



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wiper Democratic Movement v Moturi; Geni (Interested Party) (Election  
Petition E002 of 2022) [2022] KECA 624 (KLR) (8 July 2022) (Ruling)**

Neutral citation: [2022] KECA 624 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
ELECTION PETITION E002 OF 2022  
PO KIAGE, HA OMONDI & F TUIYOT'T, JJA  
JULY 8, 2022**

**BETWEEN**

**WIPER DEMOCRATIC MOVEMENT ..... APPLICANT**

**AND**

**ZACHARY NYAYIEMI MOTURI ..... RESPONDENT**

**AND**

**CHARLES MONG'ARE GENI ..... INTERESTED PARTY**

*(Being an Application for stay of execution/review/setting aside of the judgment  
of the Court of Appeal at Kisumu, (Kiage, Omondi & Tuiyott, JJA) dated  
22nd June, 2022 in Election Petition (Civil Appeal) No. E002 of 2022)*

**RULING**

1. On 15<sup>th</sup> June, 2022, this Court heard the appeal filed by Zachary Nyayiemi Moturi (the respondent herein) challenging the decision made by Ochieng, J. in Kisumu Election Appeal No. 001 of 2022, Charles Mongare Geni v Zachary Nyayiemi Moturi and Wiper Democratic Movement Party. The crux of that appeal was that the learned Judge in the Superior Court had erred in law in holding that the Political Parties Disputes Tribunal lacked jurisdiction, and that the proceedings and resultant judgment before it were a nullity. Upon hearing the submissions by counsel for the respective parties, this Court, on 22<sup>nd</sup> June, allowed the appeal, and set aside the judgment and decree of the High Court.
2. Consequently, the judgment of the Political Parties Disputes Tribunal dated 15<sup>th</sup> May, 2022, was restored in entirety and the appellant was awarded the costs of the appeal and of the High Court as well. Due to the urgent nature of the matter, the judgment was rendered pursuant to Rule 32(5) of the *Court of Appeal Rules* (2010) conveying the decision of the Court, and the reasons were to be given on 8<sup>th</sup> July, 2022.



3. However, before this Court could deliver the reasons for its decision, the applicant herein (Wiper Democratic Movement Party) on 24<sup>th</sup> June, 2022, filed this application dated 24<sup>th</sup> June, 2022, under Certificate of Urgency, supported by the affidavit sworn by Dr. Justine Kyambi, its Executive Director. The application urged us to set aside, review and/ stay the Judgment we had entered, and to order that the Interested Party be reinstated as the duly nominated candidate to vie for the position of Member of Parliament in North Mugirango Constituency.
4. The applicant has also urged us to make an interpretation on the issue of costs, contending that at no given time did it participate and/or have the status of a party to the proceedings at the High Court. In addition, the applicant also prays that we make a comprehensive interpretation on the controversial issue of service by the respondent as regards the applicant's internal dispute resolution mechanism, as well as to provide full judgment, in order to enable any aggrieved party to pursue an appeal.
5. The applicant explains that it has acted in haste because; there is no stay of execution of the judgment we entered; the appellant is proceeding to execute the said judgment, which is final; the judgment failed to consider that the alleged letter dated 27<sup>th</sup> April, 2022, by the respondent was neither physically nor electronically signed, thus its authenticity is extremely questionable; the email used by the respondent in effecting service on the applicant is not correct and; the record of appeal was incomplete.
6. The application is opposed on grounds that this Court lacks jurisdiction to entertain the review application; even if it has jurisdiction, the application does not fall within the exceptionally narrow grounds for grant of the relief sought, and; the application is misconceived.
7. The applicant has submitted that this Court failed to consider that the respondent did not invoke the internal dispute resolution mechanism in the first place, service was not properly effected and that since the application is merited, costs should be awarded to it.
8. Has the applicant satisfied the threshold to warrant review of the decision by this Court? On this aspect, this Court (Musinga, Sichale, and Kantai JJ.A) , just last week, on 30<sup>th</sup> June 2021, in *Jemnyango Moses Kamali v Abdisalam Hassan Abdi and 2 others* (2022) had occasion to reflect on the threshold and stated,

‘This Court has severally held that its residual jurisdiction to review its own decisions should be invoked with circumspection and in very rare cases where a party demonstrates that there has been fraud, bias, or other injustice with a view to correcting the same, but taking into consideration the principles of finality that hinges on public interest and the need to have conclusiveness in litigation. See *Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited* [2014] eKLR and *Ushago Diani Investment Limited v Jabeen Manan Abdulwahab* [2019] eKLR’
9. The Applicant has purported to read our minds by prematurely seeking to review a decision whose reasons were yet to be rendered. The matters being raised were central to the appeal, and were argued before us, and fully considered, as will be apparent in the Reasons for the Judgment being delivered today, 8<sup>th</sup> June, 2022. The applicant has not demonstrated a scintilla of bias or that the judgment was obtained through fraud.
10. The only reasonable inference we can draw is that the applicant having realised that it may have dropped the ball in resisting the appeal, has now pressed the panic button in an attempt to patch up whatever lacuna it perceives to have emerged in its earlier response to the appeal. It is indeed inconceivable and even preposterous for a party to apply for review of a decision of a court before knowing the reasons



informing the outcome. We therefore hold that the application lacks merit, and is dismissed with costs to the respondent.

**DELIVERED AND DATED AT KISUMU THIS 8<sup>TH</sup> DAY OF JULY, 2022**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

