



**Parliament of Kenya v Okioti & 3 others (Civil Appeal (Application)  
E060 of 2022) [2022] KECA 1092 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1092 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E060 OF 2022  
DK MUSINGA, W KARANJA & MSA MAKHANDIA, JJA  
OCTOBER 7, 2022**

**BETWEEN**

**PARLIAMENT OF KENYA ..... APPLICANT**

**AND**

**OKIYA OMTATAH OKOITI ..... 1<sup>ST</sup> RESPONDENT**

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

**BETH MUGO ..... 3<sup>RD</sup> RESPONDENT**

**ADAN KEYNAN ..... 4<sup>TH</sup> RESPONDENT**

*(An appeal against the Ruling and Orders of the High Court of Kenya at Nairobi (H. Ong’udi, J.) delivered on 3rd February 2022 in Constitutional Petition No. 71 of 2018.)*

**RULING**

1. This ruling is in respect of an application dated 14<sup>th</sup> February 2022 where the applicant seeks stay of further proceedings in Constitutional Petition No. 71 of 2018 – Okiya Omtatah Okioti v The Parliament of Kenya & 3 Others pending the hearing and determination of this appeal.
2. In support of the application, Michael Sialai, who was the Clerk of the National Assembly stated, inter alia, that the aforesaid Petition challenges the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Commissioners of the 1<sup>st</sup> Interested Party

on grounds that pursuant to Article 250 (6)(a) as read alongside Article 127 (c)(i) and (ii) of *the Constitution*, members of Parliament are prohibited from serving as Commissioners of the Parliamentary Service Commission for more than one term of five years; that the appellant entered appearance and filed an application urging the trial court to certify that the application raises substantial questions of law and refer the Petition to the Chief Justice for empaneling of a bench of an



uneven number of judges not less than three to hear the matter; and that the application was considered by Ong’udi, J. and dismissed vide a ruling dated 3<sup>rd</sup> February 2022.

3. The applicant was aggrieved by that ruling and filed an appeal to this Court to challenge it. The applicant believes that the petition raises novel issues that require careful interpretation of *the Constitution*, particulars whereof are set out in the applicant’s affidavit. The applicant is apprehensive that unless this Court grants the orders sought the hearing of the Petition shall proceed, in which event the appeal shall be rendered nugatory.
4. When the application came up for hearing, Ms Kemunto appeared for the applicant; the 1<sup>st</sup> respondent appeared in person; while Mrs L. Kambuni, S.C. appeared for the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> and 4<sup>th</sup> respondent did not participate in these proceedings.
5. The 1<sup>st</sup> respondent did not oppose the application, while the 2<sup>nd</sup> respondent supported the application.
6. The applicable principles in an application brought under rule 5(2)(b) of this Court’s Rules such as this one are well settled. An applicant must demonstrate that the appeal or intended appeal is arguable and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Attorney General v Okiya Omtatah Okoiti & Another* [2019] eKLR.
7. In the impugned ruling, the learned judge found that the Petition raised novel constitutional issues but not substantial to warrant the empanelment of an expanded bench of uneven number of judges. We have perused the memorandum of appeal. One of the fundamental issues raised is that the learned judge erred by subjectively concluding, without any justification, that the interpretation of Article 127(2) as read with Article 250(6) of *the Constitution* does not raise a substantial question of law on the interpretation of *the Constitution*. We think this is an arguable issue.
8. We also agree that unless the the order of stay of proceedings is granted, the hearing of the Petition is likely to proceed, in which event the appeal shall be rendered a mere academic exercise.
9. Consequently, we allow the application and order that the proceedings in Constitutional Petition No. 71 of 2018 be and are hereby stayed pending the hearing and determination of this appeal. The costs of this application shall be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

**W. KARANJA**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

