

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI
(Coram: Mutunga CJ; Tunoi, Ojwang, Wanjala, Ndungu, SCJJ)

PETITION NO. 7 OF 2012

HON. LADY JUSTICE NANCY MAKOKHA BARAZA.....**APPLICANT**

-VERSUS-

THE TRIBUNAL INVESTIGATING THE CONDUCT OF THE HON.
DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME
COURT OF THE REPUBLIC OF KENYA.....**RESPONDENT**

R U L I N G

When this appeal came up for hearing this morning, Mr. Solomon Wamwayi, holding brief for Mrs. Guserwa, Counsel for the appellant, has told this Court that his singular instructions are to seek an adjournment because Mrs. Guserwa is on a retreat in Europe that has been organized by the Law Society of Kenya. Mr. Murgor, Learned Counsel for the Respondent has opposed the application.

When this matter came up for mention on October 9, 2012 before my brother Judge Ojwang and my sister Judge Ndungu, Mrs. Guserwa told them that the appeal has to be determined expeditiously. In her words the.....**“matter is hanging on the head of my client. If your**

Lordships are able to fit us within your schedule, within reasonable time, we are not averse to having the matter heard expeditiously.” We observe that Mr. Wamwayi has reinforced this position by saying that the sword of Damocles is hanging over the appellant’s head. Mr. Murgor stated as follows: **“If it is the wish of my learned friend that this appeal be disposed off as soon as possible, we completely support that position. In fact we are instructed to support the position of the expeditious disposal of the petition of appeal.”**

On the basis of that record it is clear to us that Mrs. Gurserwa ‘s reasons for her absence today to prosecute this appeal, and her failure to fully brief Mr. Wamwayi or any other Counsel to argue this matter this morning smacks of arrogance, disrespect and negligence on her part. This Court will not allow Counsel to treat it with disrespect or arrogance. This matter is one of public interest and the Court in giving Counsel today’s date for the hearing of the appeal was fully aware of this fact. This is the Supreme Court of Kenya, the apex Court in this nation. Our schedule shall not be based on the convenience of Counsel. Let this message be heard loud and clear by Counsel who will appear before this Court.

Mr. Murgor has rightly opposed the application and we note he is ready to proceed to argue this appeal.

We have considered rejecting this application on the basis of this background and on these grounds. We realize, however, that it is not Mrs. Guserwa who is seeking justice in this Court. We shall give justice to the appellant and make the following orders:

- 1) The application for adjournment is hereby allowed.
- 2) This appeal shall be heard at 10.00 a.m. on October 23, 2012.
- 3) This Court shall not entertain further applications for adjournment.
- 4) If the appellant wishes to respond to the Respondent's submissions then this must be done on or before Monday, October 22, 2012.
- 5) Mrs. Guserwa will personally pay the costs of the adjournment.

DATED and DELIVERED at NAIROBI this 17th day of October, 2012.

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W. MUTUNGA
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT OF KENYA

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P. K. TUNOI
JUDGE OF THE SUPREME COURT OF KENYA

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J. B. OJWANG
JUDGE OF THE SUPREME COURT OF KENYA

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S.C. WANJALA
JUDGE OF THE SUPREME COURT OF KENYA

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N.S. NDUNGU
JUDGE OF THE SUPREME COURT OF KENYA