



**Adam v Mohamed & 3 others (Application 18 of 2014)  
[2014] KESC 28 (KLR) (9 May 2014) (Ruling)**

*Nathif Jama Adam v Abdikhaim Osman Mohamed & 3 others [2014] eKLR*

Neutral citation: [2014] KESC 28 (KLR)

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

**APPLICATION 18 OF 2014**

**PK TUNOI & N NDUNGU, SCJJ**

**MAY 9, 2014**

**BETWEEN**

**NATHIF JAMA ADAM ..... APPLICANT**

**AND**

**ABDIKHAIM OSMAN MOHAMED ..... 1<sup>ST</sup> RESPONDENT**

**SAHAEL NUNO ABDI ..... 2<sup>ND</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 3<sup>RD</sup>  
RESPONDENT**

**RETURNING OFFICER, GARISSA COUNTY ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for stay of execution of the Judgement and order  
of the Court of Appeal; at Nairobi in Civil Appeal No. 293 of 2013  
(D.K.Maraga, J.W.Mwera & P.M.Mwilu JJ.A) dated 23rd April, 2014)*

**Court issues stay of execution of an entire Judgment in an election appeal.**

Reported by Emma Kinya & Opiyo Lorraine

***Electoral Law** - election petition - stay of execution - application for stay of execution of an entire judgment pending the determination of appeal where the respondents argued that the stay of execution should only be with regard to the conduct of the by-election and not the declaration that the office of the governor was vacant thereby warranting the speaker to be sworn in as the interim governor - Constitution of Kenya, 2010, article 182.*

***Electoral Law** - election petition - declaration of vacancy of the office of a County Governor - whether the office of a Governor could be declared vacant thereby warranting the Speaker to assume the office of Governor in circumstances where there was an appeal before the Supreme Court - Elections Act, Cap 7, section 82(2).*



## **Brief facts**

The instant application sought a stay of execution of the whole judgment/orders of the Court of Appeal. The application also sought grant of conservatory orders against the 3<sup>rd</sup> Respondent from;

- (i) certifying a vacancy in the Garissa County gubernatorial seat pending the hearing of the appeal;
- (ii) conservatory orders against the speaker of the Garissa County Assembly from assuming the office of the Governor pending the hearing and determination of the instant appeal; and
- (iii) conservatory orders against the 3<sup>rd</sup> respondent from announcing and conducting gubernatorial elections for Garissa County pending the hearing and determination of the appeal. The background to the application was that the Court of Appeal had overturned the election of the applicant herein thereby nullifying his election victory.

## **Issues**

- i. Whether a vacancy to the office of a Governor could be said to occur upon the nullification of a gubernatorial election by the trial court.
- ii. Whether an application for orders of stay of execution could be made against the whole judgment being the subject of appeal or only specific parts thereof.
- iii. What were the circumstances in which a vacancy could arise in the office of the County Governor?

## **Relevant provisions of the Law**

### **Constitution of Kenya, 2010**

#### **Article 182**

*(1) The office of the county governor shall become vacant if the holder of the office —*

*(a) dies;*

*(b) resigns, in writing, addressed to the speaker of the county assembly;*

*(c) ceases to be eligible to be elected county governor under article 180(2);*

*(d) is convicted of an offence punishable by imprisonment for at least twelve months; or*

*(e) is removed from office under this Constitution...*

*(4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.*

*(5) If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor.*

*(6) A person who assumes the office of county governor under this Article shall, unless otherwise removed from office under this Constitution, hold office until the newly elected county governor assumes office following the next election held under article 180(1).*

## **Held**

1. Article 182(4) of the Constitution did not give rise to the interpretation proposed by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent. The article spoke of “if a vacancy occurs”. A vacancy could not be said to have occurred merely upon a judgment of the Court of Appeal. Such Judgment could be stayed by the Supreme Court for review, with a possibility of reversal of the decision by the Court of Appeal.

2. The moment a counsel admitted that the court had jurisdiction over an appeal, he could not argue against the capacity of that court to stay that judgment and all its consequences including the swearing-in of the Speaker as interim Governor.

3. On the balance of public interest, the certainty in the running of county governments was key to the stability of that integral part of Kenya’s administration. Greater certainty and stability was offered when a judgment was stayed and the Governor continued in office, until his election was finally and irrevocably nullified; in essence, until the vacancy in the office of the Governor was perfected.



4. If the court was inclined not to stay the swearing-in of the Speaker, a constitutional timeline of 60 days, leading up to the byelection would begin to run. In the circumstances, the court was unable to extend constitutional timelines. If stay was not granted during the pendency of the appeal, the Independent Electoral and Boundaries Commission (IEBC), the 3<sup>rd</sup> respondent in the matter would be forced to undertake several processes to ensure that the by-election would be held within time, whether or not the court would eventually uphold the finding of the Court of Appeal. Those preparatory processes ranged from accepting nominations by political parties to printing of ballot papers. Parties, some of which were funded by the Political Parties Fund (a public fund) would also be called upon to carry out nominations. That approach was inappropriate as it would result in the unreasonable waste of public funds.

5. The tenure of office of a Governor was aptly addressed by article 182 of the Constitution. Article 182, which unlike article 101, did not require the issuance of any other notices except for a certificate to issue from the election court as provided under section 80(5) and 86 of the Elections Act. Upon such issuance of certificate and subsequent assumption of office by the Speaker, a by-election had to be held within 60 days. Thus, in the case of a Governor's seat, the effective act that engaged the IEBC to prepare for a by-election was the assumption of office of the Speaker.

6. An arguable appeal existed with an apparent risk of being rendered nugatory if stay of execution of a judgment was not granted. The public interest tilted towards granting of a stay of execution of the Court of Appeal judgment and orders.

*Application allowed.*

#### **Orders**

*i. Execution of the whole judgment and/or orders of the Court of Appeal dated 23<sup>rd</sup> April, 2014, was stayed pending hearing and determination of the appeal.*

*ii. A conservatory order was issued against the 3<sup>rd</sup> respondent certifying the gubernatorial seat of Garissa County vacant pending the hearing and determination of the appeal.*

*iii. A conservatory order was issued against the Speaker of Garissa County Asset assuming the office of the Governor, pending the hearing and determination the Appeal.*

*iv. A conservatory order was issued against the 3<sup>rd</sup> respondent announcing and conducting gubernatorial elections for Garissa County, pending the hearing and determination of the Appeal.*

*v. Costs of the application were to abide the determination of the main cause on appeal.*

#### **Citations**

##### ***East Africa***

1. *Board of Governors, Moi High School Kabarak & another v Malcolm Bell* Application Nos 12 & 13 of 2013 - (Explained)

2. *Munya, Gatirau Peter v Dickson Mwenda Githinji & 2 others* Petition No 2B of 2014 - (Applied)

3. *Obado, Zachariah Okoth v Edward Akong'o Oyugi & 2 others* Application No 6 of 2014 - (Applied)

4. *Speaker of the Senate and another v Attorney General & 3 others* Advisory Opinion No 2 of 2013 - (Explained)

5. *Wanjohi, George Mike v Steven Kariuki* Civil Application No 6 of 2014 - (Applied)

#### **Statutes**

##### ***East Africa***

1. Constitution of Kenya, 2010 articles 25(c); 38; 50; 81(a)(d); 82(e); 85; 86(2); 94; 163(4)(a),(7); 182(2)(4) (5) - (Interpreted)

2. Elections Act, 2011 (Act No 24 of 2011) section 85A

3. Elections (General) Regulations, 2012 (Act No 24 of 2011 Sub Leg) regulations 11, 66(1)(2)



## RULING

### A. Introduction

1. This is an application by way of Notice of Motion under certificate of urgency seeking orders, inter alia, for:
  - (i) stay of execution of the whole judgment/orders of the Court of Appeal at Nairobi in Civil Appeal No. 293 of 2013, pending the hearing and determination of the petition of appeal;
  - (ii) grant of conservatory orders against the 3<sup>rd</sup> Respondent from certifying a vacancy in the Garissa County Gubernatorial seat, pending the hearing and determination of the appeal;
  - (iii) grant of conservatory orders against the Speaker of the County Assembly of Garissa from assuming the office of Governor, pending the hearing and determination of the appeal; and
  - (iv) grant of conservatory orders issue against the 3<sup>rd</sup> Respondent from announcing and conducting gubernatorial elections for Garissa County, pending the hearing and determination of the Petition before the Court;
2. The Applicant has filed an appeal seeking to set aside the whole judgment of the Court of Appeal in Civil Appeal No. 293 of 2013 at Nairobi dated 23<sup>rd</sup> April, 2014.

### B. Background

3. The Applicant, Mr. Nadhif Jama Adam, was declared the duly elected Governor after the Garissa gubernatorial elections held on 4<sup>th</sup> March, 2013.
4. Thereafter, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, Abdikhaim Osman Mohamed and Sahael Nuno Abdi, who are registered voters in Garissa County, filed a petition in the High Court citing irregularities and challenging the election results. They sought orders voiding the election of the Applicant and seeking fresh gubernatorial elections for Garissa County.
5. The High Court (Mabeya J), in a judgment dated 24<sup>th</sup> September 2013, dismissed the petition, finding that although several irregularities had been proven, the effect of these irregularities could not have affected the outcome of the election. Aggrieved by the High Court's decision, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, appealed to the Court of Appeal.
6. The Court of Appeal (D.K.Maraga, J.W.Mwera & P.M.Mwilu JJ.A) in its decision dated 23<sup>rd</sup> April 2014, allowed the appeal and set aside the judgement of the High Court, finding that the trial court erred in finding that the irregularities did not affect the outcome of the election, and that the results of the election were indeterminate; the consequence of which - the election of Mr. Adam was subsequently nullified. Aggrieved by the judgement of the Court of Appeal, the Applicant filed a Notice of Motion, under certificate of urgency, which precipitated the oral hearing on 30<sup>th</sup> April, 2014.
7. On 7<sup>th</sup> April, 2014, the application was heard ex parte by a single Judge (Njoki Ndungu SCJ), and certified urgent. Conservatory orders maintaining status quo were granted until an inter partes hearing, before a 2 Judge bench on 30<sup>th</sup> April, 2014. After hearing submissions on all interlocutory matters, Tunoi and Njoki SCJJ, set the ruling for 8<sup>th</sup> May 2014. On 8<sup>th</sup> May 2014, the time for the ruling was extended to 9<sup>th</sup> May 2014, and all stay orders previously granted were maintained until delivery of ruling.



### **C. Submissions by the Parties**

8. Senior counsel, Ahmednassir Abdullahi, counsel for the Applicant submitted that the appeal raised substantive issues of law, touching on both statute and constitutional law, and thus was not frivolous. He added that the Applicant was before the court as a matter of right under Article 163(4) (a), and that his appeal satisfied the conditions set out by this Court's decision in *Gatirau Peter Munya v Dickson Mwenda Githinji & 2 others*, SC Petition No. 2 of 2014 (the Munya case) for interlocutory orders pending the hearing of the substantive matter.

#### **On arguability and nugatory aspects**

9. Counsel enumerated several grounds that were arguable including, that the Court of Appeal had acted beyond its scope under Section 85A of the Elections Act and considered matters of fact as opposed to matters of law, and it misinterpreted clear provisions of the law, including regulation 66(1)(2) of the Election (General) Regulations, 2012.
10. He argued that certain conditions must be met before a court can make a finding that an election was compromised, which conditions include, the margin of defeat between the candidates and whether the extent of irregularity had an impact on the result. He stated that the Court of Appeal did not tabulate the qualitative and quantitative nature of the irregularities to show how, in any way, it affected the results.

#### **On public interest**

11. Senior Counsel stated that there was a greater public interest in a Governor not being removed on the basis of a flawed judgment. It was his submission that the errors on the face of the judgment were too serious for any action by any party, to be taken based on that judgment. He therefore asked that a stay be issued on the whole judgment of the Court of Appeal, including a stay on the swearing-in of the Speaker as interim Governor.
12. Mr. Muganda, counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents supported the application. He urged that consideration should not be one sided but rather should involve a wholesome approach. He stated that a by-election would involve wastage of public funds if the orders of stay were not issued and this Court subsequently overturned the Court of Appeal decision. He cited instances where great losses had been incurred by the 3<sup>rd</sup> Respondent as a result of elections being stopped by the Appellate Court when the process had already started. In addition, he pointed out that time was already set within which the appeal must be determined and therefore no prejudice would be occasioned to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
13. Mr. Muganda reiterated that the Applicant's submission that the appeal raised substantive constitutional issues. He submitted that they were seeking this Court's interpretation on Article 163(7) of the Constitution, in addition to interpretation of statutes that emanate from the Constitution, such as the Elections Act as read with Articles 81(a) (d), 82(e), 85, 86 and 94 of the Constitution. It was his further submission that there was need for the Court to determine whether in exercising their judicial function, courts can derogate from the provisions of Article 25(c) as read with Article 50 on the right to fair hearing.

#### **1<sup>st</sup> and 2<sup>nd</sup> Respondents reply**

14. Mr. Macharia, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, while conceding that there were arguable issues for determination in the appeal, stated that he only opposed prayers 4, 5 and 6 of the Notice of Motion.



He agreed with Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents on the issue of saving public expenditure where conduct of another election is stayed pending the hearing and determination of the Appeal.

15. He however, asked the Court to exercise its jurisdiction under Article 163(7) and reach a different conclusion from its decision in *Zachariah Okoth Obado v Edward Akong'o Oyugi and 2 Others*, SC Application No. 6 of 2014 (the Obado case). He particularly referred to the findings at paragraph 68-73 of the Obado ruling. He singled out paragraph 70 of the ruling, on the Court's interpretation of what happens when the seat of Governor is declared vacant. It was Counsel's argument that once a vacancy occurs, the electoral body receives the certificate from the Court and hands it to the Speaker of County Assembly who takes up the position of Governor in an acting capacity.
16. Counsel drew the Court's attention to the fact that although the declaration of the vacancy of the seat of Governor ought to be provided for in Regulation 11 of the Election (General) Regulations, 2012, this was not the case. He therefore urged the Court to vary their finding in the Obado case that the Speaker only assumes office after taking the mandatory oath upon which the vacancy is effected. It was his submission that as per Article 182 (e) of the Constitution the vacancy arises upon the declaration of the Court and not upon the swearing in of the Speaker.
17. Counsel further submitted that a stay should only issue as to conduct of the by-election, but not the swearing-in of the Speaker as interim Governor. In Counsel's view, the public interest embodied in Article 182 which calls for the Speaker to be Governor in an acting capacity seeks to establish a parity of arms as a constitutional principle. This is to ensure that a person found not validly elected by the courts of law does not continue to exercise authority of State machinery, with all the trappings of the Governor's office. A contrary position, in his view, would give rise to disparity of arms and violates the principles articulated under Articles 38 and 86 of the Constitution.
18. Counsel, submitted that it was not in the public interest to have an individual, whose process for election had been declared flawed by the Appellate Court, imposed on the electorate. However, he conceded that such a Governor still had a right of appeal and acknowledged that there was no finality until the appeal process was exhausted.

#### **D. Analysis**

19. At the hearing of this application, the Notice of Motion was only partly opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as regards the extent of the stay that should be granted on the basis of public interest. It was agreed by the parties that the matter was an arguable case, and without a stay the appeal would be rendered nugatory. The only contention, therefore, was as to the scope of the stay. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents argued that stay should only be issued as to the conduct of the by-election, while counsels for the Applicant and 3<sup>rd</sup> and 4<sup>th</sup> Respondents argued that stay should be granted for the entire process, including the issuance of a certificate by the Court of Appeal under Section 86 (2) of the Elections Act, to the swearing-in of the Speaker as interim Governor under Article 182 (4) of the Constitution. Therefore, we shall confine ourselves only to the issue in contention.
20. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents argued that it would be in the public interest to disallow a Governor whose election is impugned by a judgment, from continuing to hold office without restriction, pending an appeal. In their mind, the import of Article 182 (4) & (5) is that the electorate would not want to have a situation where such a Governor continues handling public funds or overseeing the county's operations, when his electoral mandate is still in question.
21. Article 182 of the Constitution reads as follows:
  - (1) The office of the county governor shall become vacant if the holder of the office—



- (a) dies;
- (b) resigns, in writing, addressed to the speaker of the county assembly;
- (c) ceases to be eligible to be elected county governor under Article 180(2);
- (d) is convicted of an offence punishable by imprisonment for at least twelve months; or
- (e) is removed from office under this Constitution...

...

- (4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.
  - (5) If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor.
  - (6) A person who assumes the office of county governor under this Article shall, unless otherwise removed from office under this Constitution, hold office until the newly elected county governor assumes office following the next election held under Article 180(1).
22. Our reading of Article 182 (4) of the Constitution does not give rise to the interpretation proposed by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Article speaks to “If” a vacancy occurs. In our opinion, a vacancy cannot occur merely upon a judgment of the Court of Appeal. Such Judgment may be stayed by this Court for review, with a possibility of reversal of the decision by the Court of Appeal. In Board of Governors, Moi High School Kabarak & Anor v Malcolm Bell, SC Application No. 12 & 13 of 2013, this Court found that the power of stay is inextricably linked with the non-finality of the Court of Appeal’s decision once a proper appeal is filed:

In our opinion, the Supreme Court’s jurisdiction in respect of interlocutory orders, such as stay-of-execution orders, firstly emanates directly from the statute law and the rules; and secondly, rests on the rational principle that the appellate power of “review and possible reversal” of the substantive judgment appealed against, is destined to be lost unless a requisite interlocutory order was made.

Once counsel admits that this Court has jurisdiction over the Appeal, he cannot argue against the capacity of this Court to stay that judgment and all its consequences. This includes the swearing-in of the Speaker as interim Governor.

23. Secondly, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have argued that it is in the public interest for the Governor only to stay in office where no “cloud” hangs over his mandate. However, examining the course of litigation reveals that there is an even greater public policy concern. Suppose a Governor’s election was impugned by the High Court, would this mean, according to counsel, that he should step down and the Speaker assume office in the meantime? What then happens when the Court of Appeal nullifies that finding? It follows that those actions would be immediately reversed, that is, the Speaker resigns and the Governor will resume office. However, what next if the Supreme Court upholds the High Court decision and reverses the Court of Appeal holding? Such uncertainty is inappropriate for such an important public office.
24. On the balance of public interest, we find that certainty in the running of county governments is key to the stability of this integral part of this country’s administration. Greater certainty and stability is



offered when a judgment is stayed and the Governor continues in office, until his election is finally and irrevocably nullified- in essence, until the vacancy in the office of the Governor is perfected. In this regard, the Chief Justice Willy Mutunga’s concurring opinion, in *The Speaker of the Senate and Anor v the Attorney General and 3 Others*, SC Advisory Opinion No. 2 of 2013, gives greater emphasis to our conclusion that contests that affect counties should not be allowed to destabilize the running of these quintessential structures:

“Fixing the full meaning of devolution, especially in this operational phase, will continue to be characterized by contestation, as is normal with political issues. The competing claims should not, however, descend into institutional anarchy or dysfunctionality, as that would compromise the developmental aspirations invested by the people, in devolution.”

25. Furthermore, if the Court were inclined not to stay the swearing-in of the Speaker, a constitutional timeline, of 60 days, leading up to the by-election would begin to run. This Court has already held in *George Mike Wanjohi v Steven Kariuki*, SC Civil Application No. 6 of 2014, that it is unable to extend constitutional timelines. Therefore if stay is not granted during the pendency of the appeal, the 3<sup>rd</sup> Respondent would be forced to undertake several processes to ensure that the by-election would be held within time, whether or not this Court will eventually uphold the finding of the Court of Appeal. These preparatory processes range from accepting nominations by political parties to printing of ballot papers. Furthermore, parties, some of which are funded by the Political Parties Fund (a public fund) would also be called upon to carry out nominations. Therefore, public funds would be expended in preparation of a by-election that may be rendered unnecessary. As such, the approach suggested by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is inappropriate, as it will still result in the unconscionable waste of public funds.
26. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents also took issue with the holding of this Court in *Obado’s* case. The holding in question is found in paragraph 72, that the “swearing-in of the Speaker as acting Governor will effect the existence of a vacancy in the office of the Governor.” It was counsel’s view that this was a wrong position in law; that the vacancy is effected on the pronouncement of the Court of Appeal’s judgment. We note that a 2-judge bench of this Court made this decision and that although Article 163 (7) states that this Court is not bound by its own decisions, we believe that the proper forum for a review of the *Obado* decision would be before a full bench of this Court. We therefore reserve any further consideration of this argument until the full hearing.
27. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents also urged that there was a gap in the law on the declaration of a vacancy of the office of Governor. He pointed to the standard forms under Regulation 11 of the Elections (General) Regulations, 2012, most notably Forms 3 and 4, which are the standard forms through which the Speakers of the Senate, National Assembly and County Assembly respectively notify the 3<sup>rd</sup> Respondent of a vacancy of a seat as and when it occurs. He asked the Court to inform the Rules Committee of this oversight.
28. Despite counsel’s diligence, we find that this is not necessary. The tenure of office of a County Governor is aptly addressed by Article 182 of the Constitution. Article 182, which unlike Article 101 does not require the issuance of any other notices except for a certificate to issue from the Election Court as provided under Section 80 (5) and 86 of the Elections Act. Upon such issuance of certificate and subsequent assumption of office by the Speaker, a by-election must be held within 60 days. Thus, we find, that in the case of a Governor’s seat, the effective act that engages the 3<sup>rd</sup> Respondent to prepare for a by-election, is the assumption of office of the Speaker, as was held in the *Obado* case.



29. In conclusion, this application has demonstrated that an arguable appeal exists with an apparent risk of being rendered nugatory if stay of execution of judgement, is not granted. The public interest tilts towards granting of such stay.

#### **E. Orders**

30. The foregoing analysis of representations by counsel lead us to make the following orders:

- (i) The Applicant's Notice of Motion filed in this Court is allowed.
- (ii) Execution of the whole judgment and/or orders of the Court of Appeal dated 23<sup>rd</sup> April, 2014 is hereby stayed pending hearing and determination of the appeal.
- (iii) A conservatory order shall issue against the 3<sup>rd</sup> respondent certifying the gubernatorial seat of Garissa County vacant pending hearing and determination of the appeal.
- (iv) A conservatory order shall issue against the Speaker of Garissa County Assembly assuming the office of Governor, pending hearing and determination of the appeal.
- (v) A conservatory order shall issue against the 3<sup>rd</sup> respondent announcing and conducting gubernatorial elections for Garissa County, pending hearing and determination of the appeal.
- (vi) This matter is to be mentioned on 12<sup>th</sup> May, 2014 before the Deputy Registrar of the Supreme Court, to confirm compliance and to fix hearing dates.
- (vii) The Costs of this application shall abide the determination of the main cause on appeal.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2014.**

.....

**K. TUNOI**

**JUDGE SUPREME COURT OF KENYA**

.....

**N. S. NDUNGU**

**JUDGE SUPREME COURT OF KENYA**

I certify that this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

