



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KOOME, MUSINGA & M'INOTI, JJ. A.)**

**CIVIL APPLICATION NO. E009 OF 2021**

**BETWEEN**

**HON. MIKE SONKO MBUVI GIDEON KIOKO.....APPLICANT**

**AND**

**OKIYA OMTATAH OKOITI.....1ST RESPONDENT**

**HABIB OMAR KONGO.....2ND RESPONDENT**

**THE NAIROBI CITY COUNTY ASSEMBLY.....3RD RESPONDENT**

**THE SPEAKER,NAIROBI CITY COUNTY ASSEMBLY....4TH RESPONDENT**

**THE CLERK,NAIROBI CITY COUNTY ASSEMBLY.....5TH RESPONDENT**

**ANNE KANANU MWENDA.....6TH RESPONDENT**

**HON. ATTORNEY GENERAL.....7TH RESPONDENT**

**THE INDEPENDENT ELECTORAL**

**AND BOUNDARIES COMMISSION.....8TH RESPONDENT**

**THE SENATE.....9TH RESPONDENT**

**(Being an application for conservatory orders pending appeal from the Ruling and Orders of the High Court at Nairobi (Mrima, J.) delivered on 15th January 2021**

*in*

***Constitutional Petition No. E005 of 2021 Consolidated with Constitutional Petition No. E009 of 2021.)***

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**RULING OF THE COURT**

1. By an application dated 5th January 2021, the applicant sought an injunction to restrain the 6th respondent from being sworn in as the Deputy Governor, Nairobi City County, and from assuming the office of, or executing the functions of Governor, Nairobi City County, pending the hearing and determination of an intended appeal against the ruling of *Mrima, J.* delivered on 15th January 2021 in Nairobi *High Court Constitutional Petition No. E005 of 2021*, consolidated with *Constitutional Petition No. E009 of 2021*.

2. The 1st and the 8th respondents did not file any papers either in support or opposition to the application. The 2nd, 3rd, 4th, 6th, 7th and 9th respondents however opposed the application. They stated, *inter alia*, that the application had been overtaken by events because on 15th January 2021 the 6th respondent was duly sworn in as the Deputy Governor of Nairobi. That is not denied by the applicant, and in any event, it is a notorious fact that is in the public domain.

3. The Court does not, and ought not make orders in vain, or engage in an academic exercise. Accordingly, we agree that the instant

application has been overtaken by events and dismiss it with no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.**

**M. K. KOOME**

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**JUDGE OF APPEAL**

**D. K. MUSINGA**

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**JUDGE OF APPEAL**

**K. M'INOTI**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**