REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: *Ojwang & Lenaola SCJJ)*

PETITION NO. 14 of 2016

IN THE MATTER OF AN APPLICATION FOR STAY OF PROCEEDINGS IN CRIMINAL CASE NO. 122 OF 2013 BEFORE THE PRINCIPAL MAGISTRATE'S COURT BUTERE

– AND –

IN THE MATTER OF CRIMINAL APPEAL NO 14. OF 2016 PENDING BEFORE THIS HONOURABLE COURT

– BETWEEN –

WCLIFFE OPARANYA AMBETSA.....APPLICANT

– AND –

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

(An Appeal from the Judgment of the Court of Appeal at Kisumu (Maraga, Musinga, Gatembu, JJ.A) dated 27th July, 2016 in Crim. Appeal No. 56 of 2015)

RULING

A. INTRODUCTION

[1] This is a Notice of Motion application dated 17th October, 2016, filed under certificate of urgency, and it has an outstanding prayer for two Orders:

(a) *that, pending inter partes hearing, this Court stay the proceedings in criminal Case No. 122 of 2013,* ***R. v. Wycliffe Oparanya Ambetsa*** *before the Principal Magistrate's Court at Butere;*

(b) *that, the Order of stay of proceedings, or further proceedings in Butere Principal Magistrate's Court Criminal Case No. 122 of 2013 be*

extended and/or remain in force after the inter parties hearing, until the final hearing and/or determination of Supreme Court Criminal Appeal No. 14 of 2016.

B. BACKGROUND

[2] The applicant is the Governor of Kakamega County. On 2nd May, 2013 he was charged before the Butere Principal Magistrate's Court, in Criminal Case No. 122 of 2013, with the offence of assault causing actual bodily harm, contrary to Section 251 of the Penal Code. That offence was alleged to have been committed on 17th August, 2008.

[3] The applicant subsequently moved the High Court through Petition No. 39 of 2013, dated 25th May, 2013 challenging the institution of the criminal charges against him. The grounds in support of the petition were, *inter alia,* that:

(a) *the intended prosecution was an abuse of legal process, and in violation of the powers of prosecution conferred on the Office of the Director of Public Prosecution by Article 157(11) of the Constitution;*

(b) *the intended use by the prosecution of witnesses secured four years after the alleged offence, and initially not named as witnesses, is grounded on malice, and in a gross violation of Article 50(4) of the Constitution, and the right of the petitioner to a fair trial, and is detrimental to the administration of justice;*

(c) *four years taken by the police to make a decision to prefer criminal charges against the petitioner, is a gross violation of the petitioner's right to fair administrative action under Article 47(1) of the Constitution;*

(d) *it amounts to an abuse of office and the legal process, for the police and the prosecution to re-open a criminal case against the petitioner which was closed more than four years ago, without giving reasons for so doing and/or informing the petitioner of the reasons.*

[4] In dismissing the petition, the High Court *(Mrima J)* stated, *inter alia*:

> ***"I am not satisfied based on the material before me that the Petitioner will not receive a fair trial before the trial Court and that the trial is aimed at achieving ulterior motives. I am further unable to discern malice in the investigations and the prosecution. Neither am I persuaded that the trial will undermine the administration of justice or is against the public interest".***

[5] Aggrieved by the decision of the High Court, the applicant filed an appeal at the Court of Appeal, Criminal Appeal No. 56 of 2015. By a Judgment delivered on 29th July, 2016, the Court of Appeal *(Maraga, Musinga & Gatembu JJ.A)* upheld the decision of the High Court and dismissed the applicant's appeal.

[6] The applicant was again dissatisfied with the decision of the Court of Appeal, prompting him to move to this Court. By Petition No. 14 of 2016, dated 6th September, 2016, he seeks to appeal against the decision of the Court of Appeal at Kisumu declining to stop the Principal Magistrate, Butere or any other Court from proceeding with his trial in Criminal Case No. 122 of 2013. The petition is premised upon the following summarized grounds:

(a) *that the Judges of the Court of Appeal erred in law in basing their decision on a matter not contained in the Judgment of the High Court,*

and which was crucial to the proceedings, namely the document titled "Reply to Petition," filed by John Okoth in the High Court and which document the Appellate Judges found that the High Court Judge had admitted into the petition, as a Replying Affidavit, when the truth was that the High Court had found the document not to be a 'Replying Affidavit', but a 'Reply to Petition';

(b) by upholding the Judgment of the High Court admitting into a petition a document other than a 'Replying Affidavit' filed by the Respondent, being a State Organ, in answer to a Petition, the Hon. Judges acted in excess of their jurisdiction by re-inventing the Regulations by the Chief Justice governing constitutional petitions, which mandate is reserved to the Chief Justice under Article 22 of the Constitution and Section 19 of the Sixth Schedule to the Constitution;

(c) by reason of the misapprehension of the Judgment of the High Court concerning the document filed in answer to the petition, the Hon. Judges of the Court of Appeal missed the opportunity to appreciate the injudicious effect of employing the provisions of Article 159(2)(d) of the Constitution to admit an otherwise inadmissible document introduced by the State into a petition;

(d) the decision of the Court of Appeal is against the spirit of Article 50 of the Constitution, on the presumption of innocence of an accused, and the right of an accused to have his prosecution commenced and concluded without delay;

(e) the Judges of the Court of Appeal erred in shifting the burden of proof in criminal proceedings from the prosecution to the accused and, in this case, to the petitioner.

[7] The Orders sought in the petition are the following:

(a) *a declaration that the prosecution of the petitioner in Criminal Case No. 122 of 2013 before the Principal Magistrate's Court, Butere, is unlawful and a violation of his constitutional right to fair trial;*

(b) *an Order of prohibition, to prohibit the Principal Magistrate, Butere or any other Court, from proceeding with the trial of the petitioner in the aforesaid criminal case, or in any other proceedings commenced on the basis of the same complaint;*

(c) *costs arising from, or in connection with these proceedings be recovered from the Respondent.*

[8] Pending the hearing and determination of the petition, the applicant now seeks stay of proceedings in Criminal Case No. 122 of of 2013, ***R v. Wcliffe Oparanya Ambetsa,*** before the Principal Magistrate's Court at Butere and the stay application is the subject of the instant determination.

C. PARTIES' SUBMISSIONS

(i) The Applicant

[9] Learned Counsel, Mr. Orengo, submitted that the applicant's Notice of Motion meets the threshold for grant of stay. He submitted that, before the Court, there is an arguable appeal which is likely to be rendered nugatory, should the stay Orders be denied. In showing that the appeal is arguable, counsel contended that the Superior Courts in this case had failed to appreciate the terms of Article 47(1) of the Constitution, which provides that administrative actions must be conducted expeditiously, and so it was wrong for the police to take a period of four years before making a decision on whether to charge the applicant.

[10] The applicant's further contention was that the four-year delay was contrary to the principle of judicial authority enshrined in Article 159(2) (b) of the Constitution, which provides that:

> ***"In exercising judicial authority, the courts and tribunals shall be guided by the following principles –***
>
> ***(a)...***
>
> ***(b) justice shall not be delayed."***

[11] Counsel also invoked Article 50(2)(e) of the Constitution, which provides that an accused person has the right to have the trial begin and conclude without unreasonable delay. He submitted that criminal proceedings begin at the time when the complaint is lodged, and that in this case, it was not until 4 years after the complaint was lodged, that a criminal charge was instituted against the applicant. He urged that the delay was in all respects unreasonable, and amounted to an infringement of the applicant's right to fair trial. He questioned the position taken by the High Court, that it is not 'mere delay,' but the 'effect of delay,' that determines whether or not an infringement has occurred. Counsel urged this Court to adopt an interpretation that is more favourable to the enforcement of the Bill of Rights.

[12] It was counsel's other contention that the respondent was in breach of the relevant rules, by failing to reply to the applicant's petition at the High Court through a proper document; that such a document should have been a 'replying affidavit', and not a 'reply to a petition'. His contention is that Rule 15 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013,* on what constitutes a response to petition, is mandatory, and non-compliance therewith cannot be cured by Article 159(2) (d)

of the Constitution. On that basis, learned counsel faulted the High Court for arriving at a contrary view, even after finding that the document filed in reply by the respondent, was coloured by irregularity.

[13] Learned counsel lastly urged this Court to grant stay Orders as sought because if the trial goes on as scheduled, the appeal herein is likely to be rendered nugatory. He cites several decisions of this Court, as embodying relevant principles: ***Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others,*** Application 5 of 2014; [2014] eKLR; and ***Zacharia Okoth Obado v. Edward Akong'o Oyugi & 2 Others,*** Application No. 7 of 2014; [2014] eKLR.

(ii) The Respondent

[14] Contesting this application, Mr. Ashimosi, the prosecution counsel, submitted that there was no arguable appeal before the Court. He urged that no prejudice had been occasioned to the applicant, by the failure to respond to the applicant's petition at the High Court by way of a 'replying affidavit', as opposed to a 'reply to petition.' He submitted that the applicant's contention was to the effect that the wrong description of the response to the petition had been a mere technicality, as opposed to a matter of form or substance – a position not tenable in law, as forms by themselves do not constitute injustice.

[15] Counsel submitted that the alleged delay in finalizing the investigations had been occasioned by the difficulties encountered in getting a witness statement from the applicant himself. Thus, the delay was substantially attributable to the applicant and, in any case, the applicant had shown no prejudice that he had suffered, on account of the delay.

[16] Learned counsel submitted that the stay of criminal proceedings is to be weighed and balanced against the fundamental rights of individual persons; and that it should only be granted sparingly, and in exceptional circumstances. He urged that the applicant had not raised any credible evidence showing that he stands to suffer prejudice, should the prosecution continue uninterrupted.

[17] On the issue whether failure to allow the application would render the appeal nugatory, counsel submitted that the applicant's right to advance his case during trial remained uncompromised; and that the Constitution provides sufficient safeguards for a person accused of any criminal offence. He therefore asked the Court to dismiss the applicant's Notice of Motion, with costs to the respondent.

D. DETERMINATION

(a) Main Issues, and Pertinent Legal Standpoints

[18] The only issue for determination is whether this Court should stay the proceedings in Criminal Case No. 122 of 2013, ***R v. Wycliffe Oparanya Ambetsa,*** commenced before the Principal Magistrate's Court at Butere, pending the hearing and determination of the applicant's appeal.

[19] Whereas the Court has had many occasions to consider the question of stay, now being sought, the present application entails something new: the Court being asked to determine whether stay Orders to halt criminal proceedings already in progress, should be granted.

[20] The relevant reference-point in law is contained in Section 21(2) of the Supreme Court Act, 2011 which provides:

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

[21] This Court, in ***Board of Governors, Moi High School, Kabarak & Another v. Malcolm Bell***, SC Petition 6 & 7 of 2013; [2013] eKLR, had affirmed the position that it has jurisdiction to grant interlocutory Orders in the nature of stay Orders. At paragraph 39, the Court held:

> "*Apart from considering several questions of law and principle bearing on the matter before us, it is clear that the core question was, whether the Supreme Court has the jurisdiction to grant interlocutory orders, and more particularly, orders of stay of execution of decrees issued by other superior Courts*. ***This question is, by this Ruling, now set to rest: where the Supreme Court has appellate jurisdiction derived from the Constitution and the law, it is equally empowered not only to exercise its inherent jurisdiction, but also to make any essential or ancillary orders such as will enable it to sustain its constitutional mandate as the ultimate judicial forum. A typical instance of such exercise of ancillary power is that of safeguarding the character and integrity of the subject-matter of the appeal, pending the resolution of the contested issues"*** [emphasis supplied].

[22] This position was also affirmed in the case of ***Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others,*** Application 5 of 2014; [2014] eKLR (***Munya 1*** Case), where the Supreme Court went ahead to particularize the range of interlocutory Orders as: "*injunctions, Orders of stay, conservatory Orders and yet others.*" Further, the Court noted that, *"the concept of 'stay Orders' is*

more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light." In this case, the applicant asks this Court to halt the criminal proceedings against him that have already commenced at the Principal Magistrate's Court at Butere, until the Court gives the green light for the proceedings to recommence.

[23] In the ***Munya 1*** case, this Court was called upon to determine whether it should stay the hand of the Independent Electoral and Boundaries Commission and the Speaker of Meru County Assembly, so that they do not move to alter the state of affairs at the Meru County gubernatorial office, pending the hearing and determination of the applicant's appeal. At paragraph 85, the Court observed thus:

> ***"These are the issues to be resolved on the basis of recognizable concept. The domain of interlocutory Orders is somewhat ruffled, being characterized by injunctions, Orders of stay, conservatory Orders and yet others. Injunctions, in a proper sense, being to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of 'stay Orders' is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light."***

[24] The Court went ahead to restate the principles for grant of stay Orders, and further made the following pronouncement [at paragraph 88]:

"... in the context of the Constitution of Kenya, a third condition may be added, namely:

(iii) that it is in the public interest that the Order of stay be granted."

[25] Based on the holding in ***Munya 1,*** therefore, it can be stated that as our jurisprudence now stands, the guiding principles for grant of stay Orders are that;

(i) the appeal or intended appeal is arguable and not frivolous;
(ii) unless the Order of stay sought is granted, the appeal or intended appeal, were it eventually to succeed, would be rendered nugatory;
(iii) it is in the public interest that the Order of stay be granted.

[26] We shall therefore apply the above criteria, to determine whether the instant matter meets the threshold for grant of stay. On the question of arguability, the applicable test was elucidated in the case of Mary ***Wambui Munene v. Peter Gichuki Kingara & 2 Others,*** Application No. 12 of 2014; [2014] eKLR, where the Court, in arriving at the conclusion that the appeal was arguable, thus observed:

> ***"After carefully considering the Notice of Motion, the Pleadings, the submissions of counsel and relevant authorities, we find that this appeal raises complex issues of constitutional interpretation which ought to be determined."***

[27] The possibility of complex issues of constitutional interpretation, emerging, therefore, was a factor of merit persuading the Judges that, indeed, *the appeal was arguable.*

[28] Further, in the case of ***George Mike Wanjohi v. Steven Kariuki & 2 Others,*** Civil Application No. 6 of 2014; [2014] eKLR (at paragraph 34), the Court thus observed:

> ***" In our view the issues of contestations that we have sifted from rival submissions of the parties as set out above raise not only cognizable but weighty constitutional questions that we cannot properly determine and come to a conclusive finding at this interlocutory platform. They make manifest how a diverse range of situations brought about by the electoral legal regime implicate and correspond to the Constitution, and require that this Court pronounces with finality clear guidelines. Indeed, the application passes the arguability test."***

[29] We also note that in the case of ***Fredrick Otieno Outa v. Jared Odoyo Okello,*** Civil Application No. 10 of 2014; [2014] eKLR, the Supreme Court took the position that a difference of opinion between counsel, on an issue placed before the Court, may well show orientations of arguability. The Court thus remarked (paragraph 45):

> *"Counsel for the applicant and 1st respondent gave differing views on whether the actions of the Court of Appeal, in*

issuing a certificate and report, infringed the applicant's rights under Article 50 (1) of the Constitution. ***Such a difference of opinion, on a matter clearly bearing on rights of parties, in our perception, signals that the issue is arguable"*** [emphasis supplied].

[30] Similar views were expressed in the case of ***Anami Silverse Lisamula v. The Independent Electoral and Boundaries Commission & 2 Others,*** Petition No. 9 of 2014; [2014] eKLR, where the Court thus held (paragraph 41):

"From the foregoing, the applicant cites what he deems to be constitutional violations, which were controverted by the 3rd respondent. These issues in our view, are ***meritorious constitutional questions that cannot be wished away without the benefit of a hearing. They are by no means frivolous"*** [emphasis supplied].

[31] Furthermore, in ***Munya 1,*** the Court in holding that the case met the arguability test, observed thus (paragraph 91):

"In sum, the gist of the appeal is that, had the Appellate Court not committed the alleged breaches, it would not have declared the election of the applicant as not having met the threshold in Articles 81 and 86 of the Constitution. In view of these allegations, we do not think that this appeal can be

anything but arguable. Nor can it be characterized as frivolous."

[32] The common thread running through the several decisions of the Court can be summarized under four heads, as guidelines for meritorious questions for the Court's attention:

(a) whether complex issues of constitutional interpretation or application have been raised;

(b) whether the issues raised therein can properly be determined at the interlocutory stage without hearing the main appeal;

(c) whether there is a difference of opinions on matters touching on the right of parties; and

(d) whether there is a problematic controversy that merits a final consideration and determination.

[33] In advancing his stand that there is an arguable appeal, the applicant faults the High Court's reasoning in interpreting and applying Articles 47(1) and 50(2)(e) of the Constitution. He contends that both the High Court and the Court of Appeal had not appreciated the import of those two constitutional provisions and that a delay of 4 years in instituting criminal charges against him, cannot be reasonable or excusable; that the delay occasioned an infringement of his right to fair administrative action, as well as his right to fair hearing as safeguarded under Article 50(2)(e) of the Constitution. The said Article provides that an accused person has the right to fair trial, which includes the right *'to have the trial begin and conclude without unreasonable delay.'* He submits that, a trial begins when the complaint is first lodged with the police, and hence his 'trial' did not begin within reasonable time.

[34] The applicant disagrees with the finding of the superior Courts, that the mode of reply adopted by the respondent in response to his High Court petition, had not occasioned injustice to him. He submits that the invocation of Article 159(1)(d) of the Constitution, by the respondent, cannot cure that 'irregularity'.

[35] As regards delay, the respondent states that this delay was caused by the difficulties which the police had in getting a statement detailing the applicant's version of events. The investigations were therefore incomplete, until the applicant responded to the claims by the complainant; and it was not until then, and only after weighing the evidence against him, that a decision to prosecute the applicant was made. So the delay was solely attributable to the applicant who, the respondent claims, had evaded all endeavours to question him and to record his statement. In any case, the respondent urges that the applicant does not allege that the delay prejudiced his ability to defend himself, or to procure witnesses to defend his case.

[36] On the question of the proper form in answering a petitioner's claim at the High Court, the respondent challenged the applicant to show how the use of a 'reply to petition' as opposed to 'replying affidavit', occasioned an injustice to him; and urged that the applicant's claim is a mere technicality, which has no place in substantive justice.

(b) Delay, and Arguability of Prayer for Stay Orders

[37] In the English case, ***R v. Massey*** [2001] EWCA Crim 2850, [2000] All ER (D) 339 (Dec), the defendant was charged with indecent assault, an offence

said to have occurred *24 years* before the complaints were reported to the police. The Court of Appeal dismissed the appeal and held that the trial Court had correctly ordered the trial to proceed. Considering the factor of delay in stay proceedings in a criminal case, the Court held as follows:

> ***"Stays imposed on the grounds of delay or for any other reason should only be employed in exceptional circumstances. If they were to become a matter of routine, it would be only a short time before the public, understandably, viewed the process with suspicion and mistrust. We respectfully adopt the reasoning of Brennan, J in Jago v District Court of New South Wales (1989) 168 CLR 23. In principle, therefore, even where the delay can be said to be unjustifiable, the imposition of a permanent stay should be the exception rather than the rule. Still more rare should be cases where a stay can properly be imposed in the absence of any fault on the part of the complainant or prosecution. Delay due merely to the complexity of the case or contributed to by the actions of the defendant himself should never be the foundation for a stay."***

[38] The Court further observed (paragraph 22) as follows:

> ***"At common law, therefore, a stay should only be imposed in exceptional circumstances, and even more rarely in the absence of fault on the part of the complainant or prosecution, and no stay should be***

imposed unless a defendant has established, on the balance of probabilities, that he would suffer serious prejudice to the extent that no fair trial could be held."

[39] The Court in declining to order a stay in that matter concluded as follows (at paragraph 31):

"In short, even if otherwise relevant criticisms may be levelled at the police, whether for delay or otherwise, there is no basis for concluding that the appellant suffered in his defence any prejudice let alone the serious prejudice that would be necessary to justify any stay. Further, the judge had heard the evidence. He was best placed to judge whether the conclusions at which he had arrived earlier in the trial were still justified. Whether there had been any and what prejudice in the form of contamination of evidence was in the circumstances for the jury to determine. The judge was right to order the trial to continue."

[40] While being mindful of the overwhelmingly common-law context in which the ***Massey* case** was decided, it nevertheless bears valuable insights on the significance of *delay in relation to the prosecution of a criminal case* – of relevance even under express provisions of a *codified Constitution* such as that of Kenya.

[41] In the instant case, the *cause of delay* has been squarely placed at the doorstep of the applicant – who has not contested that fact. Is there a basis for granting stay of the criminal trial at the Principal Magistrate's Court, Butere whether temporarily or permanently, as sought by the applicant? Does he stand to suffer injustice, if the trial proceeds?

[42] The applicant's main cause has sought to pursue the contention that a four-year delay in his trial is unreasonable, and will prejudice him in the enjoyment of certain safeguards of the Constitution. He has not, however, shown at this stage how the alleged delay has prejudiced his rights to a fair trial.

[43] Does the historical background show this matter to be so crucial as to merit a hearing before this Court, even as the trial proceedings at the Principal Magistrate's Court stand in abeyance? The applicant was charged with the offence of assault on 2nd May 2013; but the criminal proceedings have not yet taken off since 25th May 2013: because the applicant moved to the High Court to challenge the institution of the criminal charge. The High Court delivered Judgment dismissing the applicant's case, upon which an appeal was lodged. The Appellate Court dismissed the applicant's claim; and the applicant lodged a further appeal before the Supreme Court. The delay, consequently, goes beyond the four-year period taken by the police before instituting criminal charges against the applicant.

[44] Does the applicant's case in the Supreme Court meet the 'arguability' test? From the principles emerging in the case law, we consider that, for such a threshold of arguability to be realized, the issues raised must rise beyond bare contestation of facts, or of matters of ordinary law. A balance has to be struck

between the *rights of the complainant,* on the one hand, and the *rights of the accused*, on the other hand: and these are matters critically anchored in evidence – hence devolving squarely to the *trial Court*. The complainant, in this case, lodged his complaint with the police in 2008; and some eight years later, he is still waiting for justice to be done; and it is now clear that the applicant himself has had a hand in the causation of the delay.

[45] The applicant on the other hand, alleges an infringement of his constitutional rights. Two superior Courts have already made a determination on this issue. Where does the interest of justice really lie, then? It might be argued that the Supreme Court, in the instant matter, is being called upon to make cogent determination on issues of law that touch on the fundamental rights and freedom of persons. We are however inclined to the viewpoint that, the trial Court has the capacity to enforce the constitutional safeguards of a fair trial, in determining the criminal proceedings instituted against the applicant. We hold, in this context, that the issue of delay does not meet the *threshold of arguability* for purposes of grant of stay.

(c) 'Form' and 'Substance', and the Question of Substantive Justice

[46] We are at this stage, only concerned with this question in relation to the arguability of the applicant's matter before this Court. We therefore consider the issue of the response to the petition before the High Court to be essentially a collateral issue, whose determination would only come later; and therefore does not affect the course of the appeal itself.

[47] While the appeal would therefore raise substantial issues to be canvassed, we hold that, in the context of an application seeking stay of criminal proceedings, the grounds raised in the present application do not provide a basis for the grant of stay; and moreover, it will not, in our opinion, be in the public interest to do so.

[48] It is to be restated that the Constitution, by its terms, and by the values which it embodies, requires timely disposal of trial matters; and the superior Courts in general have the competence to determine such constitutional issues as arise from the application of the Bill of Rights. On these grounds, we find no need to determine whether the pending appeal will be rendered nugatory: for the issues for determination in the pending appeal lend themselves to resolution with, or without the proceedings in the criminal trial.

E. ORDERS

[49] Our analysis herein leads us to two specific Orders, as follows:

(a) The Notice of Motion dated 17th October, 2016 is hereby dismissed.

(b) The applicant shall bear the costs of these proceedings.

DATED and **DELIVERED** at **NAIROBI** this **2nd** day of **March** 2017.

…… ……

J.B. OJWANG **I. LENAOLA**

JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

I certify that this is

a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA