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MEMORANDUM OF APPEAL

NEW VISION KENYA (NVK MAGEUZI), KENYA DIASPORA ALLIANCE, DR. SHEM OCHUODHO AND MR. GICHANE MURAGURI the Appellants herein Appeal to the Hon. Court of Appeal against the above mentioned judgment on the following grounds namely:-

1. The Learned Judge erred by failing to appreciate that upon finding both in fact and law that the Petitioners had a constitutional right to institute the Petition on apprehension of violation of their right to vote by turning around to hold that the right is not absolute but may be subjected to reasonable restrictions.
2. The Learned Judge erred in fact and in law by failing to appreciate that the 1st Respondent (IEBC) has not carried out its mandate in regard to Kenya Citizens living abroad. 10
3. The Learned Judge erred in law and in fact by failing to consider all the material presented before the court in a wholesome manner.
4. The Learned Judge erred in law and in fact by giving deference to the 1st Respondent (IEBC) to realize and or protect the Petitioners rights to participate and vote in the upcoming General Elections scheduled for 4th March 2012.
5. The Learned Judge erred in law and in fact by failing to take into account the fact that the Respondents had not demonstrated what steps had been carried to ensure that the rights complained off were not violated. 20
6. The Learned Judge erred in fact and in law by making a finding that the right of citizens to vote guaranteed under Article 38(3) is not absolute and may be subject to reasonable restrictions by holding that "Such restrictions for citizens residing outside Kenya are that the right is progressively realized through legislation enacted by Parliament is implemented by the IEBC".
7. The Learned Judge erred in fact and in law by taking into account irrelevant facts when delivering his judgment and failed to take into account all the evidence on record and thereby coming to the wrong conclusion and in particular that the rights of the Petitioners had not been breached.
8. The Learned Judge erred in law and in fact by failing to determine the issues raised thereby abrogating his responsibility as a judge to the IEBC the 1st Respondent. 30
9. The Learned Judge erred in law by misapprehending International instruments and the Constitution of Kenya 2010.
10. The Learned Judge erred in law and in fact by holding that the right to vote of the citizens living abroad is grounded on logistical consideration and any other criteria that the IEBC may determine thereby giving the 1st Respondent (IEBC) unfettered discretion thereby abrogating his constitutional mandate.