



Kenya Agricultural Research Institute v Kariuki & 16 others (Civil Appeal 315 of 2015) [2022] KECA 534 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KECA 534 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL 315 OF 2015
RN NAMBUYE, F SICHALE & S OLE KANTAI, JJA
APRIL 28, 2022**

BETWEEN

KENYA AGRICULTURAL RESEARCH INSTITUTE APPLICANT

AND

PETER WAMBUGU KARIUKI & 16 OTHERS RESPONDENT

(An application for review, set aside and/or rescinding of the orders made by the Court of Appeal at Nakuru (Nambuye, Sichale & Kantai, JJ.A.) dated 21st December 2018, arising from the cross-appeal against the judgment and decree of the High Court of Kenya (B. Ongaya, J.) dated 3rd May, 2013 in Nakuru Industrial Court Petition No. 2 of 2013)

RULING

1. Before us is a notice of motion dated 30th January, 2019 under Rules 1(3), 42 and 57(2) of the *Court of Appeal Rules*, section 3B(a) of the *Appellate Jurisdiction Act*, Articles 27(1) and 50(1) of *the Constitution* and all other enabling provisions of the law, substantively seeking orders that this Court be pleased to review, set aside and or rescind the order allowing the cross-appeal and awarding the cross appellants a compensation award of KShs.350,000 for each cross-appellant with costs and substitute it with an order for dismissal of the cross-appeal with costs and that costs of the application be granted to the applicant.
2. The application is supported by grounds on the face of the application, a supporting affidavit sworn by Dr. Eliud Kireger together with annexures thereto and written submissions dated 28th October, 2019. It has been opposed by the respondents replying affidavit sworn by Peter Wambugu Kariuki on the 25th April, 2019 on his own behalf and on behalf of his co-respondents together with annexures thereto and the respondents' written submissions dated 19th November, 2019. The application came before this Court for plenary hearing on 2nd February, 2022. When called out, learned counsel Mr. Milimo was in attendance for the applicant while learned counsel Mr. Wilfred Konosi appeared for the respondents.



3. The application was canvassed virtually through written submissions and legal authorities relied upon by learned counsel for the respective parties herein in support of their respective clients opposing positions, fully adopted with oral highlighting.
4. The background to the application albeit in a summary form is that the respondents to the application filed Nakuru Employment and Labour Relations (ELRC) Petition No. 2 of 2013 against the applicant seeking various reliefs. It was heard on its merit and judgment delivered in favour of the respondents on 3rd May, 2013. The respondents being dissatisfied with some aspects of the said judgment filed a review application dated 26th June, 2014. The review application was said to be founded on some mistake or error apparent on the face of the record or for any other sufficient reason and invited the review court to reopen the respondents petition and upon such reopening of the said petition, allow the respondents who were the petitioners in the ELRC to adduce viva voce evidence to prove their losses for purposes of assessment of terminal benefits and compensation they were entitled to from the applicant and lastly that consequent to review, vary the substantive orders made in the judgment delivered on 3rd May, 2013.
5. Among some of the grounds proffered by the respondents in support of the application for review was that upon finding that the respondents herein were not casual workers, the court should have proceeded to conduct an inquiry into the entitlements of the respondents as permanent employees of the applicant which the ELRC Court had failed to do, that after the ELRC Court had found that the respondents' constitutional rights had been violated, it did not frame an appropriate relief to enforce the said rights or fundamental freedoms' violations, the duty of the Court under Article 23 of *the Constitution* upon finding that there were violations of the respondents' rights and fundamental freedoms was to frame "appropriate reliefs" to vindicate the petitioners rights and to fulfill the promise of *the Constitution* and in particular the bill of rights. Lastly, that the court was neither limited to the relief prayed for by the respondents nor limited to the specific reliefs outlined in Article 23(3)(a) to (e) of *the Constitution* of Kenya, 2010 or any purported agreement between the respondents and the applicant in its determination of an appropriate relief to redress the respondents' grievances.
6. The application for review before the ELRC was opposed by the applicant herein vide a replying affidavit dated 23rd July, 2014 and filed on 4th August, 2014. Upon a merit hearing, the application for review was dismissed vide the ELRC'S Ruling delivered on 31st October, 2014. The respondents were aggrieved and filed Nakuru Civil Appeal No. 271 of 2015 referred to by the applicant herein as the first appeal. During the pendency of Civil Appeal No. 271 of 2015, the applicant filed Nakuru Civil Appeal No. 315 of 2015 referred to as the second appeal in the application under consideration.
7. The respondents' complaint in the first appeal was three-fold, namely, that the ELRC Judge erred in law and in fact by finding that there was no error on the face of the record to warrant a review of the judgment delivered on 3rd May, 2013, finding that there were no sufficient reasons to warrant a review of the judgment delivered on 3rd May, 2013 and lastly, by finding that there had been inordinate delay in bringing the application for review. The respondents, therefore, sought orders of this Court that: the Ruling of S. Radido, J. delivered on 31st October, 2014 in Nakuru Industrial Court Petition No. 2 of 2013 be set aside and the matter be remitted back to the Superior Court for assessment of terminal benefits and compensation payable to the respondents; the respondents were entitled to pay and benefits applicable to permanent employees of the respondent; the respondents were entitled to accumulated leave pay for years served, unpaid overtime, unpaid rest and public holiday, unpaid house allowance and service pay and lastly an order that the respondents were entitled to compensation for violation of their rights and fundamental freedoms by the applicant.



8. In the second appeal, the applicant raised five (5) grounds of appeal, subsequently condensed into three namely, that the learned Judge erred both in law and in fact when he failed to find that ELRC Petition No. 2 of 2013 was res judicata, Nairobi Industrial Court Cause No. 1303 of 2010, by openly exhibiting bias and partiality against the appellants' case in favour of the respondents' case to the detriment of the applicant and lastly, by rendering a judgment which was contrary not only to the weight of the evidence tendered before the court but also to the applicable legal principles.
9. On the basis of the above-condensed grounds of the appeal the applicant sought from the court orders that the second appeal be allowed and the judgment and decree of B. Ongaya, J. delivered on 3rd May, 2013 in the Industrial Court of Kenya at Nakuru Petition No. 2 of 2013 be set aside and the entire respondents' petition be dismissed with costs to them.
10. The respondents herein filed a cross-appeal in the second appeal complaining that the learned Judge erred in law and in fact when he: erroneously held that the wages the respondents were entitled to were agreed upon at all material times; failed to conduct an inquiry into the respondents entitlements upon finding that they were not casual workers but permanent employees of the applicant, failed to award the respondents the other compensatory reliefs on the basis that there was no material evidence to support those claims, failed to award maximum compensation for unfair termination under section 49(1)(c) of the *Employment Act*, 2007; and failed to make an award for the proven violation of the respondents constitutional rights and fundamental freedoms.
11. The respondents, therefore, sought from this Court orders that they were entitled to: compensation for violation of their constitutional rights and fundamental freedoms by the applicant and each respondent be awarded Kshs.2,000,000.00 as general damages; terminal dues and benefits applicable to permanent employees of the applicant; accumulated leave pay, for years served, unpaid overtime, unpaid rest and public holidays worked, unpaid house allowance and service pay, such dues to be computed by the Superior Court, the respondents be awarded the equivalent of twelve (12) months instead of six (6) months wages as compensation for the unfair terminations of their services with the applicant.
12. The two appeals being interrelated were heard back to back by the same bench at the conclusion of which the court analyzed the records separately, identified issues for determination in each separately and considering these in light of the totality of the rival submissions made in each appeal file drew out conclusions on each of the identified issues forming the separate judgments delivered separately. The judgment in the first appeal was delivered on 18th October, 2018 while that in the second appeal was delivered on the 21st December, 2018.
13. The applicant has taken issue with certain aspects of each of the mentioned separate judgments. We, therefore, find it prudent not to set out the reasoning in each but just to confine ourselves to those aspects that the applicant has taken issue with and which in our view form the substratum of the review application under consideration in this ruling.

These have been set out in paragraphs 39 and 40 of the applicant's written submissions. The one under paragraph 39 which relates to the first appeal reads as follows:

“The appellants sought vindication for violation of their constitutional rights pertaining to fair administrative action and fair labour practices, a position upheld by the trial Judge together with attendant appropriate reliefs as already highlighted above. There was no prayer for an award of any relief under Article 23 of *the Constitution*. Neither was it cited as an access provision...The above being the position, we do not see how the review Judge



could be faulted for his failure to fault the trial Judge for his failure to award a relief under a provision of law not cited as an access provision.”

While that relating to the second appeal at paragraph 40 reads as follows:

“We find nothing in the said article to suggest that a particular relief for the violation must be prayed for before it may be granted. We, therefore, find that there was jurisdiction for the judge to grant the relief notwithstanding lack of specific prayer for the particular appropriate remedy. The trial Judge, therefore, failed to exercise his discretion judiciously in this regard. It merits interference which we hereby do ... taking into account the totality of all the relevant circumstances of this appeal, an award of KShs.350,000.00 for each cross-appellant will be adequate compensation for these violations.”

14. It is against the above background that the applicant seeks review. The applicant has proffered two issues for our determination in the disposal of the application for review, namely, whether:

- a. his Court has power and mandate to review its judgment.
- b. The applicant has satisfied the condition precedent for this court to review its judgment delivered on 21st December, 2018.

15. In support of issue number (a) the applicant relies on the provisions of law cited in the heading of the application under consideration as construed and applied in the case of *Nguruman Limited v Shompole Group Ranch & another* [2014] eKLR and as more explicitly set out in the case of *Standard Chartered Financial Services Ltd & others v Manchester Outfitters (Suiting Division) Ltd (now Known as King Woolen Mills Limited & 2 others* [2016] eKLR in which this Court expressed itself on this issue *inter alia*, as follows:

“... This is to say that this Court has already pronounced itself in the Benjoh case in a way that evidences a clear intention of departing from the precedent set out in the Rai case. We reiterate that position and stress that this Court is clothed with residual jurisdiction to reopen and rehear of concluded matters where the interest of justice demands, but that such jurisdiction will only be exercised in exceptional situation where the need to obviate injustice outweighs the principle of finality in litigation.”

16. Based on the above crystallized position, the applicant has proffered about four (4) reasons as basis for seeking review. In support of the first reason, the applicant relies on the case of *Serephen Nyasan Mange v Risgab Onsase* [2018] eKLR and the case of *Suleiman Simra v Said Mohamed Said* [2018] eKLR and submits that the applicant in its submissions in the second appeal was explicit that the cross-appeal was an afterthought as the same was filed after the applicant had made representations before the ELRC in opposition to the respondents’ application therein for review of the very judgment that the applicant had appealed against in the second appeal and the respondents subsequently cross-appealed against; and secondly, that the respondents having lost out on their application for review before the ELRC Court should not have been allowed to re-agitate the same issues in the form of a cross-appeal in the second appeal.

17. Further that the respondents having unsuccessfully elected to seek review of the constitutional petition judgment and also unsuccessfully lodged an appeal in Civil Appeal No. 271 of 2015, were precluded in law from appealing against the same judgment by way of a cross-appeal in the second appeal. It is therefore the applicant’s assertions that by this court making a determination on the cross-appeal in the second appeal with the full knowledge that the respondents had unsuccessfully sought review as well as appeal thereof in the first appeal, the resulting favourable determination in their favour on the



cross-appeal not only went against the doctrine of election but also reduced the public confidence in the rule of law. In the applicant's opinion, the said impugned decision displaced the well-established principle of election of either a review or an appeal. Secondly, it also transgressed the principle that any party who opts for both processes namely, appeal and review ought not to receive favour in a court of law. It is also the applicant's assertion that the impugned action on the part of this Court also created an uncertainty in the law as the applicant is left wondering as to which of the two judgments between the one in the first and the second appeal states the correct position in law.

18. In support of the second reason, the applicant relies on the case of *Independent Electoral and Boundaries Commission and another v Stephen Mutinda Muli & 3 Others* [2014] eKLR on the principle on the binding nature of pleadings both on the court and parties and submits that, the court in the second appeal was bound by the respondents pleadings in the constitutional petition which as was correctly held in the first appeal did not have any prayer for an award of compensatory reliefs for the alleged breach or violation of the respondents' constitutional rights. The court therefore committed not only an error apparent on the face of the record but also an injustice against the applicant which warrants review and setting aside of the impugned aspect of this Court's judgment in the second appeal.
19. In support of the third reason, the applicant relies on the case of *Peterson Maina Karitu v Augustine Mwangi Ndanyi & another* [2009] eKLR and the case of *George Miyare t/a Miyare & Co. Advocates vs. Evans Gor Semelango* [2019] eKLR both for the holdings/propositions that a litigant has no right to pursue two processes which will have the same effect in two courts either concurrently or consecutively with a view of obtaining victory in one of the processes or both and submits firstly, that the application for review is meritorious as in the applicant's opinion contradictory judgments not only create confusion but also operate to reduce the confidence that the public has in the rule of law. Secondly, invites this court to protect the applicant against abuse of the court process as advanced by the respondents herein by recalling the fresh award granted in favour of the cross-appeal and vitiate it.
20. In rebuttal of the applicant's application, the respondents identified two issues for determination namely whether:
 - a) The respondents were precluded from filing the cross-appeal.
 - b) The applicants have made out a case for the grant of the orders sought in the application herein.
21. Starting with the first issue, the respondents rely on the case of *Board of Trustees National Social Security Fund vs. Jorim Wahome Marenya* [2014] eKLR in which Githinji, J. A (as he then was) held, inter alia, that both the Industrial Court Act and the Rules made thereunder do not expressly preclude a review application where an appeal has been proffered or when an appeal is allowed, and submit that the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* are silent on review. It, therefore, follows that when the application for review was made to the Superior Court, the applicable procedural law and which the respondents invoked when seeking review before the ELRC was Rule 32 of the Industrial Court (Procedure Rules, 2010 which according to the respondents slightly differs from that provided for in the Civil Procedure Rules in that it does not bar a party seeking from availing himself/herself of both processes when seeking redress for any grievance against a decision of the ELRC rendered under the ELRC Act.
22. The position taken above notwithstanding, the respondents submit that issue of an appeal and review processes being sought simultaneously by the respondents does not arise herein as the respondent did not file any notice of appeal against the decision of the Superior Court delivered on 3rd May, 2013. They unsuccessfully applied for review of the said decision resulting in their filing Civil Appeal No. 271 of 2015 against "the refusal to review decision". During the pendency of Civil Appeal No. 271 of 2015, is when the applicant filed Civil Appeal No. 305 of 2015 prompting the respondents to lodge a cross-



- appeal therein. Secondly, issue of the competence and propriety of the cross-appeal was considered by this Court in the second appeal and ruled that it was properly laid and proceeded to consider it on its merit. It is therefore not now open to the applicant to re-litigate the said issue as in their opinion, the applicant's invitation to this Court to revisit that issue is tantamount to inviting this court to sit on its own appeal on the said issue.
23. Turning to the second issue, the respondents rely on the case of *Benjob Amalgamated Limited & Another v Kenya Commercial Bank Ltd* [2014] eKLR in which this Court interrogated both legal prescriptions and relevant jurisprudence on the court's residual power to revisit and review its decisions and which according to the respondents entrenches the review powers subject to an aggrieved party meeting the threshold set therein by the court for accessing the relief of review of this court's orders.
 24. Based on the jurisprudential exposition set by the court in the *Benjob Amalgamated Limited & another* case (supra), the respondent submit that it is now trite law that this Court has power to review its own decisions within the parameters set out in the Benjoh case [supra], a threshold the respondents contend the application under consideration has not met. The respondents rely on the Supreme Court of Kenya decision in the case of *Kenfreight (E.A) Limited v Benjamin Nguti* [2018] eKLR and submits that since the only reason the applicant has moved this Court for review is that there are two conflicting judgments on the same issue then the proper forum to redress the applicant's grievances should have been by way of an appeal to the Supreme Court. Failure of the applicant to take the above opined process amounts to an invitation to this court to sit on an appeal over its own decision for which no jurisdiction exists.
 25. On the provision of law cited by the applicant for accessing the relief sought, the respondents rely on the cases of *Chartered Financial Services Limited & another* (supra), *Nguruman Limited* (supra) and *Central Bank of Kenya v Makhecha & Company Advocates* [2019] eKLR among numerous others and submit that with the exception of stating that Rule 1(3) of this Court's Rules does not exist there is concurrence with the position taken by the applicant that this Court in the Benjoh case [supra] entrenched its right to revisit and review its decisions.
 26. As to whether the application under consideration has met the threshold in the Benjoh case [supra], the respondents contend it does not. Reason being firstly, that their take on the applicants' complaint is that the decision in Civil Appeal No. 271 of 2015 is correct while that delivered in Civil Appeal No. 305 of 2015 is incorrect allegedly because the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law which according to the respondents does not fall as a ground for review but as a ground of appeal to the Supreme Court.
 27. Secondly, since the judgment in Civil Appeal No. 271 of 2015 was delivered on 18th October, 2018 while that in Civil Appeal No. 305 of 2015 was delivered on 21st December, 2018, the latter judgment impliedly overruled the judgment in Civil Appeal No. 271 of 2015. Secondly, it is their position that having espoused the correct legal position the latter's decision has generated a substantial level of reliance having been cited with approval by this Court in the case of *Commission of Administration of Justice v Kenya Vision 2030 Delivery Board & 2 others* [2019] eKLR. They therefore invite this court to adopt the position taken by this Court in the *Central Bank of Kenya v Makhecha & Company* [2019] eKLR case that "there has to be a necessary finality to the decisions of this Court, which should only be re-opened before it only in the most exceptional of cases and only when certain conditions obtain" which threshold the respondents assert the applicant has failed to meet herein and on that account prayed for the application to be dismissed with costs to them.
 28. Our invitation to intervene on behalf of the applicant has been invoked under the provisions of law cited in the heading of the application. With the exception of our mention that Rule 1(3) of this



Court's Rules is non-existent, we need not belabor the interpretation and applicability of the rest of the provisions on which the application is anchored as that exercise was aptly undertaken by this Court in the Benjoh case in which the courts' mandate in an application of this nature was both crystalized and entrenched. It is therefore sufficient for us to state that we are properly seized of the application under consideration and shall proceed to pronounce ourselves thereon on its merits.

29. We have considered the application, the submissions by the parties and the authorities cited in light of the now crystalized positions in law in the exercise of our mandate under the above Rules. It is our position that it is now settled that this Court has residual jurisdiction to review its decisions. The history on how the court came to crystalize this position in law and which we fully adopt but find no need to rehash is as was aptly set out in the *Nguruman Limited v Shompole Group Ranch & another* [2014] eKLR. Bearing the aforesaid history in mind, the approach which we take in resolving the rival positions herein and which we also fully adopt is as was restated by the court in the case of *Moi University of Eldoret & another v Prof Ezekiel Kiprop & another* [2019] eKLR in which the court expressed itself, inter alia, as follows:

“..In *Benjoh Amalgamated & another v Kenya Commercial Bank Ltd* (*supra*) this Court undertook an exhaustive review of previous decisions as well as decisions from several foreign jurisdictions on its power to review its judgments and concluded that it has residual jurisdiction, in limited cases, to reopen a decided matter. That power, the Court added, must be exercised with circumspection. This is how the Court expressed itself:

“The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection and only in cases whose decisions are not appealable (to the Supreme Court).”

30. *In Mukuru Munge v Florence Shingi Mwawana, & 2 others* [2016] eKLR, this Court, in declining an invitation to review its judgment stated as follows:

“The residual power of the Court to reopen its decisions is therefore a circumscribed power to be exercised in exceptional cases. That power is not intended to circumvent the principle that, save in those cases where *the Constitution* allows an appeal to the Supreme Court, decisions of this Court are otherwise final.”

See also *Niels Bruel v Moses Wachira & 2 others* [2018] eKLR, in which the Court reiterated as follows:

“Starting with the first prayer to re-open the appeal and review the judgment of this Court, it is axiomatic that this Court has jurisdiction to do so. But that jurisdiction is exceptional and has to be exercised sparingly and with



circumspection to thwart disaffected parties who merely seek a second bite of the cherry or who invite the Court to sit on appeal from its own judgment.”

31. Our take on the above exposition on the principles that guide this Court in the discharge of its mandate in an application of this nature is that the key consideration is interrogation as to whether there are exceptional circumstances that would justify the review sought by the applicant herein. The applicant’s grievances for seeking review are as captured in the submissions highlighted above and more particularly in paragraphs 44, 51 and 53 of the written submissions and which we find prudent to reproduce herein as hereunder:

“44. Having elected to review the Constitutional Petition Judgment and lodged an appeal in Nakuru Civil Appeal No. 271 of 2015, the respondents could not appeal the same by filing a cross appeal. by virtue of filing a review application, the respondents had lost their right to successfully appeal the constitutional petition judgment. Making a determination on the cross-appeal in the full knowledge that the respondents had unsuccessfully sought review as well as appeal thereof went against the doctrine of election. This reduced the public confidence in the rule of law as it displaced the well-established principle of election of either a review or an appeal and that any party who opts for both ought not receive favour in a court of law. Further, it created an uncertainty in the law as the appellant is left to wonder which judgment between the one in the first and second appeals is the applicable law and or decision.

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51. ... it is clear that the appellant’s application on this score is meritorious. Contradictory judgments create confusion and reduces the confidence that the public has in the rule of law.

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53. ... the court should protect the appellant against abuse of the court process as advanced by the respondents herein by recalling the fresh award granted in favour of the cross-appeal.”

32. The threshold/parameter and or ingredients we are obligated in law to invoke and apply in the determination of an application of this nature is that crystallized by the Court itself in the Standard Chartered Financial Services Limited & 2 Others case [supra] namely. “.....that this Court is clothed with residual jurisdiction to reopen and rehear a concluded matter where the interest of justice demands, but that such jurisdiction will only be exercised in exceptional situations where the need to obviate injustice outweighs the principle of finality in litigation.”
33. Our take thereon is that principles to guide the exercise of our mandate which we find prudent to distill from the above exposition in our view are as follows: “firstly, to reopen and rehear a concluded matter.”
34. Pursuant to this prerequisite, there is no mandate “to reopen and rehear concluded matters.” Herein, although the applicant has sought review in the second appeal only, our take on the tenor of the applicant’s submissions, is that what these amount to is an invitation for us to revisit the conclusions reached in the first appeal as to why that appeal was rejected and use the same reasoning to displace the reasoning in the second appeal on the basis of which the respondents’ cross-appeal was allowed. Our response to that invitation is that we have no mandate to do so. We reiterate our mandate is limited to revisiting and reopening “a matter” and not “matters”.
35. Secondly, jurisdiction lies only where “the interest of justice demands”. Our take on this ingredient is that interests of justice referred to in the said phrase should be of those of all the parties involved in the litigation. There is no mention of the interests of justice to one party or some of the parties to



the litigation giving rise to the decision sought to be reviewed. Herein, what we have been confronted with going by the tone of the rival submissions highlighted above is that each party is only interested in safeguarding what they believe is their stake in the second judgment. Our take on this issue is that it is a further invitation for us to revisit the merits of the reasoning in both appeals on this issue and justify the decision reached in favour of the respondents in the second appeal as opposed to the applicant.

36. Thirdly, review lies “where the need to obviate an injustice outweighs the principle of finality in litigants.” Nowhere in the rival submissions have we been addressed on the overriding objective in this ingredient. All we have before us as already mentioned above is polarized positions taken by each side with the applicant trying to wrestle from the respondents what the court accorded them vide the judgment delivered in the second appeal while the respondents holding on whatever was accorded to them vide the same judgment at their backs and telling the applicant “it is ours by right because it was rightly given to us you cannot take it away from us through the review application. We are entitled to fight for it.”
37. This again is an invitation for us to carry out an in-depth overhaul of the reasoning made to determine whether we should recall the relief granted to the respondents or otherwise and give reasons either way. If we were to venture into that arena, we would definitely be re-sitting on our own appeal and not a review.
38. In the result and in view of the totality of the above assessment and reasoning, we find no merit in the application. It is accordingly dismissed with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022.

R. N. NAMBUYE

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

