



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: MWILU, J.A.)**

**CIVIL APPLICATION NO. 12 OF 2015 (UR 12/2015)**

**BETWEEN**

**ATTORNEY GENERAL .....1<sup>ST</sup> APPELLANT**

**REPUBLIC OF KENYA..... 2<sup>ND</sup> APPELLANT**

**AND**

**COALITION FOR REFORM & DEMOCRACY .....1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL COMMISSION OF HUMAN RIGHTS.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS. ....3<sup>RD</sup> RESPONDENT**

**THE JUBILEE COALITION PARTY .....4<sup>TH</sup> RESPONDENT**

**KITUO CHA SHERIA .....5<sup>TH</sup> RESPONDENT**

**KATIBA INSTITUTE .....6<sup>TH</sup> RESPONDENT**

**LAW SOCIETY OF KENYA .....7<sup>TH</sup> RESPONDENT**

**CIC (COMMISSION ON THE  
IMPLEMENTATION OF THE CONSTITUTION).....8<sup>TH</sup> RESPONDENT**

*(Being an Application for leave to amend Notice of Appeal in an intended appeal from the Ruling and Order of the High Court of Kenya at Nairobi*

*in*

*H.C. Petition No. 628 of 2014 Consolidated with Petition No. 630 of 2014*

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**R U L I N G O F T H E C O U R T**

1. When the honourable the Attorney General of the Republic of Kenya drew his Notice of Appeal following the Ruling and Order of the honourable Mr. Justice Odunga on the 2<sup>nd</sup> January 2015 with which he was dissatisfied, he styled it as intended to be an appeal to the Supreme Court. The honourable Attorney General calls that the first error in that Notice of Appeal. The second error is given as the date of the Ruling by Odunga J; that instead of indicating the correct date as 2<sup>nd</sup> January 2015, the same was shown as 2<sup>nd</sup> January 2014.

2. The honourable the Attorney General therefore took out the notice of motion dated the 15<sup>th</sup> day of January 2015 and filed herein on 19<sup>th</sup> January 2015. That motion is premised on the provisions of **Articles 156, 159 (2) (d) and (e) of the Constitution of Kenya** as well as under **rules 1(2), 4, 42, 44 of the Court of Appeal Rules** and **section 3 of the Appellate Jurisdiction Act**. It seeks orders that leave be granted to the applicants to amend the Notice of Appeal so as to indicate that the appeal was to the Court of Appeal and not to the Supreme Court and that the date of the impugned Ruling was 2<sup>nd</sup> January 2015 and not 2<sup>nd</sup> January 2014.

3. The motion is based on the grounds that those errors were inadvertently made and in the interest of justice they should be rectified by leave being granted for an amendment to the Notice of Appeal. Further, that the appeal sought to be lodged is of great public importance and raises a complex point of law.

4. The affidavit in support of the Motion was deponed to by **Mwangi Njoroge**, the Deputy Chief Litigation Counsel in which he stated, *inter alia*, that the applicant intended to proceed to file the record of appeal but could not do so unless there was a properly amended Notice of Appeal.

5. I heard this application on the 9<sup>th</sup> of November 2015 when Mr. Mwangi Njoroge for the applicant reiterated what is stated in the Attorney General's motion and in his supporting affidavit. Learned Counsel Mr. Lempaa for the 2<sup>nd</sup> and 6<sup>th</sup> respondents did not oppose the application terming the errors procedural technicalities. For the 3<sup>rd</sup> respondent Mr. Karuga did not oppose the application for similar reasons. The 4<sup>th</sup> respondent through its counsel Mr. Steve Kimathi did not oppose the application.

6. The 1<sup>st</sup> respondent was served with the hearing notice on the 2<sup>nd</sup> October 2015 through its advocate on record Mr. A.T. Oluoch. However there was no representation for the 1<sup>st</sup> respondent at the hearing of the motion.

7. The record shows that the errors intended to be corrected are careless ones but which do not cause any prejudice to be occasioned to the respondents. All parties are agreed as to when the impugned Ruling and Order were made and clearly addressing the Notice of Appeal to the Supreme Court is a error that is correctable by this Court even under its inherent powers. The objective of the rules of the court and more importantly **sections 3A and 3B of the Appellate Jurisdiction Act** is to facilitate the just and fast disposal of cases and justice devoid of undue regard to technicalities.

8. It is therefore my considered view that the leave sought would serve the sole purpose of allowing access to the appellate judicial process and no prejudice or inconvenience would be occasioned to any party. The errors committed by the applicant cannot impede this Court's discharge of substantive justice. Accordingly I grant orders in terms of prayers 1, 2 and 3 of the motion under consideration. I order that costs do abide the intended appeal.

**Dated and delivered at Nairobi this 4<sup>th</sup> day of December, 2015.**

**P. M. MWILU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**