

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu DCJ & VP, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ)

PETITION (APPLICATION) NO. 47 OF 2019

—BETWEEN—

GEO CHEM MIDDLE EAST.....APPELLANT/APPLICANT

—AND—

KENYA BUREAU OF STANDARDS.....RESPONDENT

(Being an application to file a Supplementary Record of Appeal)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion by the Appellant/Applicant dated 11th September 2020 and filed on 14th September 2020, which application is brought under Rule 40(4) of the Supreme Court Rules, 2010; and

[2] UPON perusing the supporting affidavit of Counsel for the Appellant/Applicant, Fredrick Ngatia, sworn to on 11th August 2020; and

[3] UPON considering the written submissions by the Appellant/Applicant dated 14th September 2020 and filed on the same day wherein the Appellant/Applicant contends that the delay in filing the Supplementary Record of

Appeal was occasioned by inability to obtain the Judges' notes as they were not available at the time of filing the Appeal and that three letters; **(i)** one dated 23rd March 2012 from the Respondent to the Commissioner General, Kenya Revenue Authority; **(ii)** another dated 25th June 2013 from the Appellant's lawyers, M/s Mahmoud & Gitau Advocates, to the Respondent and; **(iii)** another dated 15th July 2013 from the Respondent to the Appellant's lawyer, M/s Mahmoud & Gitau Advocates, were all inadvertently omitted from the Record of Appeal and;

[4] NOTING the Respondent's response to the Motion by way of a Replying Affidavit sworn on 16th September 2020 by Jotham Okome Arwa, Advocate and Submissions filed on 17th September 2020 wherein the Respondent contends that the application is incompetent as the documents sought to be admitted are not annexed and therefore their authenticity and relevance cannot be authenticated. In addition, that the entire record of appeal is jumbled up and the letters in question were deliberately excluded to prejudice the Respondent's case and in any event, the Judges' notes have not been served on the Respondent and on the whole, allowing the application would greatly inconvenience the Respondent and therefore the same ought to be dismissed with costs; and

[5] HAVING considered the application and the submissions filed by the Appellant/Applicant and by the Respondent by a unanimous decision of this Bench, we find that;

- (a)** *By Rule 15(b) of this Court's Rules, 2020, the Court may, at its discretion extend time for any action under the Rules – see also **Anuar Loitytip v Independent Electoral & Boundaries Commission** [2018] eKLR.*
- (b)** *That the principles for grant of an order of extension of time are that an Applicant must give sufficient reasons for any delay and that the period of delay is nonetheless an important consideration in the*

*Court's exercise of discretion to grant or deny the extension – see **Base Titanium Limited v County Government of Mombasa & another SC Petition (App). No. 22 of 2018.***

(c) In the present case, the explanation given by the Appellant/Applicant is reasonable and we see no prejudice to be caused to the Respondent as the three letters sought to be admitted have certainly been in its custody in proceedings before the Superior Courts below and failure to obtain Judges' notes timeously cannot be blamed on the Appellant/Applicant but on slow administrative Court processes.

[6] In the circumstances, we now make **ORDERS** as follows;

- (a) **The Notice of Motion by the Appellant/Applicant dated 11th September 2020 and filed on 14th September 2020 is hereby allowed;***
- (b) **The Supplementary Record of Appeal shall be filed and served within 3 days of this Ruling.***
- (c) **Each party shall bear its costs.***

[7] Orders accordingly.

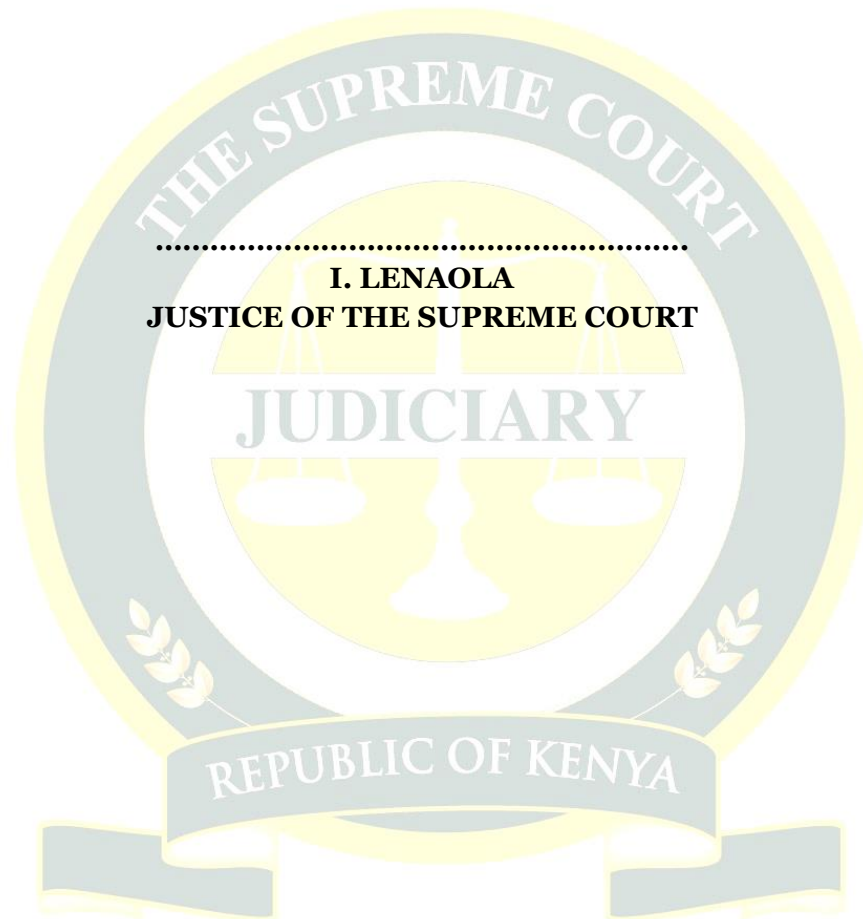
DATED and DELIVERED at NAIROBI this 23rd day of September 2020

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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. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA