

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mutunga, CJ & P, Ibrahim, Ojwang, Wanjala, Njoki, SCJJ)

APPLICATION NO. 11 of 2016

—BETWEEN—

HON. (LADY) JUSTICE KALPANA H. RAWAL.....APPLICANT

—VERSUS—

1. JUDICIAL SERVICE COMMISSION.....	}	RESPONDENTS
2. THE SECRETARY, JUDICIAL SERVICE COMMISSION.....		

—AND—

OKIYA OMTATAH OKOITI..... INTERESTED PARTY

—AND—

1. INTERNATIONAL COMMISSION OF JURISTS.....	}	AMICI CURIAE
2. KITUO CHA SHERIA.....		
3. LAW SOCIETY OF KENYA.....		

—AND—

CIVIL APPLICATION NO. 12 OF 2016

—BETWEEN—

1. JUSTICE PHILIP TUNOI.....	}	APPLICANTS
2. JUSTICE DAVID A. ONYANCHI.....		

—VERSUS—

1. THE JUDICIAL SERVICE COMMISSION.....	}	RESPONDENTS
2. THE JUDICIARY.....		

—AND—

LAW SOCIETY OF KENYA..... AMICUS CURIAE

ORDER OF THE COURT

These are the Orders of the Court:

1. The Preliminary Objection by the interested party (Mr. Omtatah) together with the application No. 13 is hereby allowed.
2. The *ex parte* Orders granted by the Duty Judge, on 27th of May, 2016, are hereby vacated.
3. The Judgment of the Court of Appeal shall stand until it is either affirmed, or reversed by a competent Bench of this Court.
4. In view of the fact that 2 members of this Bench were minded to allow preliminary objections No. 11 and 12, while 2 others were equally minded to disallow the said preliminary objections, and the 5th member has recused himself from making a finding on the objections, there is no determination that has been made regarding preliminary objection No. 11 and 12.
6. Costs shall be in the cause.

D ATED and DELIVERED at NAIROBI this 14th Day of June, 2016.

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

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

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME

.....
S. N. NDUNGU
JUSTICE OF THE SUPREME COURT

**I certify that this is a true copy
of the original**

REGISTRAR

SUPREME COURT OF KENYA