

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki & Ouko, SCJJ)

PETITION NO. 34 OF 2019

BETWEEN

PRISCILLA MWARA KIMANI 1ST PETITIONER/APPLICANT

LUCY WATURI KIMANI 2ND PETITIONER/APPLICANT

ESTHER GATHONI GICIMU 3RD PETITIONER/APPLICANT

AND

THE ATTORNEY GENERAL RESPONDENT

(Being an application for leave to file a Supplementary Record of Appeal and consolidation of Petition No. 34 of 2019 with Petition Nos. 26 and 35 of 2019)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 21st January, 2022 and filed on 1st February, 2022 which is erroneously premised on Rule 23 of the Supreme Court Rules, 2012 (repealed) and other enabling provisions of the law; the applicants seek leave of the Court to file a Supplementary Record of Appeal in order to include a certified copy of the order of dismissal of their appeal at the Court of Appeal; consolidation of their appeal, being Petition No. 34 of 2019 with Petition No. 26 of 2019 and Petition No. 35 of 2019 and designation of Petition No. 26 of 2019 as the lead file.

[2] UPON considering the affidavit by Mr. James H. Gitau Mwara, learned counsel appearing for the applicants, sworn in support of the motion and the applicants' submissions to the effect that, following the dismissal of their appeal at the Court of Appeal on 6th August, 2019; they filed their Petition and Record of Appeal before this Court on 19th August, 2019 and 27th August, 2019 respectively; that at the time of filing their appeal, the settling of terms of the order of dismissal had initially been scheduled for 18th February, 2020 but was eventually settled on 14th December, 2021; that notwithstanding, the order of dismissal being issued on 16th December, 2021, a certified copy of the order was served upon the advocate on 21st January, 2022 as evidenced by a copy of an email from the Deputy Registrar of the Court of Appeal annexed to the motion. Further, that the three appeals sought to be consolidated are not only founded on alleged violation of constitutional rights that occurred at 'Freedom Corner' and All Saints Cathedral Church between 3rd March, 1992 and 19th January, 1993 but were also decided by the same Judge in the High Court (*Lenaola, J.*, as he then was) and Bench of the Court of Appeal (*Warsame, Kiage & Murgor, J.J.A*); and raise similar issues.

[3] NOTING that the respondent did not file any response despite service of the motion.

[4] We find as follows:

- a) In line with the principles set out by this Court in ***Nicholas Kiptoo Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others***, SC Application No. 16 of 2014; [2014] eKLR, the applicants have provided a plausible and reasonable explanation for the omission of the certified order in question and the delay in filing the Supplementary Record of Appeal. Further, taking into account that the certified order was served upon the applicants' advocates on 21st January, 2022 and the motion at hand was filed on 1st February, 2022, about nine days thereafter, the delay cannot be termed as inordinate. Equally, we note that the certified order sought to be introduced through the Supplementary Record of Appeal is not

prejudicial to the respondent. Therefore, we are inclined to exercise our discretion under Rule 15(2) of the Supreme Court Rules, 2020 in favour of the applicants.

- b) Petition Nos. 26, 34 and 35 of 2019 before this Court arise from the same set of circumstances, raise similar issues and seek similar orders. Further, they meet the threshold for consolidation as delineated in ***Omoke vs. Kenyatta & 83 others, Petition 11 of 2021***; [2021] KESC 27 (KLR) and ***Law Society of Kenya vs. Centre for Human Rights & Democracy & 12 others***, SC Petition No. 14 of 2013; [2014] eKLR.

[5] CONSEQUENTLY, we allow the Notice of Motion dated 21st January, 2022 and make the following orders: -

- i. The applicants are hereby granted leave to file a Supplementary Record of Appeal to include a certified copy of the order of dismissal issued on 16th December, 2021 by the Court of Appeal within seven days of this ruling.*
- ii. Petition No. 34 of 2019, Priscilla Mwara Kimani & 2 Others vs. Attorney General is hereby consolidated with Petition No. 26 of 2019, Monica Wangu Wamwere vs. Attorney General, and Petition No. 35 of 2019, Michael Maina Kamami & Another vs. Attorney General. Petition No. 26 of 2019 being the first in time shall be the lead file.*
- iii. The costs of the application shall abide by the outcome of the consolidated appeal.*

DATED and DELIVERED at NAIROBI this 19th day of May, 2022.

.....
M.K. KOOME
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT OF KENYA

.....
P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE
PRESIDENT OF THE SUPREME
COURT OF KENYA

.....
S. C WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

