

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Maraga CJ & P, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ)*

**PETITION (APPLICATION) NO. 2 OF 2020**

**—BETWEEN—**

**FERDINAND NDUNGU**

**WAITITU BABAYAO.....PETITIONER/APPLICANT**

**—AND—**

**REPUBLIC.....RESPONDENT**

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*(Being an application for leave to file Supplementary Record of Appeal out of time)*

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**RULING OF THE COURT**

[1] **UPON** perusing the Notice of Motion application by the Petitioner/Applicant dated 7<sup>th</sup> August 2020 and filed on 11<sup>th</sup> August 2020, which application is brought pursuant to leave granted by the Deputy Registrar on 14<sup>th</sup> July 2020 as well as Rule 15 of the Supreme Court Rules, 2020; and

[2] **UPON** perusing the supporting affidavit of Counsel for the Petitioner/Applicant, Prof. T.O. Ojienda, SC, deponed to on 7<sup>th</sup> August 2020; and

[3] UPON considering the written submissions by the Petitioner/Applicant dated 10<sup>th</sup> August 2020 and filed on 11<sup>th</sup> August 2020 wherein the Applicant/Petitioner contends that the delay in filing the Supplementary Record of Appeal dated 30<sup>th</sup> July 2020 and filed on 5<sup>th</sup> August 2020 was occasioned by inability to obtain the order and certified copies of typed Court proceedings from the Court of Appeal timeously despite request made on 30<sup>th</sup> December 2019 and noting;

THAT the Respondent did not file any response or submissions with regard to the application despite directions issued by the Deputy Registrar on 14<sup>th</sup> August 2020, 19<sup>th</sup> August 2020 and 26<sup>th</sup> August 2020 that submissions ought to be filed by 28<sup>th</sup> August 2020. We have however seen submissions purportedly filed by the Respondent on 16<sup>th</sup> September 2020 which are hereby rejected for being filed out of time contrary to Rule 31(4) of these Court Rules 2020; and

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

- (a) *This Court has the jurisdiction to consider and determine an application for leave to extend time to do anything required by its Rules - see **Anuar Loiptip v. Independent Electoral & Boundaries Commission** SC Petition (App.) No. 18 of 2018; [2018] eKLR as well as Section 21(3) of the Supreme Court Act and Rule 53 of the Supreme Court Rules, 2012;*
- (b) *That the application by the Petitioner/Applicant dated 7<sup>th</sup> August 2020 and filed on 11<sup>th</sup> August 2020 satisfies the principles set out by this Court in **Base Titanium Limited v. County Government of Mombasa & another** SC Petition (App). No. 22 of 2018 and earlier in **Nicholas Kiptoo Arap Korir Salat v. Independent***

***Electoral & Boundaries Commission & 7 others SC (App) No. 16 of 2014; (2014) eKLR on extension of time;***

- (c) We also find that the Petitioner/Applicant has provided sufficient grounds and reasons for the delay in filing the Supplementary Record of Appeal as the delay in obtaining the order and certified typed copies of proceedings from the Court of Appeal is an administrative issue that cannot and should not be held against the Petitioner/Applicant;***
- (d) The Respondent has not opposed the application neither has he shown what prejudice shall be occasioned upon him if the Applicant's application is allowed.***

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

- (a) The Notice of Motion application by the Petitioner dated 7<sup>th</sup> August 2020 and filed on 11<sup>th</sup> August 2020 is hereby allowed;***
- (b) The Supplementary Record of Appeal dated 30<sup>th</sup> July 2020 and filed on 5<sup>th</sup> August 2020 is deemed as duly and properly filed;***
- (c) The parties to appear before the Deputy Registrar for further directions;***
- (d) Each party shall bear its costs.***

**[6]** Orders accordingly.

**DATED and DELIVERED at NAIROBI this 23<sup>rd</sup> day of September 2020**

.....  
**D.K. MARAGA**  
**CHIEF JUSTICE &**  
**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**

