IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, NAMBUYE & M'INOTI, JJ.A.)

CIVIL APPEAL NO. 323 OF 2013

BETWEEN

WAVINYA NDETI…………………...APPELLANT

AND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION (IEBC)...…...…...........................…1ST RESPONDENT

ISAAC HASSAN (RETURNING OFFICER

OF THE NATIONAL TALLYING CENTER….......………………....2ND RESPONDENT

THE MACHAKOS COUNTY RETURNING OFFICER.....……......3RD RESPONDENT

ALFRED MUTUA NGANGA…………………….……………...…4TH RESPONDENT

BERNARD MUIA TOM KIALA……….. …………...………...…5TH RESPONDENT

*(Being an appeal against the entire judgment, decree and order of the High Court of Kenya at Machakos (**Hon. Mr. Justice David S. Majanja**) delivered on 17th September, 2014*

in

Election Petition No. 4 of 2013)

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JUDGMENT OF THE COURT

[**1**] The appellant ***Wavinya Ndeti*** and the 4th respondent ***Alfred Mutua Nganga*** are among the six candidates who vied for the elective office of Governor of Machakos County in the Gubernatorial elections held on 4th March 2013. After the elections, the Returning Officer announced the result of the votes garnered by each candidate as follows:

Alfred Mutua Nganga – 257,607

Aaron Mwau Wambu – 5,355

Mumina Fidel Timi – 1,837

Thomas Nzioka Kibua – 4,801

Titus John Ndundu – 2,951

Wavinya Ndeti – 92,644

Subsequently Alfred Mutua Nganga was declared the duly elected Governor. The appellant being aggrieved by the election filed an election petition No. 4 of 2013 in the High Court at Machakos seeking the nullification of the election of the 4th respondent on grounds of various electoral malpractices.

Together with the petition the petitioner filed a notice of motion dated 26th March 2013 seeking a mandatory injunction for discovery of documents enumerated therein and an order for scrutiny among others. This application was heard on its merit and it gave rise to the ruling of Majanja, J. of 2nd July 2013 in which the said application was dismissed.

The petitioner then filed a notice of motion dated 5th July 2013 seeking leave to appeal against the orders of Majanja, J. made on 2nd July 2013, an order for stay of further proceedings, an order of stay of execution of the order of 2nd July 2013 and suspension of the hearing of submission on the main petition. Majanja, J. gave a ruling on 9th July 2013 acceding only to the request for the petitioner to appeal against the orders of 2nd July 2013, but dismissed the rest of the prayers paving the way for the merit disposal of the petition, giving rise to the judgment of 27th September 2013 in which Majanja, J. dismissed the petition with costs and declared the 4th respondent a validly elected Governor of Machakos County. The learned Judge further capped the costs as against the 1st, 2nd and 3rd respondents at Kshs. 2 million and as against the 4th and 5th respondents at Kshs. 2.5 million.

[**2**] The present appeal was filed on 22nd November, 2013. On 27th November 2013 the 4th and 5th respondents filed a notice of cross appeal as against the capping of the costs at Kshs. 2.5 million. They seek an order that the capping of costs is *ultra vires* the Advocates Act and that the order should be set aside and the bill of costs taxed in accordance with the Advocates Act.

[**3**] On the 14th January 2014, the 4th and 5th respondents filed a preliminary objection seeking an order that the appeal be struck out essentially on two main grounds. Firstly, that the appeal is filed out of time specified in **section 85A(a)** of the Elections Act (**Act**) and, secondly, that the memorandum of appeal raises matters of fact in contravention of section 85A of the Act. On her part, the appellant on 22nd January 2014 filed a counter preliminary objection to the preliminary objection on the ground that the preliminary objection by the 4th and 5th respondents does not comply with the procedural requirements.

The appeal, cross appeal and the preliminary objections were all listed for hearing for 23rd January, 2014. In view of the statutory requirements under section 85A (b) of the Act that the appeal should be heard and determined within six months of the filing of the appeal, the Court sought the views of the respective advocates on the manner of conducting the proceedings conveniently and timeously whereupon, with the concurrence of the respective advocates the Court directed that:

> ***"1. The preliminary objections, the appeal and cross appeal shall be heard together by way of written submissions.***
>
> 2. ***However, the Court shall determine the preliminary objections first before dealing with the merits of the appeal and cross appeal, if necessary.***

3. ***The appellant's advocates to file and serve written submissions on or before 12th February, 2014 limited to 30 pages. The respective respondents to file and serve replying submissions limited to 30 pages on or before 26th February, 2014. The appellant to file further submissions in reply, if any, limited to 15 pages on or before 5th March, 2014.***

4. ***Leave to appellant to file a supplementary record to incorporate a complete form 36 - as the form 36 in pages 1 – 13 of Vol. 5 of the record of appeal is incomplete. Leave to the 1st and 2nd and 3rd respondents to file a supplementary record to incorporate any clean documents in the record of appeal which they may wish to file.***

5. ***Mention on 5th March 2013 to confirm compliance and for giving a date for the highlighting of written submissions if any.***

6. ***Liberty to any party to apply."***

[**4**] Pursuant to the directions, the preliminary objections, the appeal and cross appeal have been fully heard both by written and oral submissions.

However, the appeal and cross-appeal have been heard albeit *de bene esse* as the Court is required to determine the preliminary objections first and only pronounce on the merits of the appeal and cross appeal if the preliminary objection by the appellant is not upheld and only if the preliminary objection by the 4th and 5th respondents is dismissed.

[**5**] Turning to the preliminary objections, the raising of a preliminary objection against a preliminary objection is a novel and improper procedure which should be discouraged. As ***Sir. Charles Newbold (P)*** said in **Mukisa Biscuits Manufacturers Co. Limited v West End Distributors Limited [1969] EA 696 at p.701 para A**, the improper raising of preliminary points unnecessarily increases costs and on occasions confuse the issues. The procedural issues raised by the appellant as preliminary issues regarding the 4th and 5th respondents' preliminary objection could have been properly argued as some grounds on which the preliminary objection is opposed. It was improper to argue the grounds of objection in two categories – technical and substantive. However, we shall consider the technical grounds first. First, it is submitted that the 4th and 5th respondents' preliminary objection is time barred as it was filed outside the 30 days stipulated by **Rule 84** of the Court of Appeal Rules (**Rules**) and secondly, that the preliminary objection is incompetent as it was not filed by a notice of motion as envisaged by Rule 42 of the Rules.

Rule 84 provides:

> ***"A person affected by an appeal may apply to the Court to strike out the notice of appeal or the appeal as the case may be on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:***
>
> ***Provided that an application to strike out a notice of appeal or an appeal shall not be brought after expiry of thirty days from the date of service of the notice of appeal or the record of appeal as the case may be."***

By Rule 42, all applications to Court, except the application made at the hearing of the appeal or by consent of parties, shall be by motion which shall state the grounds of the application.

Mr. Kinyanjui, learned counsel for the appellant submitted that the record of appeal was served on the 27th November, 2013 and that the jurisdiction to object to the record of appeal lapsed 30 days thereafter.

On the other hand, ***Mr. Mutula Kilonzo Jnr***. learned counsel for 4th and 5th respondents and ***Mr. Kimani Muhoro*** learned counsel for the 1st, 2nd and 3rd respondents submitted respectively, among other things,

that Rules 42 and 84 are inapplicable to the preliminary objection by the 4th and 5th respondents and that in any case the preliminary objection was filed within the 30 days stipulated by the Rules.

[**6**] By Rule 35 of the Elections (Parliamentary and County Elections) Petition Rules, 2013 –L.N No. 54 of 15th March 2013 (**Election Rules**), an appeal from the judgment and decree of the High Court in an election petition is governed by the Court of Appeal Rules. Logically, an appeal from the High Court as the present appeal, once filed is governed by the Rules including Rule 84 in issue. However, it is unnecessary to consider whether the specified grounds on which an application to strike out can be brought under Rule 84 apply to the preliminary objection in an appeal from an election court for two reasons. Firstly there is no application under Rule 84 to strike out the appeal at all or on the grounds stated therein. The matter before the Court is a preliminary objection to the appeal on the ground that it is filed outside the statutory period stipulated in **S. 85A (a)** of the Act. A preliminary objection is a recognized procedural device which is not normally limited in time for impugning *in limine* the competence of proceedings of whatever nature before a court of law. It is normally raised at the hearing of the proceedings in question and if upheld, the proceedings are terminated. Secondly, if the 30 days stipulated in the proviso apply, then the preliminary objection was, according to our reckoning, filed within the time permitted by the Rules. By Rule 3 of the Court of Appeal Rules, the 30 days period fixed by proviso to Rule 84 has to be reckoned as provided by Rule 3. By Rule 3(e) the period of the Christmas vacation shall not be reckoned in the computation of time unless the Court otherwise directs. By **Rule 2(2) (b)** of the High Court (Practice and Procedure) Rules contained in the Judicature Act, the Christmas vacation commences on 21st December, and terminates on 13th January. If Christmas vacation is excluded then the preliminary objection filed on 14th January, 2014 was filed on or about the 24th day from 27th November 2013 which is within the 30 days stipulated by the proviso to rule 84.

The failure to file a formal notice of motion is only relevant to the second ground of preliminary objection – that is, that the memorandum of appeal raises matters of fact as opposed to points of law. We think that from the nature of the objection, a substantive application which should be supported by an affidavit specifying the objectionable grounds was necessary so that the appellant could have had adequate notice of the nature of the objections and also a full opportunity to reply. Nevertheless, the second objection cannot be considered together with the first objection as logically, it can only be considered if the first objection relating to the competence of the appeal is dismissed. Furthermore, the appropriate occasion to consider the second objection is at the determination of the appeal on the merits.

For those reasons, the preliminary objection to the 4th and 5th respondents' preliminary objection as it relates to the competence of the appeal is dismissed. The Court will proceed to determine the merits of the preliminary objection.

[**7**] The main substantive legal issue raised by the 4th and 5th respondents and which is supported by the 1st , 2nd and 3rd respondents is essentially that the appeal is incompetent having been filed outside the 30 days stipulated by **section 85A (a)** of the Act. Section 85A is in the following terms:

> ***"An appeal from the High Court in an election petition concerning membership of National Assembly, Senate or the office of County Governor shall lie to the Court of Appeal on matters of law only and shall be –***

a. ***filed within thirty days of the decision of the High Court; and***

b. ***heard and determined within six months of the filing of the appeal"***

As mentioned earlier, it is evident and it is not disputed that the decision of the election court appealed from was delivered on 17th September 2013 and that the appeal was filed on 22nd November, 2013.

Mr. Mutula Kilonzo submitted *inter alia* that the appeal was filed sixty seven (67) days from the date of the judgment; that there is no provision in the Election Act which allows for the extension of time for filing of an appeal; that election petitions and appeals are exclusively governed by the Elections Act and

the Election Rules unless the Act or the Rules provided for the application of another legislation or rules; that the section is worded in mandatory terms; that the Court has no discretion on the matter and that the timelines set by the Act are meant to ensure expeditious disposal of election disputes. Those submissions are supported by the 1st, 2nd and 3rd respondents.

On the other hand, **Mr. Kinyanjui** raised several constitutional and procedural issues and submitted at the outset that the preliminary issue raised a constitutional question falling for determination of the Court to wit;

> ***"Whether a strict construction of section 85A of the Elections Act, 2011 violates an appellant's right of access to justice under Article 48 of the Constitution to have an election dispute heard and determined fairly by an Appellate Court under Article 25(c) of the Constitution and as envisaged under Article 50(1) within the scope of Article 259(1) of the Constitution. Whether section 85A is to that extent unconstitutional?"***

In summary, **Mr. Kinyanjui** submitted as follows:

i. The Court must construe section 85A against the right of access to justice and fair trial.

ii. A right to fair hearing which includes a right to lodge and fully try an appeal on merits and right to access to justice cannot be limited or abrogated by legislation.

iii. As the Constitution does not set the time limit for lodging an election dispute appeal, Article 259(8) of the Constitution applies and the appeal can be filed without unreasonable delay.

iv. Section 85A of the Act conflicts with rule 35 of the Election Rules and rule 82 of the Rules. By rule 35 of the Election Rules thus importing the Court of Appeal Rules into the electoral dispute appeal process the Legislature intended the filing of the record of appeal to be governed by the time lines specified in the Court of Appeal Rules.

v. The administrative mechanism necessary to avail the court proceedings to the appellant were outside the appellant's control and it was not possible to lodge the appeal within 30 days of the delivery of judgment and the time should be computed pursuant to rule 82 from 24th September, 2013 certified by the Registrar in the Certificate of Delay.

vi. The Court has discretion to admit an appeal filed outside the 30 days limitation and each case should be treated on its own merits.

[**8**] It is apparent that the appellant is invoking the provisions of the Constitution, the Elections Act, the Appellate Jurisdiction Act, the Court of Appeal Rules and the Election Rules for the submission that the 30 days time limitation in Section 85A(a) of the Act, does not apply at all as it is unconstitutional or that it does not apply in the circumstances of this case.

It is convenient to deal first with the alleged conflict between section 85A (a) of the Act, Rule 35 of Election Rules and Rule 82 of the Rules. Rule 35 of the Election Rules made under section 96(1) of the Act provides that an appeal from the judgment and decree of the High Court shall be governed by the Court of Appeal Rules. Rule 82 (1) of the Rules stipulates that an appeal shall be instituted by lodging the documents specified therein within sixty days of the date when the notice of appeal was lodged. The proviso to rule 82 (1) excludes from computing time such time as may be certified by the Registrar of the High Court as having been required for preparation and delivery to the appellant of a copy of proceedings if an application for such proceeding was made in writing within 30 days of the decision and a copy thereof sent to the respondent. The appellant lodged a notice of appeal on 17th September 2013. The certificate of delay given and issued by the Deputy Registrar certified that the application for proceedings was lodged on the 17th September 2013, and that the proceedings and decree were not ready until 24th September 2013. It follows that if Rule 82 (1) applies to the appeal, the sixty days should be computed

from 24th September 2013, which could render the appeal filed on 22nd November 2013 compliant.

[**9**] The Elections Act was enacted under the authority of **Article 87(1)** of the Constitution which provides:

> ***"Parliament shall enact legislation to establish mechanisms for timely settling of electoral disputes."***

As the Supreme Court said in **<u>Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others</u> [2012] eKLR at para 68:**

> ***"A Court's jurisdiction flows from either the Constitution, or legislation, or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law… Where the Constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."***

In **<u>Anarita Karimi Njeru v Republic</u> (No. 2) [1979] KLR 162** this Court held that the Court of Appeal enjoys no general supervisory role over the judicial process and only has such jurisdiction as expressly conferred on it by statute.

The Elections Act is a special legislation governing, among other things, the election dispute resolution mechanisms. Section 85(A) gives a limited or conditional right of appeal against the judgment of the High Court in an election petition. The right of appeal and the period within which the appeal should be filed and determined are conjunctive so that if the appeal is not filed and determined within the period stipulated, the right of appeal is extinguished. Neither the Appellate Jurisdiction Act nor the Rules gives a right of appeal in election disputes nor prescribe the period within which such appeals should be filed and determined. Indeed, **section 3(1)** of the Appellate Jurisdiction Act gives the Court of Appeal jurisdiction to hear appeals ***in cases in which an appeal lies to the Court of Appeal*** under any law. Section 85A of the Act is such law which gives the Court jurisdiction to entertain appeals from the High Court in an election petition.

The question raised by **Mr. Kinyanjui** regarding the conflict of statutory provisions relating to appeals from election petition and the Court of Appeal rules have been determined by the Court under the repealed National Assembly and Presidential Elections Act (repealed Act) . Section 23(4) of that Act provided:

> ***"Subject to subsection (5), an appeal shall lie to the Court of Appeal from decision of an election court whether the decision be interlocutory or final, within thirty days of the decision."***

In **<u>Maitha v Said & Another</u> – Civil Appeal No. 292 of 1998 (2008) 2KLR (EP 33**) the Court by majority rejected the argument that the Court of Appeal Rules applied and held:

> ***"If an Act giving the right of appeal from the High Court to the Court of Appeal has set out the time limit within which such right should be exercised, failure to comply with such time limit would extinguish the right of appeal and an appeal would not lie outside the time limit."***

That decision was followed in **<u>Lorna Chepkemoi Laboso v Anthony Kipkoskei Kimeto & Two Others</u> - Civil Appeal (Application) No. 172 of 2005** (unreported) where an application to strike out an appeal from the election court which was filed outside the 30 days stipulated by **section 23(4**) of the repealed Act was allowed. In allowing the application, the Court said in part:

> ***"The practicality of lodging an appeal within 30 days as stipulated by section 23(4) of the***

Act has not been questioned. On our part, we think that the 30 days stipulated are sufficient for a vigilant and diligent party to lodge an appeal. If that period be considered too short, then it is only the Parliament and not the Court which can intervene by legislation after necessary consultation with all interested parties. For our part we do not think the section is particularly oppressive to intending appellants. Many appeals from the decisions of the superior court on election petitions have been brought to this Court and apart from Emmanuel Karisa Maitha case, we are not aware of any other case complaining against section 23(4) of the Act."

In **Murathe v Macharia (2008) 2 KLR [E.P] 244**, an election petition was served outside the 28 days stipulated by **section 20(1) (a)** of the repealed Act which provided that:

"A petition to question the validity of an election, shall be presented and served within twenty eight days after the date of publication of the result of the election in the Gazette."

The contention that the petition was valid as it was served within the time prescribed by the Civil Procedure Rules was rejected, the Court holding *inter alia*:

"Election petitions are governed by a special self contained regime and the Civil Procedure Rules were inapplicable except where expressly stated. Moreover, order 49 rule 3A of the Civil Procedure Rules was a piece of subsidiary legislation promulgated by the Rules Committee for purposes of Civil Procedure Act and under the rules of statutory interpretation, they would not override the express provisions of an Act of Parliament."

In **Jyoti Basu & Others v Debi Ghosal & Others [1982] AIR 983; 1982 SCR (3) 318** the Supreme Court of India held, among other things, that the provisions of the Civil Procedure Code cannot be invoked to permit that which the Representation of the People Act 1951 does not permit, and that the Civil Procedure Code applies subject to the provisions of the Representation of the People Act 1951 and any rule made there-under.

[**10**] It is an established principle of construction of statutes that no subsidiary legislation shall be inconsistent with the provisions of an Act (See section 31(b) of the Interpretation and General Provisions Act – Cap 2 Laws of Kenya). A subsidiary legislation cannot repeal or contradict express provisions of an Act from which they derive their authority.

The only distinguishing factor between **Maitha's** and **Lorna's** cases on one hand and the present appeal on the other is that there was no rule similar to Rule 35 of the Election Rules in place at that time. However, the Rules predate the Elections Act and were designed for all general appeals to the Court and not specifically for appeals from Election Courts. Rule 35 did not introduce new rules and in any case even where an Act passed subsequently to the making of the rules is inconsistent with the existing rules, the Act must normally still prevail.

In our view, the **Maitha** and the **Lorna** cases are authoritative in the interpretation of section 85A (a) vis-à-vis the Court of Appeal Rules.

[**11**] It is also contended that it was not possible to file the appeal within the 30 days because of the delay by the Registrar of the High Court in supplying the proceedings. The Certificate of Delay issued by the Deputy Registrar of the High Court on 12th November 2013 shows that the proceedings were ready by 24th September 2013 but were collected on 12th November, 2013 and that the delay in the preparation of the proceedings were only seven days. The appellant's counsel however submitted that the Deputy Registrar failed to notify them that the proceedings were ready for collection. It is evident from the certificate of delay that the proceedings were collected about one and half months after they were ready. Had the appellant collected the proceedings on 25th September 2013, she would still have had about two weeks to file the appeal in time. It is apparent that there was no prejudicial systemic delay in the preparation of the proceedings. The appellant had a duty to be vigilant. Law, like equity, serves the vigilant and section 85A has to be construed in accordance with the maxim ***vigilantibus et non***

dormientbus jura subveniunt (the law aids the vigilant, not those who sleep) – see **para 1437 Halsbury's Laws of England, Vol. 44(1) 4th Ed. P. 867.**

Seemingly, other than requesting for proceedings the appellant took no further steps for almost two months such as contacting the High Court Registry for necessary information. Furthermore, Rule 88 of the rules allows a party to file without leave a supplementary record of appeal containing the essential documents within 15 days of the lodging of the record of appeal.

The appellant could have filed the appeal within time and file the supplementary record containing essential documents within the stipulated time. We are not satisfied that in such an important matter and where time was of essence, the appellant was vigilant.

[**12**] The question whether the Court has discretion to entertain any appeal filed out of time depends on whether the provisions of section 85A are mandatory or discretionary. The same language in section 85A is used in section 75(4) of the Act in relation to appeals from the Resident Magistrate's Court to the High Court. Section 85A deals with substantive and not procedural law. It confers both a right of appeal and jurisdiction to the Court of Appeal. There cannot be any doubt from the language and tenor of section 85A that Parliament intended the provisions to be mandatory. The Court has not been given power to extend time.

[**13**] Lastly, the question whether a strict interpretation of section 85A violates the appellant's Constitutional right under Article 48 to access to justice and fair hearing under Article 50(1) has to be considered having regard to the entire Constitution and the Elections Act. Section 85A (a) can only be void if it is inconsistent with the Constitution. As already stated the Elections Act was enacted pursuant to Article 87(1) of the Constitution.

Article 87(1) specifically sanctions the Parliament to enact legislation for '***timely settling of electoral disputes'***.

Article 87(2) provides that petitions concerning an election other than a presidential election should be filed within 28 days after the declaration of election results. Further, Article 140(1) and (2) respectively requires that a petition to challenge the election of president–elect should be filed within 7 days after the declaration of results and should be heard and determined by the Supreme Court within 14 days.

Thus, the expeditious resolution of electoral disputes is an overriding constitutional principle. The Supreme Court recognized this principle in **Ali Hassan Joho & Another v Suleiman Said Shahbal & Others [2014] eKLR** when it said in para 101:

> ***"…expedition in the disposal of electoral disputes is a fundamental principle under the Constitution."***

It stands to reason that the enactment of section 85A(a) having been sanctioned by the Constitution cannot be inconsistent with the right of access to justice and fair hearing. As the Supreme Court of Nigeria held in **Senator John AKpanudoedehe v Godswill Obot Akabio SC No. 154 of 2012** when a Constitution provides a limitation period for hearing of a matter, the right to fair hearing is guaranteed by the courts within the specified period. In our view, the same is true when the limitation period is provided by a statute sanctioned by the Constitution like in the present case.

The right of access to justice and fair hearing is guaranteed by the courts within the law. As **Bode Rhodes Vivour JSC** said in the Nigerian case and as this Court said in Lorna's case, if the Court extends the time provided it would amount to judicial legislation which is not within the function of the courts. Similarly, the provisions of Article 259(8) of the Constitution which provides that if a particular time is not prescribed by the Constitution for performing a required act, such act can be performed without unreasonable delay does not apply in this case as section 85A has prescribed the time for lodging an appeal. The denial of right of access to justice cannot, as matter of fact arise as the Court has found that the appellant was not vigilant.

[**14**] In conclusion when construing section 85A(a) the Court must presume that Parliament intended a construction which corresponds to the legal meaning and should find against a construction which circumvents or otherwise evades the objective of the section which is the timely resolution of appeals from election courts. Further, the Court should uphold the principle that law should be coherent and self consistent and find that Parliament intended the entire electoral law relating to timely resolution of electoral dispute stipulated both in the Constitution and the Election Act to be coherent and self consistent and to be strictly adhered to by the implementing courts of law. No room was left for any exercise of judicial discretion.

[**15**] From the foregoing we find that section 85A(a) is sacrosanct and that Rule 82 is *ultra vires* and is inapplicable to the extent of the inconsistency. Thus, this appeal which was filed outside the stipulated 30 days is incompetent. The cross appeal which is anchored on an incompetent appeal is also incompetent. Having so found, it is not necessary to pronounce on the merits of the appeal and the cross appeal.

Accordingly, the first preliminary objection by the 4th and 5th respondents is upheld with the result that and we so order, that the appeal be and is hereby struck out with costs to all the respondents. The cross-appeal is also struck out with costs to the appellant in line with the guiding principle.

Dated and delivered at Nairobi this 9th day of April, 2014.

E.M. GITHINJI

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JUDGE OF APPEAL

R.N. NAMBUYE

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR