment through a legal recruitment process."
- None of the above informs the basis of the grounds of appeal that the appellant seeks to agitate on appeal and the 2nd and 3rd respondents defence on appeal. Secondly, it is instructive to note that the appeal as presented does not arise from the impugned ruling of 4th June, 2021.
35. Thirdly, it is also our position that it is evident from the above excerpt that the events complained of by the applicant occurred not only long after the appeal he intends to be enjoined to had long been filed, but also after the delivery of the impugned ruling of 4th June, 2021. It is therefore our finding that joinder of the applicant to the appeal as currently laid will only convolute the issues as his complaint is directed at the current Ag. Clerk who allegedly unprocedurally not only barred him from the office but also removed him from the payroll.
36. Turning to prayer 8, the position we take is that it is now settled that this court has residual jurisdiction to review its decisions. The approach we and which we also fully adopt is as was restated by the court in



the case of *University of Eldoret & Another vs. Prof. Ezekiel Kiprop & Another* [2019] eKLR in which the court expressed itself therein, inter alia, as follows:

“In *Benjob Amalgamated & Another vs. Kenya Commercial Bank Limited [supra]* this court undertook an exhaustive review of previous decisions as well as decisions from several foreign jurisdictions on its power to review its judgment and concluded that it has residual jurisdiction, in limited cases, to reopen a decided matter. that power, the court added, must be exercised with circumspection. This is how the court expressed itself:

“The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection and only in cases whose decisions are not appealable (to the Supreme Court).”

37. In *Mukuru Munge vs. Florence Shingi Mwawana & 2 others*, CA No. 191 of 2011, this court in declining an invitation to review its judgment stated as follows:

“The residual power of the Court to reopen its decisions is therefore a circumscribed power to be exercised in exceptional cases.”

And in *Niels Bruel vs. Moses Wachira & 2 Others*, [2015] eKLR, the Court reiterated as follows:

“....., it is axiomatic that this Court has jurisdiction to do so.

But that jurisdiction is exceptional and has to be exercised sparingly and with circumspection to thwart disaffected parties who merely seek a second bite of the cherry or who invite the Court to sit on appeal from its own judgment.”

38. From the above exposition, the key consideration in an application of this nature is interrogation as to whether there are exceptional circumstances that would justify the review of the court’s ruling of 4th June, 2021.

39. Having carefully considered prayer 8 in light of the totality of the assessment and reasoning that informed the conclusions reached by this Court in its ruling of 4th June, 2021 in light of the reasons applicant has proffered for this relief vis a vis reasons advanced in opposition to the application by the 1st, 2nd and 3rd respondents, we find and hold that the threshold set by the Court for granting relief of this nature as crystalized by the case law highlighted above has not been met. Our reasons are firstly that reasons for seeking the courts intervention herein are based on the conduct of the current Ag. Clerk to the Nairobi City County Assembly who on the alleged pretext that she was acting on the basis of a court order removed the applicant not only from the office but also from the payroll. All these events occurred long after the appeal herein had been filed and the impugned orders of 4th June, 2021. The reasons for seeking joinder are therefore alien to the issues in controversy before this Court on appeal.



Secondly, these do not meet the exceptional circumstances required to be demonstrated to exist before relief of the nature sought for by the applicant can be granted.

40. In light of the above assessment and reasoning, we make orders as follows:

1. We hereby affirm the orders made on 14th February, 2022 dismissing the applicant's application dated 23rd November, 2021 for the reasons we have set out above.
2. The respondents to the application will have costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2022.

R. N. NAMBUYE

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JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

