

**REPUBLIC OF KENYA**  
**IN THE SUPREME COURT OF KENYA**  
*(Coram: Ibrahim & Lenaola, SCJJ)*

**APPLICATION NO. 7A OF 2016**

**EDWARD AKONG'O OYUGI.....APPLICANT**

**—VERSUS—**

**ZACHARIA OKOTH OBADO.....1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....2<sup>ND</sup> RESPONDENT**

**JAIRUS OBAGA-COUNTY RETURNING OFFICE,**

**MIGORI COUNTY.....3<sup>RD</sup> RESPONDENT**

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*(Being an application for extension of time to file an application for review and setting aside of part of the Judgment of the Supreme Court in Petition No. 4 of 2014 delivered on 17<sup>th</sup> July, 2014 at Nairobi(Mutunga C.J&P, Rawal DC.J & V.P, Tunoi, Ibrahim, Ojwang, Wanjala & Njoki, SCJJ)*

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**RULING**

1. **UPON** perusing the Notice of Motion application dated 25<sup>th</sup> April, 2016 and filed on 27<sup>th</sup> April, 2016, for extension of time to file an application for review of part of this Court's Judgment in Petition No. 4 of 2014, directing the applicant to pay costs to the 1<sup>st</sup> respondent and that the grant of leave do act as a stay of execution; and
2. **UPON** reading the applicant's affidavit sworn by EDWARD AKONGO OYUGI, on 25<sup>th</sup> April, 2016, the 1<sup>st</sup> respondent's replying affidavit sworn by ZACHARIAH OKOTH OBADO on 17<sup>th</sup> October, 2016 and the 2<sup>nd</sup> and 3<sup>rd</sup>

respondents replying affidavit sworn by PRAXEDES TOROREY on 14<sup>th</sup> September, 2016; and

3. **UPON** considering the written submissions on record for the applicant and the respondents, wherein, the applicant contends that the delay was occasioned by the conduct of his then advocate on record, who despite being given instructions failed to file the application for review necessitating a change of advocates; and the 1<sup>st</sup> respondent's contention that the delay of 21 months from the date of the delivery of Judgment is inordinate, inexcusable and unreasonable and in any case that this Court is *functus officio*, having given its final determination. Further, noting the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' opposition to the application, arguing that the 2 years' delay is inordinate and that the applicant has not given any justifiable reason for the said delay and that the applicant has not provided any evidence to show that his former advocate failed to act on any instructions given.
4. **AND** having considered the application, by a unanimous decision of this Bench, we make the following Orders under Section 23(2)(b) of the Supreme Court Act, and Rule 21 and 23 of the Supreme Court Rules, 2012(as amended).

| ORDERS                                                                                                                                              | REASONS                                                                                                                                                                                                                                                                                        |
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| a. The Notice of Motion Application dated 25 <sup>th</sup> April, 2016 is hereby dismissed with costs to the respondents as costs follow the event. | a. The application does not satisfy the principles laid down in the case of <b><i>Nicholas Kiptoo Arap Korir Salat v. The Independent Electoral and Boundaries Commission &amp; 7 Others</i></b> , Appl. No. 16 of 2014.<br><br>b. The delay of 21 months is unjustifiable and unreasonable in |

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|  | the circumstances. The said delay is also inordinate. |
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**DATED** and **DELIVERED** at **NAIROBI** this 24<sup>th</sup> day of March, 2017.

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**M.K. IBRAHIM**  
**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**