

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA AT NAIROBI**

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

**PETITION NO. 11 (E008) OF 2022**

**-BETWEEN-**

**HON. MIKE MBUVI GIDEON SONKO ..... APPELLANT**

**-AND-**

**THE CLERK, NAIROBI CITY**

**COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER, NAIROBI CITY**

**COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ASSEMBLY..... 3<sup>RD</sup> RESPONDENT**

**THE CLERK OF THE SENATE OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**THE SPEAKER OF THE SENATE OF KENYA ..... 5<sup>TH</sup> RESPONDENT**

**THE SENATE OF KENYA ..... 6<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL COMMISSION... 8<sup>TH</sup> RESPONDENT**

**THE ASSUMPTION OF THE OFFICE**

**OF THE GOVERNOR COMMITTEE**

**NAIROBI CITY COUNTY..... 9<sup>TH</sup> RESPONDENT**

**HON. BENSON MUTURA, THE ACTING**

**GOVERNOR NAIROBI CITY COUNTY ..... 10<sup>TH</sup> RESPONDENT**

**ANN KANANU MWENDA, THE DEPUTY GOVERNOR**

**NAIROBI CITY COUNTY ..... 11<sup>TH</sup> RESPONDENT**

**OKIYA OKOITI OMTATAH ..... 12<sup>TH</sup> RESPONDENT**

*(Being an appeal from the judgment of the Court of Appeal (Nambuye, Okwengu & Laibuta, JJ.A) delivered on 4<sup>th</sup> March, 2022 in Civil Appeal No. E425 OF 2021.*

## **REASONS FOR THE RULING OF THE COURT**

*(delivered on 14<sup>th</sup> July, 2022)*

**[1]** Upon this appeal, which was listed for hearing on 14<sup>th</sup> July, 2022, being called out, Mr. Nyamu who appeared together with Dr. Khaminwa for the appellant indicated that he had a two-pronged application to make.

**[2]** Firstly, Mr. Nyamu stated that owing to the manner in which the Court's directions dated 11<sup>th</sup> and 12<sup>th</sup> July, 2022 were issued, it was difficult and nearly impossible for the appellant's advocates to file comprehensive written submissions and adequately prepare for the hearing. More so, taking into account that at the time the appellant was directed to file his submissions there were no responses from the respondents. In addition, thereafter some of the respondents filed and served their responses as late as the morning of the hearing date. Counsel felt that the foregoing state of affairs was prejudicial to the appellant and so he applied for an adjournment.

**[3]** Secondly, Mr. Nyamu submitted that the President of the Court had previously made certain remarks which indicated that she had taken a position with regard to the appellant's matter which is before this Court. Consequently, the appellant was apprehensive of her impartiality as pertaining to the appeal and sought her recusal from presiding over the matter.

**[4]** While opposing the application, Mr. Kokebe who appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that some of the issues in the appeal had a bearing on the election cycle hence an adjournment would have a collateral effect on the forthcoming general elections. Further, as pertaining to recusal, he urged that the appellant ought to have made a formal application. Likewise, Mr. Ashioya for the 3<sup>rd</sup> respondent as well as Ms. Thanji for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents reiterated the same position. In any event, Ms. Chemutai who held brief for Mr. Kiarie for the 11<sup>th</sup> respondent, submitted that recusal of the President of the Court would affect the

quorum of the Court rendering it incapable of determining the appeal in the event that there was a tie.

**[5]** Expounding further, Mr. Nyamodi for the 7<sup>th</sup> respondent argued that though the appeal was initially filed as an ordinary appeal it had a bearing on the forthcoming general elections. He submitted that the appellant had pleaded in an election matter filed in the High Court at Mombasa that he was eligible to vie for the seat of the Governor of Mombasa County since this appeal was still pending before the Court. As such, Mr. Nyamodi submitted that the determination of the appeal was of utmost urgency. He went on to express that the President of the Court also being the Chief Justice was entitled to comment on constitutional provisions; and in any case, the appellant had not demonstrated or disclosed what was uttered and how the alleged utterance was prejudicial to him or exhibited bias on the part of the President of the Court. As far as he was concerned, the appellant's application was merely a gimmick by the appellant to stall the determination of the appeal. Counsel was of the view that the adjournment was sought in furtherance of a scheme borne by the fact that earlier on Mr. Nyamu, vide a letter dated 13<sup>th</sup> July, 2022 addressed to the Registrar of the Court, had indicated that he would be making an application to cease acting for the appellant.

**[6]** On his part, Mr. Mukele for the 8<sup>th</sup> respondent, added that the determination of this appeal would enable the 8<sup>th</sup> respondent to not only deal with the appellant's eligibility to vie for a Gubernatorial post but also resolve the dilemma or confusion that had arisen on account of a High Court decision. Furthermore, he added that the delay would also affect the printing of ballot papers for the forthcoming general elections. On the issue of recusal, he indicated he was not aware of the utterance alluded to by the appellant and urged the Court to dismiss the application for adjournment while noting the appeal was filed in April, 2022 and the appellant should be able to get on with his case.

**[7]** Upon considering the application and the opposition thereto, the Court dismissed the appellant's application reserving to issue the reasons herein soon thereafter.

**[8]** Beginning with the issue of adjournment, the Court does acknowledge that the directions dated 11<sup>th</sup> and 12<sup>th</sup> July, 2022 gave a short notice to the parties but that notwithstanding, the parties had albeit late complied and filed their respective submissions. Moreover, the Court took note of the fact that this appeal involves the same matter of impeachment of the appellant that arose from the Nairobi City County Assembly and the Senate. Dissatisfied with the outcome thereto, the appellant unsuccessfully applied to quash the decision before the High Court, the Court of Appeal and eventually, is before this Court. In the Courts view, the issues in dispute in all those proceedings having been crystalized, there is nothing new which would justify the appellant's advocates' contention that they needed more time, over and above what they have had from the time the appeal was filed, to prepare for the appeal.

**[9]** Besides, it is not lost to the Court that the appellant did himself, play a role in the delay in the finalization of this matter by lodging the hard copy of his appeal on 20<sup>th</sup> May, 2022, that is, over one month after filing the electronic copy thereof on 4<sup>th</sup> April, 2022 in the Court's online platform. However, in the interest of justice and despite this delay by the appellant, which the Court deprecated, and due to the nature of the appeal, the Court by a ruling delivered on 11<sup>th</sup> July, 2022 opted to sustain rather than striking it out.

**[10]** Furthermore, all the parties including counsel for the appellant agreed that the appeal was urgent. The Court has a duty to hear matters expeditiously and while noting the public interest implication of this appeal to the forthcoming elections as submitted by counsel for the respondents, we find no merit in the application for adjournment. From the time counsel for the appellant filed the appeal, he ought to have prepared to prosecute it once called upon by the Court.

[11] On the issue of recusal, apart from the fact that no particulars of the alleged statements made by the President of the Court were provided, the Court has been consistent and resolute that an application for recusal of any Judge of the Court cannot be made from the bar. Rather, such an application must be through a formal written application lodged in the Court. It is common ground that the Court is composed of seven (7) Judges and the probability that the President of the Court would have presided over the appeal was certainly within the appellant's knowledge. Therefore, the appellant should have filed a formal application for her recusal.

[12] In the circumstances, there was nothing to demonstrate any prejudice or bias the appellant would suffer. All in all, the application for recusal did not meet the parameters for recusal of a Judge as delineated in this Court's decision in *Gladys Boss Shollei vs. Judicial Service Commission & Another*, SC Petition 34 of 2014; [2018] eKLR and the Judicial Service (Code of Conduct and Ethics) Regulations, 2020.

**DATED and DELIVERED at NAIROBI this 18<sup>th</sup> day of July, 2022**

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

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

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

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

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

.....  
**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

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

**I certify that this is a true copy  
of the original**

**REGISTRAR**  
**SUPREME COURT OF KENYA**

