REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Wanjala, Njoki, Lenaola, Ouko, Warsame SCJJ)

APPLICATION NO. E018 OF 2025

— BETWEEN —

CHRISTOPHER AMASAVA.....APPLICANT

-AND-

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

(Being an application for stay of the ruling and determination of the application dated 17th February 2026)

Representation:

The Applicant acting in person

Andambi Chabala for the 1st Respondent

The Hon. Attorney General for the 2nd Respondent

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 22nd April 2026 and filed on 27th April 2026, pursuant to Article 159, 163, 165(4) of the Constitution seeking the following orders:

a) *THAT this application be certified as urgent and service be dispensed with in the first instance;*

b) *THAT pending the hearing and determination of this application, the delivery of ruling to the application dated 17th February 2026 be stayed;*

c) *THAT this Honourable Court be pleased to grant the Applicant leave to place before it issues relating to the constitution of the bench that determined the application dated 14th November 2025;*
d) *THAT this Honourable Court be pleased to consider and determine the issue of jurisdiction arising from the constitution of the bench prior to the delivery of ruling;*
e) *THAT upon such consideration, this Court be pleased to set aside the ruling delivered on 14th November 2025;*
f) *THAT this Honourable Court be pleased to direct that the matter be placed before the Honourable Chief Justice for purposes of constituting a bench in accordance with the Constitution; and*
g) *THAT the costs of the application be in the cause*; and

[2] UPON CONSIDERING the applicant's grounds on the face of the application and affidavit sworn in support by *Christopher Amasava*, the applicant (acting in person) on 22nd April 2026, wherein he contends that there is an application dated 17th February 2026 seeking the review of a ruling of this Court of 14th November 2025 pending before this Court; that the applicant has since established a fundamental jurisdictional issue concerning the constitution of the bench that rendered the said ruling of 14th November 2025; that the said bench comprised of the Deputy Chief Justice Philomena Mbete Mwilu, the Late Mr. Justice Mohammed Ibrahim, Lady Justice Njoki Ndungu and Mr. Justice Isaac Lenaola; that the Deputy Chief Justice, instead of the Hon. Chief Justice empanelled the said bench contrary to the law; that the applicant only became aware of the said judicial irregularity upon perusing the court record during his visit to the Supreme Court Registry on 21st April 2026 prompting the instant application; that if the ruling is delivered without first addressing the jurisdictional question established, he stands to suffer irreparable prejudice; and

[3] UPON EXAMINING the applicant's submissions dated 22nd April 2026 and rejoinder submissions dated 15th May 2026 and filed on 27th April 2026 and 15th

May 2026 respectively, urging in addition to the above averments, that the instant application does not seek to re-argue the review application; that in the cases of ***Owners of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd*** [1989] KECA 48 (KLR), ***Macharia & another Vs Kenya Commercial Bank Ltd & 2 others*** [2012] KESC 8 (KLR) and ***Republic Vs Chengo & 2 others*** [2017] KESC 15 (KLR), the courts have emphasised that jurisdiction is everything and it therefore follows that, if a bench was improperly constituted, this Court lacks jurisdiction *ab initio*; that the power to empanel a bench is constitutional and jurisdictional in nature and not merely an administrative function and any defects therein render the proceedings a nullity; and

[4] BEARING IN MIND the 1st respondent's affidavit sworn by *Victor Andambi Chabala* on 12th May 2026 and submissions dated 13th May 2026 to the effect that the ruling, subject of this application, is pending determination; that under Article 163(1)(b)(i) and (ii) of the Constitution, the Deputy Chief Justice deputizes the Chief Justice as the Vice President of the Supreme Court and therefore constitutionally mandated, in the absence of the Chief Justice to step in the latter's judicial or administrative shoes; and that the Deputy Chief Justice may also perform such duties as may expressly be assigned or delegated by the Chief Justice; and

[5] UPON CONSIDERING the 2nd respondent's grounds of opposition and submissions all dated 12th May 2026 and filed on 20th May 2026 to the effect that the application is seeking review of the ruling of this Court of 14th November 2025; that the ruling cannot be stayed since the applicant has not set out a case for the grant of orders as enunciated in the case of ***Munya Vs Kithinji & 2 others*** [2014] KESC 30 (KLR); that the application dated 17th February 2026 whose ruling the applicant seeks to stay its delivery has no legal or factual relation with the alleged jurisdictional issues touching on the constitution of a bench by the Deputy Chief Justice; that litigation is a logical process which must come to an end and a party cannot choose to engage in piecemeal litigation in blatant abuse of the court

process; that the application is misconstrued having been brought under Article 165(4) of the Constitution which only applies to constitution of benches before the High Court and has no relation with a bench of the Supreme Court established under Article 163 of the Constitution; that the question of constitution of a bench in the Supreme Court is guided by Sections 6 and 23 of the Supreme Court Act and the applicant's allegations are unfounded; that the applicant is effectively inviting this Court to assume jurisdiction over a grievance that is neither grounded on constitutional on any provision nor supported by any statutory framework when in fact a court's jurisdiction flows from the Constitution or legislation or both as was held in ***Macharia & another Vs Kenya Commercial Bank Ltd & 2 others*** *(supra)*; that in any event, the applicant has failed to demonstrate that there exists a legitimate and compelling basis for suspending the ordinary course of judicial proceedings; and

[6] GUIDED by our reasoning and determination in ***Board of Governors, Moi High School, Kabarak & another Vs Bell & 2 others*** [2013] KESC 12 (KLR) on the discretion of the Court to grant interlocutory reliefs, we reiterate that:

> ***"22... in addition to this foundation, it now emerges that the Court, in its exercise of discretion, may consider the convenience of interlocutory orders within the context of the appeal itself....***
>
> ***25....Where necessary, this Court may also exercise its discretion to decline to grant interlocutory relief, if the same may imperil the ultimate function of the Court – to render justice in accordance with the Constitution and the ordinary law."***

[7] WE NOW OPINE on these arguments as follows:

i. The present application seeks to stay the delivery of a ruling arising from the application dated 17th February 2026, by which the applicant sought a review of this Court's ruling delivered on 14th November 2025. In the

impugned ruling, the Court dismissed the applicant's application for extension of time within which to file a Notice of Appeal out of time.

ii. The Court subsequently delivered the ruling dismissing the application for review on 19th June 2026, almost a month and a half after this Motion was filed. Consequently, the application for review, having been determined, is incapable of being stayed as the Court is now *functus officio* in respect of it.

iii. Secondly, the application is founded upon Article 165(4) of the Constitution, a provision that is concerned with the constitution of benches of the High Court in matters certified to raise a substantial question of law. It is inapplicable in the Supreme Court.

iv. Whereas under Sections 21(2),23A and 24, respectively, of the Supreme Court Act, the Court has the discretion to exercise general powers, issue orders of stay and injunction as well as other interlocutory orders, the exercise of those powers is circumscribed. The stay of further proceedings, stay of execution, an injunction or any other conservatory or interim orders envisaged by Section 23A of the Supreme Court Act relate to decisions of the superior courts below. Therefore, to seek "stay of a ruling" of this Court is misguided and cannot attract any proper juridical action on our part.

v. A ruling which is pending delivery does not constitute an executable decision capable of being "stayed", as there is, as yet, no order resulting from it.

vi. Having found that the ruling sought to be stayed has, as a matter of fact, been delivered, we see no utility in considering whether the applicant has satisfied the principles applicable to the grant of interlocutory relief, or whether, in the circumstances, the impugned bench was properly constituted. Those questions are rendered moot by our finding on the threshold issue. Accordingly, the application, having failed that preliminary hurdle, must be dismissed.

vii. As regards costs, the settled rule is that costs follow the event. We award costs to the respondents.

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

a) The Notice of Motion dated 22nd April 2026 and filed on 27th April 2026 is hereby dismissed.

b) Costs thereof are awarded to the respondents.

It is so Ordered.

DATED and **DELIVERED** at **NAIROBI** this **23rd** Day of **October**, **2026.**

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S. C. WANJALA
JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

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

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

.....
M. WARSAME
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR
SUPREME COURT OF KENYA