



**Institute for Social Accountability & Centre for Enhancing Democracy and Good Governance v Institute for Social Accountability & Centre for Enhancing Democracy and Good Governance (Petition 1 of 2018) [2019] KESC 90 (KLR) (8 November 2019) (Ruling)**

*Institute for Social Accountability & another v National Assembly of Kenya & 4 others [2019] eKLR*

Neutral citation: [2019] KESC 90 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA**

**PETITION 1 OF 2018**

**DK MARAGA, CJ, PM MWILU, DCJ & VP, MK  
IBRAHIM, SC WANJALA & N NDUNGU, SCJJ**

**NOVEMBER 8, 2019**

**BETWEEN**

**INSTITUTE FOR SOCIAL ACCOUNTABILITY ..... 1<sup>ST</sup> APPLICANT**

**CENTRE FOR ENHANCING DEMOCRACY AND GOOD  
GOVERNANCE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NATIONAL ASSEMBLY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE SENATE ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**CONSTITUENCY DEVELOPMENT FUND BOARD ..... 4<sup>TH</sup> RESPONDENT**

**COMMISSION FOR THE IMPLEMENTATION OF THE  
CONSTITUTION ..... 5<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time limited to file a Supplementary Record of Appeal against the Judgment and Orders of the Court of Appeal in Civil Appeal No.92 of 2015 (Githinji, Okwengu & G.B.M Kariuki, JJ. A) delivered on 24th November, 2017)*

**RULING**

1. Upon perusing the Notice of Motion application dated 30<sup>th</sup> January, 2018 and lodged in the Supreme Court Registry on 31<sup>st</sup> January, 2018 for extension of time limited to file a Supplementary Record of



- Appeal under rules 3(5) and 53 of the *Supreme Court of Rules 2012* against the entire Judgment and Orders of the Court of Appeal delivered on 24<sup>th</sup> November, 2017 in Civil Appeal No. 92 of 2015; and
2. Upon reading the supporting affidavit by Michael Kioko Munguti sworn on 30<sup>th</sup> January, 2018 and the written submissions filed by the applicants including the supplementary submissions in reply to those by the 1<sup>st</sup> and 4<sup>th</sup> respondents wherein it is contended that the delay in filing the supplementary record of appeal was occasioned by the Court of Appeal's failure to provide its certified order and copies of typed proceedings, despite the applicants having applied for the same vide two letters dated 27<sup>th</sup> November, 2017 and 10<sup>th</sup> January 2018 respectively; and that having been aggrieved by the Court of Appeal decision they filed a Notice of Appeal on 27<sup>th</sup> November, 2017; that on the 2<sup>nd</sup> January 2018, the applicants lodged an appeal in this Honorable Court; that they filed this application for extension of time soon after the 15 day period within which to file a supplementary record of appeal thus demonstrating due diligence on their part especially given that the request is occasioned by circumstances that are beyond the applicants; and
  3. Upon reading the respective grounds of opposition and written submissions by the 1<sup>st</sup> respondent and 4<sup>th</sup> respondent wherein they contend that the application is an abuse of the process of this Honorable Court and should be dismissed as the applicants are yet to appear before a single judge at the Court of Appeal to canvass the issue of the documents which they seek to file and the motion in the Court of Appeal should as a matter of priority be allowed to run its full course; the application is ambiguous to the extent that the applicants seek leave for an open ended period; the applicants are not clear or certain on when they will file the supplementary record; and the orders the applicants are seeking at this juncture are speculative and premature as they could not seek leave to file documents that are not ready. In addition, they submit that the applicants have not complied with timelines set out in Rule 33(6) of this *Court's Rules* and fault the applicants for relying on the supporting affidavit of Michael Kioko Munguti, who they submit is not a party to the proceedings or authorized to swear the affidavit on the applicant's behalf.
  4. Having Considered the question at the core of the application viz: whether on the basis of the rival affidavits and written submissions of the parties, the applicants herein, have made a compelling case for this Court to exercise discretion in their favor and thereby grant the orders sought, we are satisfied that the applicants satisfy the principles set out by this Court in the cases of *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others* SC Application No.16 of 2014 [2014] eKLR and *Hassan Nyanje Charo v Khatib Mwashetani & 3 Others* SC Application No. 15 of 2014 [2014] eKLR on extension of time by this Court.
  5. The applicants took the necessary steps in requesting for the proceedings and the order from the Court of Appeal. They filed the notice of appeal and the appeal within time. Unlike the 4<sup>th</sup> respondent who agreed to the draft consent as presented by the applicants, it is the 1<sup>st</sup> respondent's refusal that has necessitated the resultant process of having the matter placed before a single judge of the Court of Appeal without which the present application would not arise. The prayers sought are not speculative or open ended as they depend on a certain event by the Court of Appeal which is beyond the control of this Court or the applicants. In any event, we have a live matter in form of an appeal filed by the applicants before us which we shall have to dispose of it one way or the other, including when moved appropriately by any party.
  6. As for the supporting affidavit by Michael Kioko Munguti, we are not persuaded by the respondents' argument that the said Michael Kioko Munguti is a stranger. His affidavit accompanies the formal application filed by the applicants as the actual litigants as an addition to the grounds set out on the face of the application and not the only ground. On considering the affidavit itself, the said Michael Kioko



Munguti depones in paragraph 8 of his affidavit that he was instructed by counsel for the applicants. This is not rebutted by the respondents. Moreover, the matters to which he states are factual in nature and in his personal knowledge following instructions from counsel for the applicants. The annexed letters to the affidavit are made by the instructing advocate. We are therefore not persuaded by the respondents' arguments on this matter.

7. In the end, pursuant to the provisions of sections 21(2) and 23(2)(b) of the *Supreme Court Act*, 2011 and Rules 21 and 53 of the Supreme Court Rules, 2012; we make the following Orders:
- a) The Application dated 30<sup>th</sup> January, 2018 is hereby allowed;
  - b) The Applicant(s) shall file its Supplementary Record of appeal containing the Certified Order of the Court of Appeal and the typed proceedings within 7 days of receipt of those documents; and
  - c) Costs shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2019.**

.....

**D. K. MARAGA**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

.....

**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

.....

**M. K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

.....

**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

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

**Registrar**

Supreme Court of Kenya

