



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

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

**PETITION (APPLICATION) NO. 42 OF 2019**

**— BETWEEN —**

**KENYA VISION 2030 DELIVERY BOARD ..... APPELLANT/APPLICANT**

**— AND —**

**THE COMMISSION ON ADMINISTRATIVE JUSTICE ... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**ENG. JUDAH ABEKAH ..... 3<sup>RD</sup> RESPONDENT**

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*(Being an application for Review of the Judgment of the Supreme Court  
(Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ) delivered on 24<sup>th</sup>  
March 2021 in SC Petition No 49 of 2019)*

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**Representation**

Ms. Oyare Elvis for the 1<sup>st</sup> Appellant/Applicant  
*(Hamilton Harrison & Mathews Advocates)*

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

**RULING OF THE COURT**

**[1] COGNISANT THAT** by a Judgment dated 24<sup>th</sup> March 2021, this Court made the following orders:

- 1. *The Petition of Appeal dated 6<sup>th</sup> November, 2019 and filed on 7<sup>th</sup> November, 2019 be and is hereby allowed.***
- 2. *The Judgment of the Court of Appeal sitting at Nairobi dated 27<sup>th</sup> September, 2019 is hereby quashed and set aside.***
- 3. *For the avoidance of doubt, the Judgment of the High Court delivered on 26<sup>th</sup> February, 2016, be and is hereby upheld.***
- 4. *Costs of this Appeal to abide the appeal.***

**[2] FURTHER COGNIZANT** that the Appellant/Applicant wrote to the Court on 1<sup>st</sup> April, 2021 and 13<sup>th</sup> May, 2021 invoked Section 21(4) of the Supreme Court Act, No.9B of the Laws of Kenya, and requested the Court to clarify the issue of costs in the proceedings before the Court of Appeal; and

**[3] UPON PERUSING** the Notice of Motion dated 23<sup>rd</sup> November, 2022 and filed on 9<sup>th</sup> July, 2024 pursuant to Sections 3A and 21(4) of the Supreme Court Act, by the Appellant/Applicant seeking the following orders:

- a) *The Court be pleased to clarify the order made in its judgment of 24<sup>th</sup> March, 2021 regarding the Appellant's costs in the proceedings before the Court of Appeal being Nairobi Civil Appeal No. 141 of 2015 and who should pay the costs.***
- b) *THAT costs of this application be provided for.***

**[4] TAKING INTO ACCOUNT** the grounds on the face of the application, the affidavit in support sworn by Queenton Ochieng, the Appellant/Applicant' counsel, and the undated written submissions wherein they submit that by a Judgment delivered on 24<sup>th</sup> March 2021, this Court allowed the appeal and set aside the Judgment of the Court of Appeal; that, while the costs of the appeal were awarded to the Appellant/Applicant, the Court did not make any pronouncement on the costs before the Court of Appeal; that it is therefore necessary and in the interests

of justice to clarify the said issue; that, the rule of thumb is that costs follow the event as laid out in the case of **Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others**, SC Petition No. 4 of 2012; [2014] eKLR; that, viewing as the Appellant/Applicant was the successful party in the appeal, it urged the Court to exercise its discretion in its favour and award the costs at the Court of Appeal to the Appellant/Applicant; that further, the costs should be borne by the 1<sup>st</sup> Respondent, the Commission on Administrative Justice; and

**[5] APPRECIATING** that despite service of the application and submissions, the Respondents have not responded to the application;

**[6] AND WE NOW OPINE** as follows:

- i. Section 21(4) of the Supreme Court Act provides as follows:

***The Court may, on its own motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgment, ruling or order and such correction shall constitute part of the judgment, ruling or order of the Court.***

- ii. Rule 28(5) of the Supreme Court Rules, 2020 provides as follows:

***(5) The Court may review any of its decisions in any circumstance which the Court considers meritorious, exceptional, and in the public interest, either on the Court's own motion, or upon application by a party.***

- iii. The question then before this Court is whether failure to pronounce itself on the question of costs for proceedings before the Court of Appeal is a matter that can be resolved under the slip rule. In **Fredrick Outa vs Jared Odongo Okello & 3 Others**, SC Petition No. 6 of 2014; [2017] KESC 25 (KLR) we had the following to say about Section 21(4) of the Supreme Court Act:

**85. This Section as quoted, embodies what is ordinarily referred to as the “Slip Rule”. By its nature, the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the Slip Rule.**

- iv. In ***Trattoria Limited vs Joaninah Wanjiku Maina & 3 Others***, SC Petition (Application) 26 (E029) of 2022; [2024] KESC 54 (KLR), faced with a similar question on costs, we invoked our jurisdiction under the ‘slip rule’. To that end, failure to award or decline to award costs, falls within the parameters of the error(s) contemplated under Section 21(4) of the Supreme Court Act. In that regard, we must find that the Appellant/Applicant’s application has merit.
- v. In the ***Jasbir Singh Rai Case***, we held in paragraph 8 that this Court is not bound to adhere to the principle that costs follow the event, but has an open-mandate to exercise its discretion to ensure that the ends of justice are met, quite similar to Section 27(1) of the

Civil Procedure Act, Cap 21 of the Laws of Kenya. In stating so, relied on Section 21(2) of the Supreme Court Act which reads:

***In any proceedings, the Supreme Court may make any ancillary or interlocutory orders, including any orders as to costs as it thinks fit to award.***

We also relied on Rule 3(5) of the Supreme Court Rules 2020 which reads as follows:

***Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.***

- vi. We agree with the Appellant/Applicant that the rule of thumb is that costs follow the event and as the Appellant/Applicant was the successful party in this case, we find no reason not to award costs for the proceedings at the Court of Appeal.
- vii. Contrary to the Appellant/Applicant's proposition, the Court of Appeal awarded costs to the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Respondent, as the cross-Appellant, but did not condemn any specific party to bear the costs. If anything, both the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were awarded costs and there would be no reason to condemn one to bear the costs of the appeal to the exclusion of the other.
- viii. Consequently, and for the reasons stated above, we make the following orders:
  - a. ***The Notice of Motion dated 23<sup>rd</sup> November, 2022 and filed on 9<sup>th</sup> July, 2024, is hereby allowed.***
  - b. ***The Judgment dated 24<sup>th</sup> March, 2021 is hereby reviewed, and in particular, the Appellant/Applicant***

*is awarded the costs of the proceedings at the Court of Appeal in Civil Appeal No. 141 of 2015.*

- c. There having been no opposition by the Respondents, we make no order as to costs in regard to this Motion.*

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 8<sup>th</sup> day of November, 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**

.....  
**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**