



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OUKO, (P), (IN CHAMBERS))**

**CIVIL APPLICATION NO. 240 OF 2017**

**BETWEEN**

**JACINTA WANZA MAKENZI.....APPLICANT**

**AND**

**AGNES MUTINDA KITHUSI.....1ST RESPONDENT**

**MARDEN KELLI.....2<sup>ND</sup> RESPONDENT**

**KEVIN MUTINDA KELLI.....3<sup>RD</sup> RESPONDENT**

**SYLVIA MWENDE KELLI.....4<sup>TH</sup> RESPONDENT**

**PETER MUTINDA MUNYAO.....5<sup>TH</sup> RESPONDENT**

*(In the matter of extension of time to file a reference to full court against the Ruling*

*and order of the single Judge of the appellate Court at Nairobi (Musinga, JA)*

*dated 27<sup>th</sup> April, 2018 In Civil Appl. No. 240 of 2017)*

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**RULING**

On 27<sup>th</sup> April, 2018, Musinga, JA, sitting as a single judge declined to extend time within which the applicant would appeal the decision of the High Court rendered on 6<sup>th</sup> October, 2014. The applicant then sought, in a motion dated 28<sup>th</sup> June, 2018 and pursuant to **Rules 4 and 55(1)(b)** of the Court of Appeal Rules

**“leave ....to file a reference to a full court against the ruling and orders delivered on 27<sup>th</sup> April, 2018 by Hon. Justice D.K Musinga.....”.**

When the application came up on 8<sup>th</sup> November, 2018, the applicant’s counsel or the applicant were not in attendance despite service with the hearing notice. Kantai, JA, on being moved by the respondents’ counsel dismissed the motion, I suppose under Rule 56 of the Court’s Rules. It is the reinstatement of that motion that ought to have concerned the applicant. Instead the instant motion frog-lips the decision of Kantai, JA and seeks go back to Musinga, JA’s ruling.

Ordinarily once a single judge rejects an application for extension of time, under **Rule 55** an aggrieved applicant may apply in writing to the Registrar within seven days to place the matter before a full court to varied, discharged or reversed the decision of a single judge.

By bringing this application, it is not clear whether the applicant would like me to grant leave to her to **“appeal the ruling dated 27<sup>th</sup> April, 2018 out of time”**, as she has averred in her affidavit or to grant leave to have a reference made to a full court in respect of Musinga, JA’s decision. There is no mention **at all of the decision of Kantai, JA.**

This application is grossly incompetent and bereft of any substance. I accordingly dismiss it with costs.

**Dated and delivered at Nairobi 21<sup>st</sup> day of June, 2019.**

**W. OUKO, (P)**

**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

**DEPUTY REGISTRAR**