

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

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

**CIVIL APPLICATION NO. 21 OF 2020**

**—BETWEEN—**

**SAMMY MWANGANGI.....1<sup>ST</sup> APPLICANT**  
**MUSYOKA ILIMA.....2<sup>ND</sup> APPLICANT**  
**JOSEPH KARANJA.....3<sup>RD</sup> APPLICANT**  
**PAUL KIMENYE.....4<sup>TH</sup> APPLICANT**  
**BEN MUNYWOKI.....5<sup>TH</sup> APPLICANT**  
**JOSEPH MUTHIANI.....6<sup>TH</sup> APPLICANT**  
**KYULE MWIMBI.....7<sup>TH</sup> APPLICANT**  
**FRANCIS MUSAI.....8<sup>TH</sup> APPLICANT**  
**MICHAEL NDAKA.....9<sup>TH</sup> APPLICANT**  
**PHILIP MAINGI.....10<sup>TH</sup> APPLICANT**  
**NZULA MUEMA.....11<sup>TH</sup> APPLICANT**

**—AND—**

**COMMISSIONER OF LANDS.....1<sup>ST</sup> RESPONDENT**  
**JAMES GAMAU WAINAINA.....2<sup>ND</sup> RESPONDENT**  
**RAPHAEL MUGAI MWANGI.....3<sup>RD</sup> RESPONDENT**  
**PAUL KAHUTU KONDIA.....4<sup>TH</sup> RESPONDENT**

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*(Being an application to seek enlargement of time to file an application for review of the Ruling of the Court of Appeal at Nairobi (W. Ouko (P), M. Warsame & F. Sichale, JJA) dated 10<sup>th</sup> July 2020 seeking certification to appeal to the Supreme Court against the Judgment of the Court of Appeal at Nairobi (A. Visram, W. Karanja & M. Koome, JJA) dated 9<sup>th</sup> February 2018)*

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## **RULING OF THE COURT**

[1] **UPON** perusing the Notice of Motion by the Applicants dated 11<sup>th</sup> August 2020 and filed on 14<sup>th</sup> August 2020, which application is brought pursuant to the provisions of Section 26 and 53 of the Supreme Court Act, 2012, and in which the Applicants seeks enlargement of time to file an application for review of the ruling of the Court of Appeal (*W. Ouko (P), M. Warsame & F. Sichale, JJA*) in **Civil Application SUPP No. 9 of 2018** (UR 6/2018) dated 10<sup>th</sup> July 2020; and

[2] **UPON** perusing the supporting affidavit of Sammy Mwangangi deposed to on 11<sup>th</sup> August 2020 as well as the 3<sup>rd</sup> & 4<sup>th</sup> Respondents' Replying Affidavit deposed to on 27<sup>th</sup> August 2020 and filed on even date; and

[3] **UPON** considering the written submissions on record for the Applicants wherein they contend that the delay in filing the application for review to this Court was inadvertent, and was occasioned by delay in the assessment of filing fees and uploading of documents on this Court's e-filing portal; and

**NOTING THAT** the 3<sup>rd</sup> & 4<sup>th</sup> Respondents in opposing the application submit that no purpose will be served by the extension as the matter they seek to pursue before this Court is not a matter of general public importance as alleged by the Applicants, but is one seeking to enforce private rights; and

[4] **HAVING** considered the application, the replying affidavit and the submissions filed by the respective parties, by a unanimous decision of this Bench, we find that;

- (a) This Court's jurisprudence on extension of time was settled in ***Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others*** SC (App) No. 16 of 2014;

(2014) eKLR. In that matter, we stated *inter alia* that grant or refusal of extension of time is a matter of judicial discretion to be exercised, not subjectively or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice.

- (b)** The Applicants have explained, cogently and reasonably, that the delay in filing their application for review of the Court of Appeal’s decision denying them timeous access to this Court was not of their own making. We thus accept that explanation.
- (c)** The delay of six (6) days is in any event not inordinate and we see no prejudice caused to the Respondents, especially the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, who have strenuously opposed the application.
- (d)** The question whether the Applicants have established that the issues in contest are of general public important as enunciated in ***Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione*** SC Application No. 4 of 2012; [2013] eKLR is a matter that cannot be determined now, it being the gravamen of the intended review application under Article 163(5) of the Constitution.
- (e)** Prayer 3 of the Motion under consideration seeking orders that “*the Originating Motion dated 22<sup>nd</sup> July 2020 under Reference No.SC APP;/E007/2020 be deemed as dully (sic) filed*” is not one for granting in the present instance. It is best that a proper motion for review under the Constitution, the Supreme Court Act and Rules be filed pursuant to the orders granted herebelow.

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

- (a) *The time within which to file the application for review of the Ruling of the Court of Appeal (W. Ouko (P), M. Warsame & F. Sichale, JJA) dated 10<sup>th</sup> July 2020 is hereby enlarged and the same to be filed within 7 days of this Ruling.*
- (b) *Directions to be taken before the Deputy Registrar thereafter.*
- (c) *Each party shall bear its costs of the Application.*

[6] Orders accordingly.

**DATED and DELIVERED at NAIROBI this 9<sup>th</sup> day of October, 2020**

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

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**M. K. IBRAHIM**  
**JUSTICE OF THE SUPREME COURT**

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**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**

