



## **REPUBLIC OF KENYA**

### **IN THE SUPREME COURT OF KENYA**

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

### **CONSOLIDATED PETITION (APPLICATION) NO. 39 & 40 OF 2019**

— BETWEEN —

**PRAKIDIS NAMONI SAISI.....1<sup>ST</sup> APPELLANT/APPLICANT**  
**PETER AYODO OMENDA.....2<sup>ND</sup> APPELLANT**  
**NICHOLAS KARUME WEKE.....3<sup>RD</sup> APPELLANT**  
**CALEB INDIATSI MBAYE.....4<sup>TH</sup> APPELLANT**  
**ABRAHAM KIPCHIRICHIR SAAT.....5<sup>TH</sup> APPELLANT**  
**MICHEAL MAINGI MBEVI.....6<sup>TH</sup> APPELLANT**  
**GODWIN MWANGAE MWAWONGO.....7<sup>TH</sup> APPELLANT**  
**BRUNO MUGAMBI LINYURI.....8<sup>TH</sup> APPELLANT**

-AND-

**DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup> RESPONDENT**  
**ETHICS AND ANTI-CORRUPTION**  
**COMMISSION.....2<sup>ND</sup> RESPONDENT**  
**CHIEF MAGISTRATE**  
**ANTI-CORRUPTION COURT NAIROBI.....3<sup>RD</sup> RESPONDENT**

---

*(Being an application for Review of Judgment of the Supreme Court (Ibrahim, Wanjala, Njoki, Lenaola & Ouko SCJJ) dated 27<sup>th</sup> January 2023 in SC Petition No. 39 & 40 of 2019 as consolidated with SC Petition No. 40 of 2019)*

---

#### Representation:

Wekesa & Simiyu Advocates for the Applicant

Office of the Director of Public Prosecutions for the 1<sup>st</sup> Respondent

Ben Murei Advocate for the 2<sup>nd</sup> Respondent

## **RULING OF THE COURT**

**[1] UPON CONSIDERING** the Notice of Motion by the applicant dated 28<sup>th</sup> January 2026 and filed on 20<sup>th</sup> February 2026 brought pursuant to Articles 2(1), 10, 25(c), 26, 27(1), (2), (4) & (5), 28, 40, 50, 159, 163(7), 259 of the Constitution, Sections 3, 3A and 21A(a) of the Supreme Court Act, Cap 9B, as well as Rules 3, 28(5) and 32 of the Supreme Court Rules, 2020 for Orders:

- i) That this Honourable Court be pleased to review, vary and/or set aside its judgment of 27<sup>th</sup> January 2023 in Petition No. 39 of 2019 (as consolidated with Petition No. 40 of 2019) in so far as the 1<sup>st</sup> Appellant/Applicant is concerned and vary the order referring the case against the 1<sup>st</sup> Appellant/Applicant for trial in the Chief Magistrates Court in Anti-Corruption No. 20 of 2015 Republic v Nicholas Weke & Others;*
- ii) That upon review of its judgment of 27<sup>th</sup> January 2023, the Honourable Court be pleased to allow the 1<sup>st</sup> Appellant/Applicant's Petition No. 39 of 2019, set aside the Judgment of the Court of Appeal in its entirety in so far as the 1<sup>st</sup> Appellant/Applicant is concerned and uphold the judgment of the High Court of 19<sup>th</sup> April 2016;*
- iii) That the Honourable Court do make such further or other orders to meet the ends of justice in the circumstances of the uniqueness of this appeal as relates to the 1<sup>st</sup> Appellant/Applicant; and*
- iv) That the cost of this application be borne by the 1<sup>st</sup> Respondent, the Director of Public Prosecutions; and*

**[2] UPON READING** the grounds on the face of the application and the supporting affidavit sworn by the applicant, *Praxidis Namoni Saisi* on 5<sup>th</sup> January 2026, wherein she contended that she was initially charged jointly with others on 17<sup>th</sup> November 2015 with three counts of corruption and economic crimes; that she successfully challenged the charges in judicial review proceedings, culminating in the judgment of the High Court (*Odunga, J*, as he then was) delivered on 19<sup>th</sup> April 2016 granting orders of *certiorari* and prohibition; that in compliance with that judgment, the 1<sup>st</sup> respondent amended the charge sheet in the trial court to exclude

her; that this decision was appealed to the Court of Appeal, which, in its judgment of 20<sup>th</sup> September 2019, set aside the High Court's ruling which *ipso facto* ought to have reinstated her as the 5<sup>th</sup> accused person; and that the judgment of the Court of Appeal was subsequently affirmed by this Court's judgment rendered on 27<sup>th</sup> January 2023; that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have failed to comply with order (b) of the said judgment by unlawfully excluding her from the proceedings in ***Chief Magistrate's Anti-Corruption Court Case No. 20 of 2015***; that following this Court's judgment, the 1<sup>st</sup> respondent, on 13<sup>th</sup> February 2024, applied before the trial court under Section 87(a) of the Criminal Procedure Code to have the charges against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons withdrawn on the ground that there was insufficient evidence to sustain the prosecution; that the application was dismissed by the trial court (*Hon. Thomas T. Nzyoki, CM*) in a ruling of 22<sup>nd</sup> May 2024; that the court found it was unsupported by sound reasons and further that it was intended to defeat this Court's aforesaid judgment; and that a subsequent application for revision of this decision to the High Court was similarly dismissed in a ruling delivered on 10<sup>th</sup> July 2024. These events, in the applicant's view, demonstrate that the judgment of this Court was procured through the 1<sup>st</sup> respondent's concealment of material facts and misrepresentation that it possessed overwhelming evidence warranting the applicant's prosecution; that these representations misled the Court into rendering the impugned judgment; that the judgment was thereby vitiated and ought to be reviewed; and

**[3] CONSIDERING** that after the judgment of the Court, the applicant appeared before the Chief Magistrate's Court (*Hon. Thomas T. Nzyoki, CM*) on 26<sup>th</sup> August 2024 and orally applied to have her reinstated as an accused person in the proceedings in compliance with this Court's judgment, but no directions were issued on the request; that, instead the trial commenced and substantially proceeded without her knowledge or participation, and she only became aware of the proceedings in June 2025 when only two prosecution witnesses remained to testify; that upon applying to be reinstated as an accused person by an application dated 30<sup>th</sup> June 2025, the application was vehemently opposed by the 1<sup>st</sup>

respondent and dismissed by the trial court (*Hon. Barasa, CM*) in a ruling delivered on 4<sup>th</sup> July 2025, which held that the Supreme Court's judgment did not expressly direct her reinstatement in the criminal case and that no prejudice would be occasioned to her by proceeding in her absence, considering that she had herself sought before the High Court that charges against her be quashed; further that no prejudice would be occasioned as the witnesses who had testified had not mentioned her; and that the 1<sup>st</sup> respondent had lawfully amended the charge sheet on 21<sup>st</sup> October 2016 following the High Court judgment to exclude the applicant. It is the applicant's case, however, that the subsequent judgments of the Court of Appeal and this Court, which set aside the High Court decision, in effect restored the *status quo ante*, thereby reinstating her as the 5<sup>th</sup> accused person without the necessity of further amendment to the charge sheet; that notwithstanding those judgments, the trial court proceeded to determine the case on 14<sup>th</sup> January 2026 to the exclusion of the applicant, contrary to this Court's judgment of 27<sup>th</sup> January 2023; and

**[4] BEARING IN MIND** the foregoing arguments and the written submissions, it is the applicant's contention that exceptional circumstances exist to warrant this Court's exercise of its jurisdiction to review its judgment under Section 21A of the Supreme Court Act, relying on *Outa Vs Okello & 3 others* [2017] KESC 25 (KLR) and *Sonko Vs Clerk, County Assembly of Nairobi City & 11 others* [2024] KESC 43 (KLR); that the 1<sup>st</sup> respondent, having consistently maintained before the superior courts that there was sufficient evidence to prosecute and secure her conviction, could not subsequently invoke Section 87(a) of the Criminal Procedure Code to terminate the proceedings against her; that if not resolved by this Court, the corruption allegations against her will continue to hang over her head indefinitely; that this poses a threat and prejudice to her professional standing as an Advocate and Certified Public Secretary, with the possibility of impairing her livelihood, and subjecting her to enduring public opprobrium through persistent online publication of the allegations; that the continued pendency of the charges has further precipitated **Petition No. E037**

**of 2025** before the High Court seeking to curtail her livelihood on account of the unresolved criminal proceedings; and that only a judicial determination of the issues raised can vindicate her name; and

**[5] HAVING CONSIDERED** the 1<sup>st</sup> respondent's replying affidavit sworn by *Angela Fuchaka* on 13<sup>th</sup> March 2026, the preliminary objection dated 13<sup>th</sup> March 2026 and submissions dated 24<sup>th</sup> March 2026, whose combined effect is that the application does not satisfy the threshold under Article 163(7) of the Constitution as read with Section 21A of the Supreme Court Act; that this Court lacks jurisdiction to review a decision whose subject matter has since been partially determined by a court of competent jurisdiction; and that the application, in substance, seeks to challenge the 1<sup>st</sup> respondent's constitutional mandate over prosecutorial decisions; that, in its judgment which the applicant now seeks to review, this Court neither considered nor pronounced itself on the merits of the criminal charges facing the applicant but was solely concerned with the scope of judicial review application; that the Court merely directed that the criminal proceedings continue before the trial court in order to afford that court the opportunity to fully interrogate the evidence through *viva voce* testimony and cross-examination of witnesses before coming to its own independent determination of the matter on merits; and

**[6] TAKING INTO ACCOUNT** the 2<sup>nd</sup> respondent's replying affidavit sworn by *Ben Murei* on 15<sup>th</sup> April 2026 and submissions of even date, to the effect that the present application is, in substance, an appeal against the trial court's decision dismissing the applicant's application to be reinstated as an accused person, disguised as an application for review; that this Court's judgment is clear, definitive and does not warrant review; and that the applicant has failed to establish any of the exceptional circumstances contemplated under Section 21A of the Supreme Court Act and as enunciated in ***Manchester Outfitters (Suiting Division) Ltd (Now known as King Wollen Mills Ltd) & another Vs Standard Chartered Financial Services Ltd & 2 others*** [2019] KESC 7 (KLR) to

warrant a review of this Court's judgment. Accordingly and collectively, the respondents pray that the Court finds and declares the application incompetent, fatally defective, and is for dismissal; and

**[7] BEING GUIDED** by Section 21A of the Supreme Court Act, Rule 28(5) of the Supreme Court Rules, 2020, and the principles set out in ***Outa Vs Okello & 3 others*** (*supra*), we reaffirm the limited scope of this Court's jurisdiction to review its own decisions. As a rule, this Court cannot sit on appeal over its own judgments and will not reopen them so as to review them, save for the correction of minor errors that are apparent on the face of the record or in the exercise of its inherent jurisdiction in exceptional circumstances, where:

***“(i) The judgment, ruling or order is obtained by fraud or deceit;***

***(ii) The judgment, ruling or order, is a nullity such as, when the Court itself was not competent; or***

***(iii) The Court was misled into giving judgment, ruling or order under a mistaken belief that the parties had consented thereto; or***

***(iv) The judgment or ruling was rendered, on the basis of a repealed law, or as a result of a deliberately concealed statutory provision.”; and***

**[8] HAVING CONSIDERED** the totality of the application and submissions presented by the parties, **WE NOW OPINE** as follows:

- i. Applying the principles in ***Outa Vs Okello & 3 others*** (*supra*) and the provisions of Rule 28(5) of the Supreme Court Rules, 2020, reproduced in the previous paragraph, to the present application, we find that the applicant has failed to bring her case for review within the narrow and exceptional grounds upon which this Court may exercise its jurisdiction.

- ii. Instead, the present application is, in substance, an appeal against the decision of the trial court dismissing the applicant's application to be reinstated as an accused person in the criminal proceedings. All that this Court determined in the judgment in question was the circumstances under which a court may carry out a merit review in an application for judicial review. Contrary to the claim by the applicant, the Court at paragraph 103(b) of the judgment merely ordered that: **“(b) Anti-Corruption Case No. 20 of 2015 before the Chief Magistrates’ Court in Milimani to proceed and be heard on priority basis”**, without directing the manner in which the 1<sup>st</sup> respondent would present or prosecute the case.
- iii. The applicant's application to be reinstated in the charge sheet, having been dismissed on 4<sup>th</sup> July 2025 by the trial court, the proper course was to challenge that ruling in the High Court instead of leapfrogging that court, the second appellate court, over to this Court to review its decision made more than three years ago. We also note in this regard that a revision application to the High Court was dismissed and no appeal has been preferred against that ruling.
- iv. It is on record that the trial to which the applicant seeks to be joined was concluded by a judgment of the trial court dated 14<sup>th</sup> January 2026. The court having found all the accused persons innocent and acquitted them, the horse has already bolted, and the present request to re-examine our decision would be in futility.
- v. Notwithstanding our findings above, it is obvious to us that the applicant has found herself in the current predicament because she has not been formally and on the court record exonerated of the criminal charges. By being excluded from the criminal proceedings that have now been concluded, she has constructively been discharged from those proceedings and ought to be considered innocent of those charges.
- vi. In the circumstances and for reasons above, save for our conclusion in v. above, we find no merit in the application as it does not satisfy the strictures

enunciated in the numerous decisions of this Court on review, some of which we have set out in this Ruling.

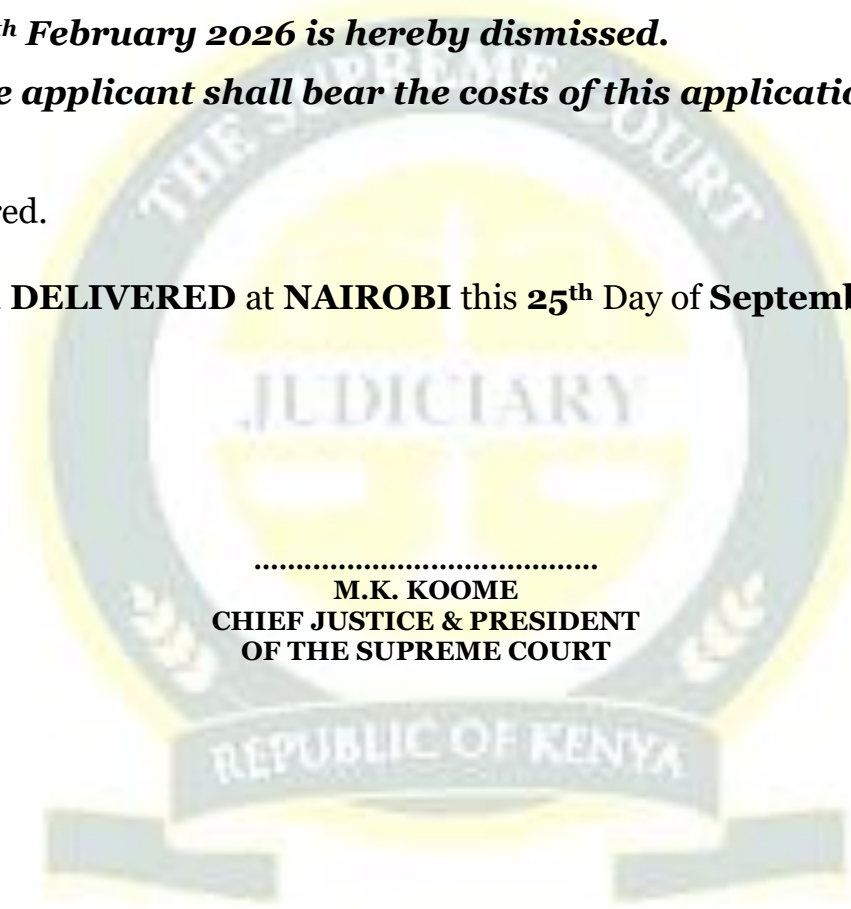
- vii. On costs, since costs follow the event, the applicant shall bear the costs of this application.

**[9] CONSEQUENTLY**, and for reasons aforesaid, we make the following **ORDERS**:

- a) *The Notice of Motion dated 28<sup>th</sup> January 2026 and filed on 20<sup>th</sup> February 2026 is hereby dismissed.***
- b) *The applicant shall bear the costs of this application.***

It is so Ordered.

**DATED and DELIVERED at NAIROBI this 25<sup>th</sup> Day of September 2026.**



.....  
**M.K. KOOME**  
**CHIEF JUSTICE & PRESIDENT**  
**OF THE SUPREME COURT**

.....  
**P.M. MWILU**  
**DEPUTY CHIEF JUSTICE & VICE**  
**PRESIDENT OF THE SUPREME COURT**

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

.....  
**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**W. OUKO**  
**JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR**  
**SUPREME COURT OF KENYA**

