

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
(Coram: Mwilu; DCJ & V-P, Ibrahim, Wanjala, Njoki, & Lenaola, SCJJ)

APPLICATION NO. 12 OF 2018

—BETWEEN—

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

—AND—

- 1. ENG. MICHAEL SISTU MWAURA KAMAU.....1ST RESPONDENT**
- 2. ETHICS AND ANTI-CORRUPTION COMMISSION.....2ND RESPONDENT**
- 3. ATTORNEY-GENERAL.....3RD RESPONDENT**
- 4. NATIONAL POLICE SERVICE.....4TH RESPONDENT**
- 5. CHIEF MAGISTRATES COURT MILLIMANI.....5TH RESPONDENT**

(Being an application for extension of time to file an appeal and stay of execution against the Judgment and Orders of the Court of Appeal in Civil Appeal No. 102 of 2016 (Makhandia, Ouko & M’Inoti, JJ.A) delivered on 14th July, 2017

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 31st May, 2018 and filed on 6th June, 2018 for extension of time to file an appeal out of time and for stay of execution against the Judgment and Orders of the Court of Appeal delivered on 14th July, 2017 in *Civil Appeal No. 102 of 2016* and brought under the Provisions of Article 163(4) of the Constitution, Section 21(2), 24(1) of the Supreme Court Act, Rules 23, 26 and 53 of the Supreme Court Rules, 2012; and

[2] UPON reading the applicant’s supporting affidavit and further affidavit sworn by EMILY KAMAU on 31st May, 2018 and 20th June, 2018 respectively; and

[3] UPON considering the written submissions filed by the applicant on 21st June, 2018 wherein it is contended that the delay in filing the appeal was occasioned by the Court of Appeal's failure to provide certified copies of typed proceedings, despite having applied for the same as far back as 14th July, 2017; and

[4] UPON further considering the written submissions by the applicant and 2nd, 3rd, 4th and 5th respondents in support of the application, wherein it is contended that:

1. The intended appeal concerns a substantial outlay of public resources amounting to approximately Kshs 17 billion.
2. Unless the Orders for extension of time and stay of execution are granted, there is real danger that over 127 pending cases of corruption, bribery and economic crime will be prematurely terminated at this stage, thus severely dealing a blow to the administration of justice and the public interest; and

[5] UPON reading the 1st respondent's replying affidavit sworn on 16th July, 2018 and written submissions dated 26th July, 2018 and filed on 16th July, 2018 and 27th July, 2018 respectively, wherein he contends that:

1. The applicant's decision to charge him afresh before the Magistrates' Court has rendered the intended appeal spent;
2. the applicant has not moved the Court with clean hands, as the Application is founded on an unconstitutionality;
3. The applicant has not demonstrated to this Court what efforts it undertook to obtain the said certified copies of typed proceedings;

[6] WE HAVE CONSIDERED the question at the core of the application *viz*: whether on the basis of the rival affidavits and written submissions of the parties, the Applicant herein, has made a compelling case for this Court to exercise discretion in its favour and thereby grant the orders sought. By a unanimous decision of this Bench, pursuant to the provisions of Sections 21(2) and 23(2)(b) of

the Supreme Court Act, 2011 and Rules 21, 23 and 53 of the Supreme Court Rules, 2012; we make the following Orders:

	ORDERS	REASONS
1.	<i>The Application dated 31st May, 2018 is hereby allowed.</i>	The application satisfies the principles set out in the cases of <i>Nicholas Kiptoo Korir Salat v. Independent Electoral and Boundaries Commission & 7 others</i> Application No. 16 of 2014 and <i>Hassan Nyanje Charo v Khatib Mwashetani & 3 Others</i> SC Application No. 15 of 2014; on extension of time by this Court —And— The principles in <i>Board of Govenors, Moi High School, Kabarak & Another v. Malcom Bell</i> SC petition No 6 & 7 of 2013 as affirmed in <i>Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others</i> Application No. 5 of 2014 and <i>Wycliffe Oparanya Ambetsa v. the Director of Public Prosecutions</i> SC Petition No 14 of 2016.
2.	The Applicant shall file its appeal within 14 days from the date hereof.	
3.	Costs shall be in the cause.	

DATED and DELIVERED at NAIROBI this 30th of April 2019.

.....
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