



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki & Ouko, SCJJ)

APPLICATION NO. E011 OF 2023

– BETWEEN –

GEORGE PETER KALUMA APPLICANT

– AND –

NGO COORDINATION BOARD 1ST RESPONDENT

ERIC GITARI 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AUDREY MBUGUA ITHIBU 4TH RESPONDENT

DANIEL KANDIE 5TH RESPONDENT

KENYA CHRISTIAN PROFESSIONALS FORUM . 6TH RESPONDENT

KATIBA INSTITUTE AMICUS CURIAE

(Being an application for Extension of Time to File a Reference against the Taxation Decision of the Deputy Registrar delivered on 6th November 2023)

Representation

Mr. George Peter Kaluma, the Applicant in Person

Mr. Bildad Khatete h/b Mr.Charles Kanjama, SC for the 1st Respondent
(Muma & Kanjama Advocates)

Mrs. Sande Ligunya for the 2nd Respondent
(Ligunya Sande & Associates Advocates)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 10th January 2024 and filed on 15th January 2024, brought under Article 159(2) of the Constitution and Rule 15(2) of the Supreme Court Rules, 2020, the Applicant seeks the following orders:

- a) *Spent.*
- b) *The Court be pleased to extend the time for filing a reference against the taxation decision vide the ruling dated 6th November, 2023, in terms of the draft reference annexed hereto.*
- c) *The draft reference application be deemed as duly filed upon payment of requisite court fees.*
- d) *Costs of the application be awarded to the Applicant.*

[2] UPON PERUSING THE GROUNDS on the face of the application and the affidavit in support sworn by the Applicant on 10th January 2024 and the submissions dated 10th January 2024; to the effect that the Deputy Registrar assessed costs at KShs.200,000/= and condemned the Applicant to pay the 2nd respondent's costs; the Applicant was not served with a Ruling Notice; he found out about the ruling when the 2nd Respondent's counsel texted him demanding the sum of Kshs.500,000/=; the statutory 7 days' timelines for filing a reference lapsed on 14th November 2023; there was need to extend the time limit to allow the applicant challenge the subject ruling; in support of the application, the applicant relied on the cases of *Kenya Railways Corporation & 2 Others vs Okiya Omtatah Okoiti & 2 Others*, SC Petition No. 13 of 2020 (as consolidated with Petition No. 18 of 2020); *William Olotch vs Pan African Insurance Limited*, Civil Application No. 14 of 2020; and *Muthuuri & 4 Others v Attorney General & 2 Others*, SC Petition (Application) No. 15 (E022) of 2021); and

[3] NOTING that the application is unopposed;

[4] HAVING CONSIDERED the application, **WE NOW OPINE** as follows:

i) This Court, by the provisions of Rule 15(2) of the Supreme Court Rules, 2020, has the discretion to extend the time limited by the rules or by any of its decisions.

ii) In addition, this Court laid down the principles for extension of time in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others*, SC Application No. 16 of 2014; [2014] eKLR. They are:

- a.** Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
- b.** A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- c.** Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
- d.** Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court.
- e.** Whether there will be any prejudice suffered by the respondents if the extension is granted.
- f.** Whether the application has been brought without undue delay.
- g.** Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

(iii) The Applicant alleges that he was not served with the ruling notice. He alleges that he only became aware of the ruling and the contents thereof when the 2nd respondent's counsel reached out to him. We have taken the liberty of perusing the record. We note that an email containing the ruling was indeed sent on 6th

November 2023 at 1719 hours to gpdkaluma@gmail.com through this Court's email address supremeregistry@court.go.ke . Furthermore, we note that there have been numerous correspondences from the Court through the email address supremeregistry@court.go.ke to the applicant and vice versa. Notably, there was correspondence from the Court on 12th September, 2023 and 6th November, 2023 to the applicant via his email address gpdkaluma@gmail.com . There has also been communication through this Court's email address supremecourtkenya@gmail.com to the applicant's email address gpdkaluma@gmail.com on various dates being 25th March, 2023, 27th March, 2023, 4th April, 2023, 6th September, 2023, 29th September 2023, 23rd October, 2023, 25th January, 2024, 12th February, 2024, 16th February, 2024 and 19th February 2024. Notably, the applicant himself sent an email through his email address gpdkaluma@gmail.com to the Court's email address supremecourtkenya@gmail.com on 25th January 2024 at 1.22 p.m. where he acknowledged receipt of the Court's directions and undertook to serve the other parties. This email was in response to the Court's email sent on 24th January 2024 at 11.02 a.m. through supremecourtkenya@gmail.com to the applicant through his email address gpdkaluma@gmail.com.

iv) It is also noteworthy that in the applicant's notice of address of service dated 9th March 2023, he indicated his email address as gpdkaluma@gmail.com. From the record, there is no indication that the email address was subsequently changed.

v) There is therefore no doubt in our minds that the email address in question belongs to the applicant. We therefore come to the irresistible conclusion that the applicant was indeed aware and was served with the impugned ruling.

vi) It therefore follows that the applicant has not provided a good reason for not challenging the Deputy Registrar's ruling within the statutory timelines. Further,

the applicant has not met any of the conditions to convince this Court to exercise its discretion in his favour.

[5] In the circumstances, the application is for dismissal. In line with our decision in *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others*, SC Petition Application No. 4 of 2012; [2014] eKLR, we make no order as to costs as the application was not challenged by any of the respondents.

ORDERS

[6] **Consequently**, and for the reasons aforesaid, we make the following Orders:

- i. The Notice of Motion dated 10th January 2024 is hereby dismissed.*

Orders accordingly.

DATED and DELIVERED at NAIROBI this 31st day of May, 2024.

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

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

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S.C. WANJALA
JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

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W. OUKO
JUSTICE OF THE SUPREME COURT