



**REPUBLIC OF KENYA**

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

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

**PETITION (APPLICATION) NO. E004 OF 2023  
(CONSOLIDATED WITH PETITION NO. E002 OF 2023)**

– BETWEEN –

**KENYA TEA GROWERS ASSOCIATION ... 1<sup>ST</sup> APPELLANT/APPLICANT  
AGRICULTURAL EMPLOYERS**

**ASSOCIATION ..... 2<sup>ND</sup> APPELLANT /APPLICANT  
COUNTY PENSIONERS**

**ASSOCIATION ..... 3<sup>RD</sup> APPELLANT /APPLICANT**

– AND –

**THE NATIONAL SOCIAL SECURITY FUND  
BOARD OF TRUSTEES ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY FOR LABOUR,  
SOCIAL SECURITY AND SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**THE RETIRMENT BENEFITS AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**THE COMPETITION AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**KENYA COUNTY GOVERNMENT**

**WORKERS UNION ..... 6<sup>TH</sup> RESPONDENT**

**KENYAN UNION OF ENTERTAINMENT**

<b>AND MUSIC INDUSTRY EMPLOYEES .....</b>	<b>7<sup>TH</sup> RESPONDENT</b>
<b>KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE &amp; ALLIED TRADES EMPLOYEES UNION .....</b>	<b>8<sup>TH</sup> RESPONDENT</b>
<b>UNION OF NATIONAL RESEARCH INSTITUTES STAFF OF KENYA (UNIRISK) .....</b>	<b>9<sup>TH</sup> RESPONDENT</b>
<b>KENYA GLASS WORKERS UNION .....</b>	<b>10<sup>TH</sup> RESPONDENT</b>
<b>NKAURAKI EDWIN LESIDAI &amp; 89 OTHERS .....</b>	<b>11<sup>TH</sup> RESPONDENT</b>
<b>CENTRAL ORGANISATION OF TRADE UNIONS (COTU) .....</b>	<b>12<sup>TH</sup> RESPONDENT</b>
<b>FEDERATION OF KENYA EMPLOYERS (FKE) .....</b>	<b>13<sup>TH</sup> RESPONDENT</b>
<b>KENYA QUARRY AND MINE WORKERS UNION .....</b>	<b>14<sup>TH</sup> RESPONDENT</b>

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*(Being applications for stay of execution of the Judgment of the Court of Appeal (Okwengu, Warsame & Mativo, JJ. A) dated 3<sup>rd</sup> February, 2023 in Civil Appeal No. 656 of 2022) and/or conservatory orders restraining the implementation of Sections 18,19, 20 & 71 of the National Social Security Fund Act, 2013)*

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**Representation:**

Mr. Geoffrey Orao Obura for the 1<sup>st</sup> and 2<sup>nd</sup> applicants  
(Obura Mbeche & Company Advocates)

Dr. Muthomi Thiankolu for the 3<sup>rd</sup> applicant  
(Muthomi & Karanja Advocates)

Mr. Fred Ngatia, SC for the 1<sup>st</sup> respondent  
(Ngatia & Associates Advocates)

Ms. Schola Mbilo for the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents  
(Attorney General Chambers)

Mr. Charles Agwara for the 3<sup>rd</sup> respondent  
(Prof. Albert Mumma & Company Advocates)

Mr. Tamari Katana for the 6<sup>th</sup> respondent  
(Kithi & Company Advocates)

## **RULING OF THE COURT**

**[1]** This ruling will dispose of two motions dated 16<sup>th</sup> February, 2023 and 2<sup>nd</sup> March, 2023 filed by County Pensioners Association (the 3<sup>rd</sup> applicant) and Kenya Tea Growers Association and Agricultural Employers Association (the 1<sup>st</sup> and 2<sup>nd</sup> applicants) respectively.

**[2]** It is instructive to note that two appeals were lodged before this Court against the Court of Appeal's judgment dated 3<sup>rd</sup> February, 2023 in Civil Appeal No. 656 of 2022. These being Petition No. E002 of 2023 at the instance of the 3<sup>rd</sup> applicant and Petition No. E004 of 2023 by the 1<sup>st</sup> and 2<sup>nd</sup> applicants. The two appeals were consolidated after the motions in issue had been filed by a consent order recorded by this Court and dated 31<sup>st</sup> March 2023, wherein Petition No. E004 of 2023 was designated as the lead file.

**[3]** On 17<sup>th</sup> February, 2023 the 3<sup>rd</sup> applicant filed a Notice of Motion dated 16<sup>th</sup> February, 2023 under Rule 31(6) of the Supreme Court Rules, 2020 seeking orders *inter alia* that-

*A conservatory order be issued restraining the National Social Security Fund Board of Trustees (1<sup>st</sup> respondent), the Attorney General (5<sup>th</sup> respondent) and the Federation of Kenya Employers (13<sup>th</sup> respondent) and their respective agents, proxies or employees from implementing Sections 18, 19, 20 and 71 of the National Social Security Fund (NSSF) Act, 2013 pending the hearing and determination of the 3<sup>rd</sup> applicant's appeal.*

**[4]** The aforesaid motion is supported by an affidavit sworn on 16<sup>th</sup> February, 2023 by the 3<sup>rd</sup> applicant's Secretary General, Charles Ikenye Muiruri, as well as written submissions of even date. The gist of what is stated in both the affidavit and the submissions can be summarized as that; the Employment and Labour Relations Court (ELRC) by a judgment dated 19<sup>th</sup> September, 2022 held that the NSSF Act,

2013 (the Act) was unconstitutional; subsequently, the Court of Appeal in the impugned judgment set aside the ELRC's decision on the ground that the ELRC lacked jurisdiction to entertain the dispute; the 3<sup>rd</sup> applicant's appeal raises arguable issues *to wit*; the impugned judgment is irregular because the 1<sup>st</sup> and 5<sup>th</sup> respondents failed to serve the 3<sup>rd</sup> applicant with the notice of appeal, record of appeal and hearing notices of their appeal before the Court of Appeal despite the 3<sup>rd</sup> applicant's participation in the ELRC proceedings; the appeal before the Court of Appeal proceeded in the absence of the 3<sup>rd</sup> applicant contrary to the *audi alteram partem* rule; the Court of Appeal misconstrued Articles 162(2)(a) and 165(3)(b)(d) & (5) of the Constitution as far as the scope of the jurisdiction of the ELRC *vis a vis* the High Court is concerned; the Court of Appeal erred by failing to remit the dispute to the High Court for determination after finding that the ELRC lacked jurisdiction; and the Court of Appeal failed to appreciate that the Act conflicted with the Competition Act to the extent it gave NSSF monopoly in the pension industry.

**[5]** Further, that the 3<sup>rd</sup> applicant's appeal would be rendered nugatory unless the order sought is granted; the 1<sup>st</sup>, 5<sup>th</sup> and 13<sup>th</sup> respondents had moved with haste to implement the Act with effect from 9<sup>th</sup> March, 2023; implementation of the Act would cause unimaginable and irreversible havoc on the pensions industry especially due to mass transfers of employees from superior private pension schemes to NSSF; in any event, the respondents will not suffer any prejudice since the implementation of the provisions in question had been stayed at the ELRC for several years with the parties' consent; and that the 3<sup>rd</sup> applicant had met the threshold for issuance of the order sought, as set out in ***University of Eldoret & Another v. Hosea Sitienei & 3 Others***, SC Applic. 8 of 2020; [2020] eKLR.

**[6]** Supporting the motion, Kenya County Government Workers Union (the 6<sup>th</sup> respondent) relied on its grounds in support of the motion and written submissions dated 2<sup>nd</sup> February, 2023 and 2<sup>nd</sup> March, 2023 respectively. Similarly, the 1<sup>st</sup> and 2<sup>nd</sup> applicants relied on their replying affidavit sworn by Apollo Kiarri, the 1<sup>st</sup> applicant's Secretary and Executive Officer, on 28<sup>th</sup> February, 2023 and their written

submissions of even date. The said respondents basically reiterated the 3<sup>rd</sup> applicant's position as detailed above.

**[7]** On the other hand, the 1<sup>st</sup> respondent vide a replying affidavit sworn by its Chairman, Anthony Muriuki Munyiri, on 28<sup>th</sup> February, 2023 and its written submissions of even date opposed the motion on the grounds that; firstly, the 3<sup>rd</sup> applicant lacks *locus standi* to lodge its appeal and motion; in that, having been joined as an interested party at the ELRC, the 3<sup>rd</sup> applicant cannot purport to take over the role of the primary parties by filing its appeal and the motion at hand; furthermore, the 3<sup>rd</sup> applicant's membership consists of former employees of local authorities who were contributors to the Local Authorities Pension Trust (Laptrust); the Laptrust scheme was closed in 2012 and solely exists for the purpose of paying the last contributor therein before being wound up; the Act does not apply to the 3<sup>rd</sup> applicant nor to its contributors; and as such, the 3<sup>rd</sup> applicant has no conceivable interest or grievance it can pursue.

**[8]** Secondly, the 3<sup>rd</sup> applicant's appeal does not raise any arguable issue for reasons that; the Court of Appeal made no findings on Sections 18,19,20 and 71 of the Act hence there is no basis for this Court to issue the order sought; besides, complaints which were raised pertaining to Sections 18 and 71 in the ELRC were dismissed and no appeal was lodged against that finding; the 3<sup>rd</sup> applicant's advocate was at all material times aware of the proceedings before the Court of Appeal; and following the delivery of the impugned judgment, the Act has been fully implemented. Thirdly, that the 3<sup>rd</sup> applicant's appeal would not be prejudiced in the event it succeeds since contributions to NSSF are credited to individual accounts of members. Besides, public interest lies with the implementation of the Act in light of the crisis facing Kenya of insufficient social security coverage which leads to old age poverty.

**[9]** Likewise, the Cabinet Secretary for Labour, Social Security and Services, the Competition Authority and the Attorney General (the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents); and the Retirement Benefits Authority (the 3<sup>rd</sup> respondent) echoed the 1<sup>st</sup>

respondent's arguments. Save that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents added that the 3<sup>rd</sup> applicant's remedy with respect to the allegation of not having been heard by the Court of Appeal lies with it seeking review of the impugned judgment as opposed to the appeal before this Court. In that regard, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents relied on a replying affidavit sworn by Geoffrey E. Kaituko, the Permanent Secretary in the Department for Labour and Skills Development, on 1<sup>st</sup> March, 2023 and their written submissions of even date. On its part, the 3<sup>rd</sup> respondent placed reliance on its written submissions dated 28<sup>th</sup> February, 2023.

**[10]** We also take note of the 3<sup>rd</sup> applicant's supplementary affidavit in rejoinder, sworn by Charles Ikenye Muiruri on 3<sup>rd</sup> March, 2023. The tenor of it being that; having failed to serve its pleadings in the Court of Appeal upon the 3<sup>rd</sup> applicant, the 1<sup>st</sup> respondent is estopped from accusing the 3<sup>rd</sup> applicant of sneaking in issues that were not canvassed before the Court of Appeal or worse still, for failing to file a cross appeal in the Court of Appeal; the 1<sup>st</sup> respondent is precluded from questioning the 3<sup>rd</sup> applicant's *locus* or motive on account of executing a consent allowing its joinder/participation at the ELRC; and the matter before this Court revolves around the constitutionality of the Act hence capable of being canvassed by any person. Moreover, the Court of Appeal does not review its decisions where a right to appeal against such a decision exists, as in this case.

**[11]** As we pointed out in the opening paragraph, the 1<sup>st</sup> and 2<sup>nd</sup> applicants on 3<sup>rd</sup> March 2013 filed a Notice of Motion dated 2<sup>nd</sup> March, 2023. The motion is anchored on Sections 21(2), 23A and 24(1) of the Supreme Court Act, 2011 and Rules 31(6) and 32 of the Supreme Court Rules, 2020. Apart from seeking a similar order restraining the implementation of Sections 18,19, 20 and 71 of the Act, as the 3<sup>rd</sup> applicant, the 1<sup>st</sup> and 2<sup>nd</sup> applicants seek –

*Stay of execution and/or implementation of the judgment delivered on 3<sup>rd</sup> February, 2023 by the Court of Appeal in Civil*

*Appeal No. E656 of 2022 pending the hearing and determination of the 1<sup>st</sup> and 2<sup>nd</sup> applicants' appeal.*

[12] This motion is supported by an affidavit sworn by Apollo Kiarri on 28<sup>th</sup> February, 2023 on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> applicants. It is also augmented by their written submissions dated 2<sup>nd</sup> March 2023, which are substantially predicated on the same grounds as the 3<sup>rd</sup> applicant's motion. The only addition being that the 1<sup>st</sup> and 2<sup>nd</sup> applicants appeal is arguable as the Court of Appeal erred in assuming jurisdiction and determining the merits of the proceedings before the ELRC, which it had declared as null and void; the 1<sup>st</sup> and 2<sup>nd</sup> applicants' appeal will be rendered nugatory because the implementation of the Act would impose a heavy and unbearable financial burden on its members who will be compelled to contribute towards the mandatory pension scheme under the Act and at the same time towards the existing private pension schemes and gratuity schemes; besides, in the event their appeal succeeds they will not be able to recover the contributions made to NSSF; by virtue of Section 19(2) of the Act their members stand to be denied access to public services in the absence of proof of registration to the mandatory scheme under the Act; and public interest tilts in favour of granting the orders sought.

[13] The 6<sup>th</sup> respondent's grounds in support of the motion mirror the 1<sup>st</sup> and 2<sup>nd</sup> applicants' propositions.

[14] The 1<sup>st</sup> respondent opposed the 1<sup>st</sup> and 2<sup>nd</sup> applicants' motion by a replying affidavit, sworn by Anthony Muriuki Munyiri on 13<sup>th</sup> March, 2023 and its written submissions of even date, which are to the effect that; in setting aside the High Court judgment, the Court of Appeal did not issue any order capable of execution, as aptly set out in ***Western College of Arts and Applied Sciences v. Oranga*** [1976] KLR 63; the orders sought are tantamount to asking this Court to undo or reverse the Court of Appeal's decision at an interlocutory stage before determination of the merits of the appeal, as appreciated by the Court of Appeal in ***Attorney General v. Law Society Of Kenya & Another***, Civil Applic No. 144 of 2009;

[2009] eKLR; gratuity is neither the equivalent of social security or pension benefits nor can it be a substitute to social security; the 1<sup>st</sup> and 2<sup>nd</sup> applicants' members would not be compelled to make double payments as Regulation 20 of the NSSF (Member Contributions) Regulations, 2014 allows employers to deduct any portion of contribution remitted to NSSF from the amount of gratuity payable to an employee; and the real reason the 1<sup>st</sup> and 2<sup>nd</sup> applicants oppose the implementation of the Act is to enable their members to avoid registration and making contribution for seasonal/casual workers who comprise the largest percentage of their workforce.

**[15]** Further, that the 1<sup>st</sup> and 2<sup>nd</sup> applicants' appeal will not be rendered nugatory as the 1<sup>st</sup> and 2<sup>nd</sup> applicants' members have since complied with the Act by registering and making contributions to NSSF; the contributions made to NSSF will be refundable at the election of the employer and employee; the government by dint of Section 70 of the NSSF Act, 2013 acts as a guarantor of public interest in NSSF and would step in when need arises to protect the interests of members; and public interest lies with the implementation of the Act which actualizes the right to social security as enshrined under Article 43(1) (e) of the Constitution.

**[16]** The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents also opposed the 1<sup>st</sup> and 2<sup>nd</sup> applicants' motion on essentially similar grounds as the 1<sup>st</sup> respondent. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents relied on a replying affidavit that was sworn by Geoffrey E. Kaituko on 13<sup>th</sup> March, 2023 and their written submissions dated 16<sup>th</sup> March, 2023.

**[17]** By way of rejoinder, the 1<sup>st</sup> and 2<sup>nd</sup> applicants filed a further affidavit, sworn by Apollo Kiarui on 16<sup>th</sup> March, 2023 and written submissions of even date. They urged that the 1<sup>st</sup> respondent is incapable of making any commitments for refund of contributions on behalf of the government.

**[18]** Having considered the foregoing, our understanding is that the challenge concerning the 3<sup>rd</sup> applicant's capacity/*locus standi* goes to the competency of its motion as well as appeal. It is therefore apposite to deal with this issue before delving into the merit of the motions. The 3<sup>rd</sup> applicant's capacity is challenged on

two fronts; firstly, that due to the status of its membership it is devoid of any identifiable interest in the matter at hand; and secondly, having been joined at the ELRC as an interested party it lacks capacity to institute the motion and the appeal.

**[19]** It is common ground that the 3<sup>rd</sup> applicant by a motion dated 18<sup>th</sup> June, 2015 sought to be joined as an interested party at the ELRC. The 3<sup>rd</sup> applicant deposed that it is an umbrella body representing over 6,000 retirees who were contributors to Laptrust, a defined benefit pension scheme, whose members are earning their pension from the said scheme; Laptrust was established for employees of the former local authorities now county governments; the sustainability of Laptrust like any other defined benefit pension scheme is significantly dependent on contributions from employees in active service and employers to finance actuarial deficits and make adequate payments to retired members; the implementation of the Act would compel employers and employees to abandon Laptrust and other existing pension schemes or divert their contributions to NSSF due to the heavy and unbearable financial burden that would ensue from making contributions to two pension schemes; as such, the livelihoods and social security of the 3<sup>rd</sup> applicant's members would be jeopardized. It further deposed that its main objectives, as evinced in its constitution, include playing an active role in the management of Laptrust through its representation in the Board of Trustees; and working for better legislation to maintain and improve the status of social welfare of retired persons.

**[20]** Our preliminary view is that the 3<sup>rd</sup> applicant's stake or interest in the proceedings before the ELRC, revolved around the implementation and constitutionality of the Act. It is also not in dispute that the motion was allowed by the parties' consent dated 6<sup>th</sup> August, 2015 and filed in the ELRC on 12<sup>th</sup> August, 2015. Our perusal of the 3<sup>rd</sup> applicant's motion and appeal before this Court reveals that the aforementioned interest is the basis upon which it has lodged its motion and appeal herein. While Laptrust doors were closed in 2012 to new members, it has not been demonstrated that the scheme does not receive contributions on behalf of its existing members who are still in active service. Indeed, the 1<sup>st</sup> respondent does

admit that Laptrust is still in existence. Therefore, at this very interlocutory stage, we are persuaded that the 3<sup>rd</sup> applicant possesses the same identifiable interest in the dispute which led to its admission at the ELRC in the matter at hand.

**[21]** As to whether the 3<sup>rd</sup> applicant has taken over the role of the primary parties, it is well settled that the crucial or overriding interest in any matter before a court is that of the principal or primary parties. It is precisely for this reason that a party joined as interested party cannot introduce new issues or go beyond the main parties' case. This much was succinctly appreciated by this Court in ***Francis Kariuki Muruatetu & Another v. Republic & 5 others***, SC Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR and ***Samuel Kamau Macharia & Another v. Director of Public Prosecution and 11 Others***, SC Petition (Applic) No. 9 (E011) of 2020.

**[22]** It is remarkable that some of the primary parties in the proceedings at the ELRC, that is, the 1<sup>st</sup> and 2<sup>nd</sup> applicants have also lodged an appeal, Petition No. E004 of 2023, which has been designated as the lead file with the consent of the parties. Perusal of the prayers/reliefs and the case advanced by the 3<sup>rd</sup> applicant in its appeal as well as its motion reveals that they are more or less in tandem with the 1<sup>st</sup> and 2<sup>nd</sup> applicants' case and reliefs sought in their appeal and motion. As such, it cannot be said that the 3<sup>rd</sup> applicant's interests have gone over and above that of the primary parties. What is more, we find that the 3<sup>rd</sup> applicant has not introduced a new issue that was either not canvassed before the superior courts below or did not arise from the impugned judgment. As to whether the 3<sup>rd</sup> applicant should have filed a review before the Court of Appeal as opposed to an appeal before this Court, we find that issue would go to the merit of its appeal and ought to be addressed in the consolidated appeal.

**[23]** Moving on to the motions at hand, we are guided by Section 23A of the Supreme Court Act, which sets out our discretionary power to issue interim orders. Equally, we are mindful of the guiding principles in ***Gatirau Peter Munya v.***

***Dickson Mwenda Kithinji & 2 Others***, SC Applic No. 5 of 2014; [2014] eKLR. The principles in question being that the applicants should demonstrate that the consolidated appeal is arguable; the appeal would be rendered nugatory unless the orders sought are granted; and that it is in the public interest that the orders sought be granted.

[24] Beginning with the prayer seeking stay of the impugned judgment, we note that Court of Appeal simply set aside the ELRC judgment on the ground that it lacked jurisdiction to entertain the matter. As such, the Court of Appeal did not issue a positive order capable of execution as defined by the Court of Appeal for East Africa in the often-quoted case of ***Western College of Arts and Applied Sciences v. Oranga & Others*** [1976] KLR 63. In that, it did not order any party to do anything or to refrain from doing anything. Besides, to issue the stay would mean reversing or undoing the impugned judgment at this interlocutory stage or determining a key issue on jurisdiction and thereby prejudicing the pending appeal. Therefore, the 1<sup>st</sup> and 2<sup>nd</sup> applicants' prayer for stay of execution or implementation of the impugned judgment cannot issue at this interlocutory stage.

[25] With regard to the conservatory order restraining the implementation of Sections 18,19,20 and 71 of the Act, we are persuaded that the applicants have demonstrated that the consolidated appeal is arguable. In that, we find the issue of the jurisdiction of the ELRC *vis a vis* the High Court with regard to the dispute at hand is one that warrants this Court's consideration. Nonetheless, we are not satisfied that the applicants have met the other two principles to warrant the conservatory order sought. The 1<sup>st</sup> and 2<sup>nd</sup> applicants did not deny the 1<sup>st</sup> respondent's contention to the effect that their members had since complied with the Act. In particular, that they had registered and started making contributions to NSSF as envisaged under the Act. Likewise, none of the applicants denied the 1<sup>st</sup> respondent's contention that following the impugned judgment that the Act has since been implemented. Besides, none of the applicants demonstrated that in the

event the consolidated appeal succeeds that the contributions made to NSSF would be lost or inaccessible to the contributors or their beneficiaries.

**[26]** All in all, we are of the view that the interest of justice will be best served by hearing and determining the consolidated appeal on priority basis so as to settle the main dispute.

**[27] CONSEQUENTLY** and for the reasons afore-stated, we make the following Orders:

- i. The 1<sup>st</sup> and 2<sup>nd</sup> applicants' Notice of Motion dated 2<sup>nd</sup> March, 2023 and filed on 3<sup>rd</sup> March, 2023 is hereby dismissed.*
- ii. The 3<sup>rd</sup> applicant Notice of Motion dated 16<sup>th</sup> February, 2023 and filed on 17<sup>th</sup> February, 2023 is hereby dismissed.*
- iii. Costs of the Motions shall abide the outcome of the consolidated appeal.*
- iv. The consolidated appeal be set down for hearing on a priority basis.*

It is so ordered

**DATED and DELIVERED at NAIROBI this 16<sup>th</sup> day of June, 2023.**

.....  
**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 COURT**

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

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

**I certify this as a true Copy of the Original**

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

