REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki & Lenaola SCJJ)

APPLICATION NO. E018 OF 2025

–BETWEEN–

CHRISTOPHER AMASAVA.....APPLICANT

-AND-

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

ATTORNEY GENERAL ..... 2ND RESPONDENT

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*(Being an application for review of the Ruling of the Supreme Court (Mwilu; DCJ & VP, Ibrahim, Njoki Ndungu, Lenaola & Ouko SCJJ) delivered on 14th November, 2025 in **SC Application No. E018 of 2025**)*

Representation:

Christopher Amasava
(Applicant acting in person)

Mr. Andambi for the 1st respondent
(*Kenya Revenue Authority*)

No Appearance for the 2nd Respondent
(*Attorney General Chambers*)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 17th February 2026, and filed on 6th March 2026 by the applicant under Articles 23(3), 25 (c), 47, 50 and 159(2) (d) of the Constitution, and Rules 16 (1) (b), 28, 31, 32(2), 33 and 35 of the Supreme Court Rules 2020 seeking orders that: -

a) *The applicant be granted leave to change representation from the firm of L.M. Ombete & Company Advocates to act in person.*
b) *This Honourable Court be pleased to review, vary and/or set aside the Ruling delivered on 14th November, 2025.*
c) *Upon review, this Honourable Court be pleased to allow the Notice of Motion dated 10th June, 2025 and grant the applicant extension of time to file and serve a Notice of Appeal.*
d) *The applicant be granted leave to file and serve the Notice of Appeal within such time as the Court may direct.*
e) *Pursuant to Articles 23(3) and 50 of the Constitution, this Honourable Court be pleased to direct that the review application be heard and determined by a fully constituted bench, in light of the constitutional questions raised regarding the integrity of the proceedings.*
f) *Costs of this application be in the cause.*

[2] UPON CONSIDERING the applicant's grounds on the face of the application, and his averments in his affidavit sworn on 17th February 2026, and filed on 6th March 2026, together with his written submissions dated 17th February 2026, and filed on 6th March 2026, as well as his supplementary submissions dated 20th March 2026, and filed on 23rd March 2026, and wherein he contends that he filed an application dated 10th June 2025, seeking extension of time to file a Notice of Appeal; that the application was dismissed by this Court in a Ruling delivered on 14th November 2025, on grounds that he lacked diligence in filing it; that the said finding of this Court did not reflect the true position, since he was proactive, diligent,

and consistently followed up the matter with his former advocate, but was unable at the time, to place documentary proof before the Court because the relevant correspondence was stored in a malfunctioned mobile phone, believed to have been irretrievably damaged; that subsequent to the ruling, he was able, with the assistance of a technical expert, to recover the said correspondence, which he has annexed as "CA-1", showing continuous follow-up and clear instructions to his former advocate, regarding timely filing of the Notice of Appeal; that he has obtained an affidavit sworn by his former advocate, Dr. John Khaminwa, annexed as "CA-3", confirming that he issued timely instructions, persistently sought confirmation of compliance, and explaining the circumstances leading to the late filing; that the recovered correspondence, and the advocate's affidavit, constitute new, credible, and verifiable evidence, which was not available to the Court at the time of the ruling and, which directly addresses the Court's concerns regarding diligence;

[3] UPON FURTHER CONSIDERING the applicant's further averments that the integrity of the proceedings was compromised by the respondents' material non-disclosure, and the erroneous impression that he had been served, when in fact no service was effected; that the Court relied on the respondents' replying affidavit and written submissions, which were never served upon him as at the case conference on 4th July 2025, thereby denying him an opportunity to respond through further affidavits and supplementary submissions, in violation of his right to a fair hearing under Article 50 of the Constitution, and the rules of natural justice; that on 4th July 2025, the Deputy Registrar confirmed that no documents had been filed by the respondents either electronically or physically prior to the matter being forwarded for empanelment, as evidenced by documents annexed as "CA-2"; that the Court was therefore misdirected into proceeding on the mistaken belief that service had been effected, resulting in a decision founded on erroneous facts, amounting to an error apparent on the face of the record; and that this application is founded on exceptional circumstances, namely: the failure to effect and confirm service of material relied upon by the Court, which denied him an opportunity to respond and

occasioned a procedural injustice that directly affected his right of appeal, thereby warranting review; and

[4] HAVING CONSIDERED the 1st respondent's replying affidavit sworn on 18th March 2026, and filed on 24th March 2026, together with the written submissions dated 18th March 2026, and filed on 24th March 2026, wherein the 1st respondent contends that the application does not satisfy the narrow grounds under which the Court may review its own decisions, as set out in the case of ***Fredrick Otieno Outa Vs Jared Odoyo Okello & 3 others***, SC Petition No. 6 of 2014 [2017] KESC 25 (KLR); that review is only permitted where a judgment was obtained by fraud, is a nullity, was issued under mistaken consent, or was based on repealed or concealed law; that the Court's dismissal of the applicant's motion for extension of time, was based on the applicant's own failures, lack of diligence, unexplained delay, and failure to provide necessary particulars, and not on reliance on the 1st respondent's affidavit; that the alleged error is not self-evident, but requires interrogation of evidence, which disqualifies it from review; that even without the 1st respondent's affidavit, the Court would have reached the same conclusion, since the applicant had not met the principles for extension of time; that the applicant was not denied the right to be heard, as all his documents, including the supplementary affidavit sworn on 9th October 2025, were considered; that the 1st respondent's replying affidavit, submissions, and case digest were duly served on the applicant, as evidenced by the annexed email thread; that the applicant has not demonstrated fraud, deceit, misrepresentation, or incompetence of the Court, nor has he shown that the ruling was based on repealed law; that instead, the applicant relies on alleged "error apparent on the face of the record" and purported new evidence; that Section 21(4) of the Supreme Court Act, only allows correction of clerical or computational errors, and not substantive alteration of judgments and rulings; that the applicant seeks to change the substance of the ruling, which is impermissible; that the application is legally untenable, unsupported by evidence, and contrary to the principles governing review jurisdiction, and should therefore be dismissed with costs; and

[5] BEARING IN MIND that the primary issue before us for determination is whether, the applicant has laid a sufficient basis to warrant the exercise of this Court's discretion to review its ruling delivered on 14th November 2025, pursuant to Section 21(4) of the Supreme Court Act, and Rule 20(4) of the Supreme Court Rules, 2020 and noting the pleadings filed, submissions made and the authorities submitted;

[6] WE NOW OPINE AND DETERMINE as follows:

i. In the ***Fred Outa case (Supra)***, this Court set out the principles to be considered in determining an application for review. The Court held as follow at paragraph 92;

> ***".....in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:***
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> ***(i)the Judgment, Ruling, or Order, is obtained, by fraud or deceit;***
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> ***(ii)the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;***
>
> ***(iii)the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;***
>
> ***(iv)the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision."***

ii. As outlined in the background hereinabove, the applicant has moved this Court seeking review and setting aside of its ruling delivered on 14th November 2025, which dismissed his earlier application for leave to lodge

a notice of appeal out of time. He explains that at the time of the previous application, he was unable to produce documentary proof of diligence in instructing his former advocate, as his correspondence was stored in a malfunctioning mobile phone believed to be irretrievably damaged. Following the delivery of the impugned ruling, he engaged a technical expert who retrieved the said correspondence, which he has now annexed together with an affidavit from his former advocate, confirming his efforts to pursue the appeal. He further contends that this Court, relied on the 1st respondent's replying affidavit and submissions, which as at the case conference on 4th July 2025, had not been served upon him, thereby depriving him of an opportunity to respond through further affidavits and supplementary submissions.

iii. Upon considering the above grounds and the ruling the applicant seeks to review, we are persuaded that the applicant has not met the threshold set out in the ***Fred Outa case (Supra)***. No evidence has been placed before this Court to demonstrate that the impugned ruling was procured through fraud or deceit; that the ruling is a nullity; nor that the Court was misled into giving the ruling under a mistaken belief that the parties had consented thereto. Equally, there is no indication that the ruling was predicated upon a repealed statute, or that a material statutory provision was deliberately concealed.

iv. The applicant's contention that the Court's determination was anchored solely on the 1st respondent's replying affidavit and submissions, which he alleges were not served upon him, is without merit. A plain reading of the ruling reveals that the Court undertook a comprehensive analysis of all pleadings, documents, and submissions duly filed by the parties. Indeed, the Court made no reference to the 1st respondent's replying affidavit or submissions in arriving at its finding that the applicant had failed to

demonstrate a credible and sufficient justification for the delay, and further, that the said application was not brought with promptitude.

v. Moreover, the Court observed that the applicant had filed the notice of appeal out of time and without leave, and that the subsequent application for extension of time that gave rise to the impugned ruling, was nothing more than an afterthought intended to cure a defect that was already fatal. The correspondences annexed to the applicant's affidavit as purported new evidence, are similarly irrelevant, for the simple reason that, the applicant had already committed the fatal procedural misstep of filing a notice of appeal without leave of Court. Moreover, it emerges that the so called evidence has been obtained and presented as a reaction to the ruling in an attempt to fill in the gaps and patch up his earlier argument, a situation that remains untenable.

vi. As for costs, it is settled that they follow the event. Since only the 1st respondent, participated in opposing the application, it is entitled to the costs.

[7] CONSEQUENTLY and for the reasons afore-stated, we make the following Orders:

i. The applicant's Notice of Motion dated* 17th February, 2026 *and filed on 6th March, 2026 be and is hereby dismissed with costs to the 1st respondent.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this **19th** day of **June**, 2026.

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M.K. KOOME

CHIEF JUSTICE & PRESIDENT OF

THE SUPREME COURT OF KENYA

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P.M. MWILU	**S.C. WANJALA**
DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT OF KENYA	**JUSTICE OF THE SUPREME COURT**
.....	.....
NJOKI NDUNGU	**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