



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**  
**CONSTITUTIONAL PETITION NO. 15 OF 2017**

IN THE MATTER OF:ARTICLES 2(1), 3(1), 27(1) (2), 29, 39(2), 40, 47, 156, 157, 258 AND 35(1) (B)  
OF THE CONSTITUTION OF KENYA 2010

**BETWEEN**

HASSAN ALI JOHO.....PETITIONER

AND

1. THE INSPECTOR-GENERAL OF POLICE
2. THE DIRECTOR OF CRIMINAL INVESTIGATION
3. THE DIRECTOR OF PUBLIC PROSECUTION
4. THE ATTORNEY-GENERAL.....RESPONDENTS

**RULING**

**The Application**

1. By a Chamber Summons application dated 30<sup>th</sup> March 2016 and filed herein on 31<sup>st</sup> March 2017 which was subsequently amended to a Notice of Motion on 13<sup>th</sup> April 2017 the applicant prays for the following orders :-

- a) **The matter be certified urgent and service upon the Respondents be dispensed within the first instance.**
- b) **Pending the hearing and determination of this Application, the honourable court be pleased to issue a RESTRAINING ORDER against the Respondents whether by themselves agents and servants and whomsoever acting under their authority or instruction from charging, prosecution, arrest, continued harassment, questioning, intimidation, apprehension on any matter concerning the Applicants academic qualifications or on account of any investigations relating to an alleged forgery of a 1992 examination slip in his name.**
- c) **Pending the hearing and determination of this Petition, the honorable Court be pleased to**

issue a **RESTRAINING ORDER** against the Respondents whether by themselves agents and servants and whomsoever acting under their authority or instruction from charging, prosecution, arrest, continued harassment, questioning, intimidation, apprehension on any matter concerning the Applicants academic qualifications or on account of any investigations relating to an alleged forgery of a 1992 examination slip in his name.

d) Pending the hearing and determination of the Application an **ORDER** be and is hereby made directing the 1<sup>st</sup> Respondent herein to restore and/or reinstate police guards assigned the Applicant by virtue of his position a duly elected County governor.

e) Pending the hearing and determination of the Petition an **ORDER** be and is hereby made directing the 1<sup>st</sup> Respondent herein to restore and/or reinstate police assigned to the Petitioner by virtue of his position a duly elected County governor.

f) Pending the hearing and determination of this Application an **ORDER OF INJUNCTION** be and is hereby granted restraining the Respondents, whether by themselves, their agents, privies and servants, acting for and on their behalf whether jointly or severally from harassing in any manner whatsoever intimidating, causing the arrest/prosecution, threatening to arrest or prefer criminal charges and/or interfering with the Applicant's fundamental rights and freedom in respect to any matters under investigations by Kenya Revenue Authority, Kenya National Examination Council and the Directorate of Criminal Investigations or further interfering in the Petitioners enjoyment of the fundamental rights as guaranteed by the Constitution.

g) Pending the hearing and determination of this Petition an **ORDER OF INJUNCTION** be and is hereby granted restraining the Respondents, whether by themselves, their agents, privies and servants, acting for and on their behalf whether jointly or severally from harassing, in any manner whatsoever intimidating, causing the arrest/prosecution, threatening to arrest or prefer criminal charges and/or interfering with the petitioner's fundamental rights and freedom in respect to any matters under investigations by Kenya Revenue Authority, Kenya National Examinations Council and the Directorate of Criminal Investigations or further interfering in the Petitioners enjoyment of the fundamental rights as guaranteed by the Constitution.

h) Pending the hearing and determination of this Application an **ORDER OF INJUNCTION** restraining the Respondents from in any manner whatsoever harassing, intimidating causing the apprehension of the Applicant, considering and/or preferring any

**Criminal charges against the Applicant in matter under investigations by Kenya Revenue Authority, Kenya National Examinations Council and the Directorate of Criminal Investigations.**

i) Pending the hearing and determination of this Petition an **ORDER OF INJUNCTION** restraining the Respondents from in any manner whatsoever harassing, intimidating, causing the apprehension of the Petitioner, considering and/or preferring any criminal charges against the Petitioner in matter under investigations by Kenya Revenue Authority, Kenya National Examinations Council and the Directorate of Criminal Investigations.

j) Any other relief that this honourable court may deem fit and just to grant in the interest of justice.

2. The application is filed pursuant to the Petition dated and filed herein on the same date and is premised on the grounds that:

(i). On 13<sup>th</sup> March 2017, the President of the Republic of Kenya His Excellency Honorable Uhuru Muigai Kenyatta while relaunching the Mtongwe Ferry Services publicly and openly threatened the

Applicant in the following terms;

**“Nitamnyorsha,Nitamwangusha...”(Iwill straighten him.. will fell him ....”).**

(ii). On the same day 13th March 2017 heavily armed security personnel including regular police, general police unit and other segments of the Police Service put up roadblocks at Nyali Bridge and mounted a thorough search on all vehicles. The Singular and stated motivation for the purported security operation was to search for the Applicant, and stop him from attending the public ceremony for the relaunch of the Mtongwe ferry, a public function.

(iii). The Applicant was physically blocked by the Police from going through the roadblock and asked to go back home in a move which was intended to unlawfully prevent him from accessing his Office or attending the Public function. Upon refusal to obey the apparently Unconstitutional order to go back home, the Petitioner was held hostage, under false imprisonment and illegal curfew, by the heavily armed elite security forces including Presidential Guards Officers who fortified the Office of the Governor before being joined by their colleagues from the Anti-Terror Police Unit.

(iv). On 18<sup>th</sup> March 2017 while addressing a political rally in Mpeketoni in Lamu County, and in full glare of Kenya Police, the Applicant was attacked by irate youth who were instructively chanting pro-government slogans who hurled stones and other weapons aimed at the Applicant upon which he had to scamper for his safety fearing for his life and personal safety and the safety of the Motor Vehicles. In spite of inquiry and protest from the Applicant, the authorities did not offer any response or explanation.

(v). On 20<sup>th</sup> March 2017, without notice and any lawful justification Kenya Revenue Authority, through the Commissioner for Investigations and Enforcement wrote to various banks namely, Diamond Trust Bank and CFC Stanbic Bank where his personal accounts are domiciled directing and ordering them not to release any funds from his accounts nor allow the Applicant to access the funds. This directive effectively denied the Applicant access to his funds.

(vi). On 23<sup>rd</sup> March 2017 Kenya Police and the General Service Unit violently disrupted the Applicant’s political rally in Kinango Kwale County by hurling tear gas canisters and firing live shots in the air. The highly intimidating operation was undertaken through the command of **Mr. Nelson Marwa**, the Coast Region Coordinator who publicly instructed the Applicant to confine his political activities within Mombasa County where he is elected.

(vii). On 26<sup>th</sup> March 2017, the Applicant learnt through social media platforms (including WhatsApp, Twitter and Facebook) that there were investigations going on against him relating to his academic qualifications. The Highly sensationalized reports claimed that the Applicant was criminally culpable of various offences.

(viii). Instructively, on 27th March 2017, the Applicant received summons from the Directorate of Criminal Investigations requiring him to appear before the Assistant Inspector General of Police to record a statement relating to forgery of result slip for the Kenya Certificate of Secondary Education Examination of 1992.

(ix). On the same date, 27<sup>th</sup> March 2017, the Kenya Revenue Authority moved the High Court in Nairobi under the Anti-Corruption and Economic Crimes Division, **HC ACC MISC. 33 OF 2017; KENYA REVENUE AUTHORITY VS. HASSAN ALI JOHO** and obtained orders ex parte prohibiting the Applicant from accessing and dealing with funds in his various accounts.

(x). The Applicant is reasonably apprehensive that there is a sustained and malicious effort by various state agencies who are ostensibly acting at the instigation of the President to arbitrarily threaten him with a view to harm him or unduly use the criminal justice processes to embarrass him on the basis of fabricated charges for an ulterior motive other than vindication of the law.

(xi) The actions of all the state agencies that have swung into action in disregard of their expected independence and set various processes in motion against the Applicant amount to abuse of public office for collateral purposes activated by spite, malice and in excess of their lawful authority.

(xii). The Petitioner is legitimately apprehensive that he may be arrested, detained and therefore seeks the protection of the Honorable Court from unjustified, malicious and unwarranted harassment and likely malicious prosecution by the Respondents on what the Petitioner believes to be on contrived and false allegations.

(xiii). The Applicant stands to suffer irreparable damage and prejudice unless the court steps in to check the infractions occasioned to him in a timeously manner.

(xiv). In view of the foregoing, and having in mind the threats from the person of the President of the Republic of Kenya, who is the Commander of the Defense Service of the Republic and who is the head of the Executive arm of government the Applicant is reasonably apprehensive of continued infringement of his constitutional rights unless this honorable court intervenes and grants the prayers sought. The Notice of Motion is supported by affidavit of the Applicant **HASSAN ALI JOHO** sworn on 30<sup>th</sup> March 2017.

### **The Applicant's case**

3. The Applicant's case is that he is the democratically elected governor of Mombasa County, a position he has held since March 2013. The Applicant is also the Deputy Party Leader of Orange Democratic Movement (ODM), the largest political Party in Kenya. The Applicant alleges that on Monday 13<sup>th</sup> of March, 2017, the President of the Republic of Kenya, His Excellence Honourable Uhuru Muigai Kenyatta while relauching the Mtongwe Ferry Services publicly and openly threatened the Applicant in the following terms:

***'Nitamnyorosha, Nitamuangusha.....' which the applicant understands to mean, 'I will straighten him. . . I will fell him***

4. On the same day on the 13<sup>th</sup> of March, 2017 heavily armed security personnel including regular police, general unit and other segments of the Police Service put up roadblocks at Nyali Bridge and mounted a thorough search on all motor vehicles. The Applicant's case is that this security operation was solely conducted to search for him and to try and stop him from attending a public ceremony for the re-launch of Mtongwe ferry. The applicant alleges that he was physically blocked by the Police from going through the roadblock and asked to go back home. The applicant alleges that was purely to unlawfully prevent him from accessing his office or attending the Public function. The Applicant refused to obey what he felt was an unconstitutional order to go back home, and was held hostage, under false imprisonment and illegal curfew, by the heavily armed elite security forces including Presidential Guard Officers and officers from Anti-terror police unit.

5. Thereafter the applicant states that a series of events unfolded as follows. On 18<sup>th</sup> March 2017 while addressing a political rally in Mpeketoni in Lamu County, and in full glare of Kenya Police, the Applicant alleges that he was attacked by irate youth who were instructively chanting pro-government slogans who hurled stones and other weapons aimed at the Applicant. The Applicant had to escape. The security forces have to date not told the Applicant the reason for or explain what happened.

6. Since then however, vide two separate letters, one dated 14<sup>th</sup> of March 2017 and the other dated 20<sup>th</sup> March 2017, without notice and any lawful justification, Kenya Revenue Authority, through the Commissioners for Investigations and Enforcement wrote to various banks namely, Diamond Trust Bank and CFC Stanbic Bank allegedly pursuant to their mandate under the provisions of the Tax Procedure Act, directing the Banks to preserve such monies in the Applicant's accounts and to ensure that such money is not transferred, withdrawn or disposed off without any authority from the Commissioner or from an order of the High Court of Kenya. This directive effectively denied The Applicant access to his

funds.

7. On 23<sup>rd</sup> of March 2017, whilst attending and/or hosting a political rally in Kinango Kwale County, the Kenya Police and the General Service Unit allegedly disrupted the Applicant's rally in Kinango Kwale County by hurling tear gas canisters and firing live shots in the air. This intimidating operation was undertaken through the command of Mr. Nelson Marwa, the Coast Region Coordinator who publicly advised the Applicant to confine his political activities within Mombasa County where he has been elected

8. The Applicant's case is that he learnt on 26<sup>th</sup> March 2017, through social media platforms (including WhatsApp, Twitter and Facebook) that there were apparent investigations going on against him, relating to his academic qualifications. These sensationalized reports claimed that The Applicant was criminally culpable of various offences. Instructively on 27<sup>th</sup> March 2017, the Applicant received a letter from **Mr. Washington Njiru**, CCIO Mombasa wishing to meet the applicant on an official capacity. On the same day the applicant received summons from the Directorate of Criminal Investigations requiring him to appear before the Assistant Inspector General of Police to record a statement relating to forgery of result slip for the Kenya Certificate of Secondary education Examination of 1992. The Applicant honoured the said summons

9. In a related event on 27<sup>th</sup> March 2017, the Kenya Revenue Authority moved the High Court in Nairobi under the anti-Corruption and Economic Crimes Division, **HC ACC no.33 of 2010, Kenya Revenue Authority versus Hassan Ali Joho** and obtained orders ex parte prohibiting the applicant from accessing, withdrawing and dealing with funds in his various accounts in any manner whatsoever.

10. The Applicant's case is that the above harassment by the state agencies actually started in 2016. On 7<sup>th</sup> March 2016 during the Malindi Constituency Parliamentary by-election the Applicant alleges that he was subjected to unlawful harassment by some of the Respondents herein. This caused him to file **MALINDI HCCC petition No. 6 of 2016** in which the court observed this:

**“The various incidents narrated in the supporting affidavit does establish form of harassment or intimidation. Arresting someone at 1.00 a.m. for an offence which does not threaten a breach of peace is not an ideal action. It becomes worse if there are twenty-four police officers who are sent to arrest that person and ultimately the case is withdrawn for lack of evidence. Drawing weapons upon unarmed honourable members of parliament is tantamount to intimidation. I do find that at this stage the applicant have established a prima facie case to warrant granting of conservatory orders pending the determination of the petition. However, the conservatory orders being granted shall not stop the Respondent from continuing with their investigations and subsequently those deemed to have breached the law”**

11. The Applicant states that barely a week later, on 10<sup>th</sup> of March 2016, the State through the Firearm Chief Licensing Officer, **MR SAMWEL C. KIMARU** arbitrarily revoked his firearm certificate No.4773 that was issued to him 18<sup>th</sup> June 2008. The letter purported that the Applicant was **“unfit to be entrusted with a firearm anymore.”** The Applicant's case is that the purpose of the action by the state was an act of abuse of power and arbitrary exercise of authority to achieve a purpose unconnected with the rule of law or objective of the system of the administration of justice. The Applicant was threatened with arrest in default of handing over the firearms and ammunition. This prompted the applicant to institute legal proceedings to challenge the decision by the Chief Licensing Officer. This led to the filing of **Miscellaneous Civil Application Number 122 of 2016, Gov. Hassan Ali Joho versus Chief Firearms Licensing officer and 3 others.** The court after hearing the issues before it, quashed the decision by the state. Vide a ruling delivered on 16<sup>th</sup> of December 2016, the court stopped the state from seizing the firearms and ammunition and issued *inter alia*, the following orders:-

***An order Prohibiting the 3<sup>rd</sup> Respondent herein the Cabinet Secretary for interior and Coordination of National Government in any manner whatsoever from directing, continuing to***

***direct, and harassing or continuing to harass the ex-parte Applicant herein Gov. Hassan Ali Joho howsoever, by himself, his agents, servants and/or assigns on the basis of the decision of the firearms licensing officer or at all communicated vide (sic) a letter dated 10<sup>th</sup> March 2016.***

Further on 6<sup>th</sup> of January 2017, the Applicant's security detail had been withdrawn by the 1<sup>st</sup> Respondent without reason.

12. In further rendition of his plight, the Applicant states that in the period between 2013 to date, he was subjected to a series of suits and investigations purporting to challenge his academic qualifications. The sole purpose of those suits was to lock the Applicant from holding a public office. In 2013, a petitioner by the name **Janet Mbeti** filed a petition, Petition No. 116 of 2013, **Janet Ndago Ekumbo Mbeti versus IEBC & 2 others**. She was allegedly aggrieved by the issuance of a nomination certificate that was issued to the Applicant citing that he did not hold a valid degree certificate from a university recognized in Kenya. **Justice Lenaola** in dismissing the Petition held as follows:

**“Having found as above, and therefore satisfied that the 3<sup>rd</sup> Respondent holds the qualifications envisaged by Section 22 sub section 2 of the Election’s Act and the Petitioner, despite all her spirited efforts, has failed to bring evidence that the 3<sup>rd</sup> Respondent used fraudulent means to obtain his degree. How can this Court uphold her objections when Kampala University and Council for High Education has said that he is qualified?”**

13. Another instance where the Applicant's education credential were challenged was in the case of **Kampala University vs. National Council for Higher Education**, High court of Uganda Misc. Cause No. 053 of 2014, where **Justice Stephen Musota** held as follows:-

**“I therefore agree with the submissions by learned counsel for the applicant that with the above clear provisions of the law, the question of whether any student of the applicant or Hassan Ali Joho followed the academic due process from admission to graduation during their study at the applicant University does not fall within the investigative territory of the respondent. Neither is it the business of the respondent to make any pronouncements about that process after it granted the university accreditation and approval of the courses the university should offer. The governance structures of such university are well versed and competent to handle such cases...”**

**“It is unfortunate that NCHE Succumbed to external pressure which stampeded it to acting ultra vires.”**

14. The Applicant states that he suffers reasonable apprehension that there is a sustained and malicious effort by various state agencies who are ostensibly acting at the instigation of the President with a view to harm him or unduly use the criminal justice processes or other legal processes to embarrass him on the basis of fabricated charges for an ulterior motive other than vindication of the law. The Applicant believes that the actions of all the state agencies that have swung into action in disregard of their expected independence amount to abuse of public office as the actions on the part of the state agencies are being used for collateral purposes actuated by spite, malice and in excess of their lawful authority. The Applicant recognizes that the Respondents herein are state organs exercising their powers under the relevant enabling legislation or statutory instruments. However, he states that the Respondents herein are in blatant breach and or in violation of the provisions of the Constitution in their actions against him. These breaches include breach of the Supremacy of the Constitution as provided in Article 2 of the Constitution; breach of the principles of devolution as provided in Article 6(20) of the Constitution that establishes the governments at the National and County levels which governments are distinct and inter-dependent; breach of the National values and principles of governance which are the guiding principles to all state officers as set out in Article 10 of the Constitution as regards sharing and devolution of power, the rule of law, democracy and participation of the people, human dignity, equality, human democracy and participation of the people, human dignity equality, human rights, non-discrimination, good governance, integrity, transparency and accountability; breach of the bill of Rights as an integral part of Kenya's democratic state and which amongst other purposes preserves the dignity, self-worth and

autonomy of each and every individual as expressed in Article 19 of the Constitution; breach of the right to equality and freedom from discrimination including the equality of every person before the law and the right to equal protection and equal benefit of the law as provided in article 27 (1) of the Constitution; breach of the right of every person to inherent dignity and the right to have that dignity respected and protected as provided in Article 28 of the Constitution; breach of the freedom and security of the person which includes the right not be deprived of freedom arbitrarily or without just cause or to be treated in a cruel inhuman or degrading manner as provided in article 29 of the Constitution; breach of the right to privacy which includes the rights not to have an individual's person home or property searched, their possession seized or information relating to an individual's family or private affairs unnecessarily required or revealed as provided in Article 31 of the Constitution; breach of the freedom of movement as provided in Article 39 of the constitution; breach of the right to property including the right that prohibits the state from depriving a person of property of any description or of any interest in, or right over property of any kind as provided in Article 40(1) (2) and (3) of the Constitution; breach of the right to Fair Administrative Action that is expeditious, efficient, lawful, reasonable and procedurally fair and that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action as provided in Articles 47(1) and (2) of the constitution and the fair Administrative Action Act; breach of the right of every person to have a fair hearing as provided in Article 50(1) of the constitution; breach of the responsibilities of leadership that require the authority assigned to a state officer to be exercised in a manner that is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promote public confidence in the integrity of the office as provided in Article 73 of the constitution, Contravention of the constitution or threatened contravention of the constitution as provided in Article 258 (10) of the Constitution; and breach of the principles of National Security requiring the protection of the people's rights, freedoms, property and which obligated National Security organs to cede to the authority of the constitution and that the National Security be pursued in compliance with the law and with utmost respect for the rule of law, democracy, human rights and fundamental freedom as provided in article 238 (1) and (2) (a) (b) of the Constitution.

15.The Applicant's case is that he stands to suffer irreparable damage and prejudice unless this court steps in to check the infractions occasioned to him in a timeously manner. The Applicant is reasonably apprehensive of continued infringement of his constitutional rights unless this court intervenes and grants the prayers sought.

### **The Response**

16.The motion is opposed by all the Respondents. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents filed grounds of opposition to the motion on 10<sup>th</sup> April 2017. They also filed a notice of Preliminary Objection to the motion on the same day. However, it was agreed by all the parties at the hearing of the motion that the said preliminary objection would be canvassed in the cause of the motion.

17.The 3<sup>rd</sup> Respondent filed grounds of opposition to the motion on 10<sup>th</sup> April 2017. They also filed a replying affidavit sworn by No.68417 Cpl. **MOSES GITUATHI** on 7<sup>th</sup> April 2017.

### **The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent's case**

18.The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents have opposed the motion on the grounds that the main underlying issue before this court is that if the petitioner had committed an offence, the same cannot be determined by the constitutional court, and that the petition is an abuse of the Court process since the issues ought to be determined via the mechanisms and institutions created by the constitution. The said respondents state that the suit has been filed by the petitioner to evade investigations and probable prosecution, and that the petition offends Article 157 of the constitution of Kenya 2010 and the government proceedings Act both read together with section 34 and 35 of National Police Service Act. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents state that this court is not the proper forum for determination of whether or not the petitioner had the necessary education and/or other qualifications to become a governor. It is the Respondents' case that the petition is one full of conjuncture, subjective opinions and personal convictions which are not

supported by any documents.

19.The Respondents' case is that the suit as drawn and filed does not comply with order 53 or with the constitutional provisions cited or with the Constitutional Rules Legal Notice 117 of 2013, and that in any event if at all, the suit herein ought to have been filed after the investigations against the petitioner have been completed.

20.The Respondents further stated that the Ethics and Anti-Corruption Commissions is an independent Constitutional body whose opinion is necessary before the determination of this suit.

21.The Respondents' case is that the petitioner has filed this suit because he is apprehensive of an offence he may have committed and therefore wants to frustrate the investigations against him

22.The 1<sup>st</sup> 2<sup>nd</sup> and 4<sup>th</sup> Respondent have also raised Preliminary Objection to the motion on the grounds:-

(1)That the suit as drawn and filed does not disclose any non-compliance with the constitutional provisions cited, and that the form is deliberately misleading, there is deliberate misjoinder and joinder of parties and the petitioner is merely apprehensive.

(2)That further to paragraph 1 above the suit does not conform to the constitutional Rules legal Notice 117 of 2013

(3)That if the orders sought in this petition are granted it will be tantamount to the determination of investigation and any likely or probable prosecution/finding of the independence of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents constitutional mandate.

(4)That the petition as drawn and filed offends and curtails the authority and exercise of Article 245 (4) (a) [and 259 (3) (a) ] of the Constitution of Kenya read together with section 12 and 16 of the government Proceedings Act.

(5)That the petitioner has filed this suit because he is apprehensive of an offence he may have committed and purely to frustrate the investigations against him.

(6)That the suit as drawn and filed seeks to embarrass the respondents as they execute their constitutional mandate.

(7)That petition seeks orders that will affect institutions which are not parties to this suit thus denying them right to be heard.

### **The 3<sup>rd</sup> Respondent's case**

23.The 3<sup>rd</sup> Respondent has opposed the motion on the grounds:

(1)That the application seeks restraining orders against the Respondents discharging their constitutional and statutory mandate thus it is bad in law.

(2)That in so far as the application seeks orders to restrain the DCI and investigative agencies from conducting investigations into allegations of criminal conduct touching on the applicant the orders are unavailable the applicant thus the Chamber Summons is incompetent and bad in law to that extent.

(3)That prayer C of the chamber summons if granted would unnecessarily act as an unwarranted fetter on the exercise of prosecutorial discretion of the 3<sup>rd</sup> Respondent without any legal and or factual basis and in clear violation of Article 157 (10) of the Constitution of Kenya 2010.

(4) That the effect of the orders sought by the Applicant if granted would be to clothe the Applicant with investigative and prosecutorial immunity in total disregard of the Constitutional authority of the Respondents to ensure that persons alleged to have committed crimes should be brought to justice if there is evidence of criminal culpability on their part such as the Applicant.

(5) That the chamber Summons is incompetent in so far as it seeks orders against Kenya Revenue Authority (KRA) and Kenya National Examination Council (KNEC) who are not parties to the Constitutional petition and the application thus by issuing the orders, the court would be acting against the principles of Natural Justice.

(6) That the allegation by the Applicant that he is targeted for harassment and intimidation by the Respondents and or their agents is a spurious claim that is not backed by any evidence and is purely calculated to attract sympathy from the court.

(7) That the orders sought if granted would run counter to the provision of Articles 157 and 159 of the Constitution of Kenya, 2010.

24. Those grounds are expounded in the Replying affidavit aforesaid. The 3<sup>rd</sup> Respondent's case is that the investigations into the matter of the Applicants KCSE certificates commenced on 10<sup>th</sup> January, 2017 following a complaint made to the Director of Criminal Investigations. Therefore, the events of alleged harassment happened long after investigations had commenced and had no connection with the Applicant's claim. The 3<sup>rd</sup> Respondent is also a stranger to alleged social media reports claiming that the Applicant was under investigations over his academic qualifications.

25. The 3<sup>rd</sup> Respondent however admits to summoning the applicant to appear before Mr. **Washington Njiru** for interrogation. These were summons issued as a routine measure in the discharge of their objective. The Applicant honoured the summons and he was handled with civility and that demonstrates good faith on their part in handling this matter. On the matters raised concerning the Kenya Revenue Authority, the 3<sup>rd</sup> Respondent's case is that the matter concerns issues of tax that have no connection with the investigations that are currently being undertaken by the Respondents herein. The 3<sup>rd</sup> Respondent denies all allegations of harassment or intimidation of the Applicant.

26. The 3<sup>rd</sup> Respondent states that the issue regarding the firearm is now moot since there is a final order vide the judgment delivered on 16<sup>th</sup> December, 2016 marked HAJ-7 of the Applicant's affidavit. The 3<sup>rd</sup> Respondent denies that there has been any suit by any Government agency against the Applicant regarding his academic qualifications in the period between 2013 to date or at any other time thus the allegation made to the effect is false and calculated to malign state agencies without any factual basis and evidence.

27. The 3<sup>rd</sup> Respondent's case is that they are only concerned with the genuineness and authenticity of the 1992 KCSE result slip and the Applicant's admission to the University of Nairobi that is at the center of their investigations. According to the records from Tom Mboya Primary School, the Applicant was admitted on 7<sup>th</sup> January 1980 admission no. 2722 in the name Hassan Ali and the father's name as Ali Hassan. A certified copy of the KCPE certificate no. 10749901 for Ali Hassan index no. 16010/019 was obtained showing that the Applicant sat for his KCPE in 1988. In regard to the qualifications of the Applicant at Serani Secondary School, the school provided the Admissions book. The same revealed that the Applicant was admitted as student no. 326 on 22<sup>nd</sup> February, 1990 in the name Hassan Ali and his father's name Ali Joho. Further, the investigation team obtained the Examination result sheets for Serani Secondary School for the years 1992 and 1993. The investigations revealed that in the years 1992 and 1993, no student acquired a grade of C+. The Kenya National Examination Council (KNEC) provided a verification and confirmation of examination results dated 26<sup>th</sup> January, 2017 confirming that there was no student named as the Applicant herein at Serani secondary in the 1992 register. Further, the Kenya National Examination Council confirmed that the purported center code 160092 did not exist as the true Serani secondary school code in the year 1992 was confirmed as 16032. In view of the foregoing, the

conclusion of the investigations was that the 1992 KCSE result slip was a forgery.

28. The Respondents' case is that the Kenya National Council (KNEC) provided the KCSE result roll for students who sat KCSE at Sereni in 1992 and the Applicant was not one of them. That KNEC also provided a KCSE result roll of students who sat for examinations in 1993 and the Applicant was one of the candidates who scored a mean grade of D-, and that the statement of examination results dated 26<sup>th</sup> January, 2017 from KNEC for **Ali Hassan** index no. 16032063 corroborates the finding that the Applicant acquired a mean grade of D-. Also, the KNEC vide a letter dated 26<sup>th</sup> January, 2017 addressed to the DCI confirmed the correct particulars of **Ali Hassan** who sat for KCSE at Sereni Secondary School and obtained a mean grade of D-.

29. The Respondents state that in regard to the Applicant's admission to the University of Nairobi a hacking investigations report dated 8<sup>th</sup> March 2012 by the University of Nairobi reveals entry of marks into the system by some candidates including the Applicant. From the University records, one of the documents obtained was a copy of the KCSE result slip for the year 1992. The University of Nairobi provided an Admission letter of the Applicant to the University. Further the Applicant filed a handwritten examination answer booklet, which was marked as per the course mark sheet. The **University** of Nairobi provided the admission requirement sheet for Bachelor of Commerce Degree. That subsequently, the Applicant secured admission for the September, 2009 entry. This was followed by a Dean's committee minutes of 390<sup>th</sup> meeting held on 5<sup>th</sup> August, 2009 which approved the admission of 848 applicants for Nairobi campus school of business. The Respondents' case is that the investigations against the Applicant are being undertaken in line with the law and that the respective government agencies are not actuated by malice or acting at the instigation of the President or any other body or authority. That contrary to what the Applicant deposes in Application, the investigations being undertaken are very objective and he does not stand the risk of irreparable damage and prejudice to justify the intervention of the Court at this stage. There indeed exists reasonable grounds for continued investigations and in deed there is probable cause for the court to allow the respondents to exercise their constitutional and statutory power without being fettered. The Respondents' case is that the Applicant has failed to demonstrate that the Respondents are not acting independently or are acting capriciously, in bad faith and or are abusing the legal process in a manner to trigger the High Court's intervention. Further, the Respondents are not involved in acts that would amount to intimidation, harassment and molestation of the applicant as alleged in his application and petition, but are purely pursuing legitimate criminal investigations in the belief that the Applicant is involved in certain criminal activities which need to be investigated and prosecuted and any attempt to restrain the Respondents from investigating the Applicant with a view to uncovering how he acquired the 1992 KCSE result slip would amount to granting the Applicant investigative and prosecutorial immunity which is against the law.

### **Submissions**

30. Parties made oral submissions in court. The applicant was represented by Senior Counsel **Hon. (Senator) James Orengo, Mr. Dennis Mosota and M/s Julie Soweto**, while **Mr. Alexander Muteti, Mr. Ndege and Mr. Wamotsa** represented the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and **Mr. Guyo Wachira** represented the 4<sup>th</sup> Respondent

31. **Mr. Orengo** submitted that the Applicant is seeking orders pursuant to prayers (c), (e) (d) (i) of the application. Counsel submitted that the petitioner alleges certain breaches and violation of fundamental Rights and Freedoms. Those violations are in relation to Article 27, 29, 39, 40, 47 and 35 (i) (b). Together with those Article Counsel submitted that any actions by the Respondent which are against the constitution are invalid. Counsel referred to Article 3 which states that every person should uphold and respect the Constitution. Counsel submitted that there is evidence of abuse of the criminal justice system so that what the Respondent is seeking to do is extraneous to the objectives of criminal justice system, and is contrary to Article 157(11) of the Constitution.

### **Concrete violations**

32. Mr. Orengo submitted that he had put before the court materials to show that ever since the petitioner was elected governor of Mombasa he has been harassed, threatened and intimidated by government forces. The purpose of that kind of treatment is to ensure that governor **Joho** ceases to be the governor of the County of Mombasa. It is an attempt to remove the governor from the office. The second purpose is to ensure that the governor is not able to stand for elections in August 2017. Mr. Orengo submitted that the 3<sup>rd</sup> purpose is to ensure that the Applicant is not able to exercise the mandate that he is given by the people of Mombasa by being taken to court on constant baseless charges and to harass him so that he loses focus. Counsel submitted that the governor does not enjoy any immunity from constant acts of harassment and only this court can stop the same. Mr. Orengo submitted that under Article 157 of the Constitution, the 3<sup>rd</sup> Respondent is required to have due regard to the interest of the public and to avoid harassing the public, and to act in accordance with the Constitution including promotion of public confidence in the integrity of the office. Counsel submitted that the DPP cannot carry out investigations selectively but must be honest in those investigations to avoid abuse of the office.

33. Referring to the case **CR 122/33/2013 CF. 102/2013 R vs. Titus Omondi** which was withdrawn by the DPP, **PC Moses Githathi** was one of the witnesses. He is also the deponent to the replying affidavit herein by the 3<sup>rd</sup> Respondent. Now, the DPP is intending to charge the petitioner on the same charges, yet the petitioner was actually the complainant in the above matter. Four years later the Applicant is the one now being charged. **Mr. Orengo** submitted that the current investigation involving a matter in 2012 which was later withdrawn has been revived only to crucify the Petitioner. Counsel submitted that the Respondents here are not interested in prosecuting and convicting the governor but merely to harass him. This is so because there are clear ways in Article 181 of removing of the governor through impeachment proceedings while under Article 182 they can also secure a conviction and remove the governor from power. So the Respondents are simply looking for a cocktail of possibilities to fix the Petitioner. The petitioner cannot perform his duties under his docket including launching of projects such as the Ferry. He was stopped from doing that. In other occasions he is held a prisoner in his own office and prevented from leaving so he cannot attend to his duties. The petitioner had also had his fire arm license withdrawn. This is also connected with the withdrawal of his bodyguards.

34. As regards the aforesaid Malindi Petition, **Mr. Orengo** submitted that the judgment repeats the complaints of the Petitioner in this matter. That court allowed orders but did not stop investigations. It is noteworthy that to date the Respondent have not concluded those investigations which included robbery with violence charges. The prosecution has not asked for those orders to be discharged. **Mr. Orengo** submitted that the investigations started with unwanted degree, the secondary school result slip and now the primary school certificate. Next time, Counsel submitted, it will be his nursery school. The petitioner is under siege. **Mr. Orengo** submitted that they had put forward a prima facie case. Counsel quoted the case of **Stanley Munga Gitunguri v- Republic CR. APP. No. 271 of 1985** where **Justice Madan** while granting an order of prohibition stated that to charge the Applicant four (4) years after it was decided by the Attorney General not to prosecute was a grave injustice.

35. Mr. Orengo submitted that the investigations in question are being conducted in bad faith with an ulterior motive solely motivated to achieve a collateral purpose other than legitimate objectives for administration of justice for the following reasons, that the issue relating to the alleged forgery of KSCE result slip was the subject of similar investigations in 2013 by the 2<sup>nd</sup> Respondent in Police file number 122/33/2013. The investigation culminated in a criminal charge, Criminal Cases No.102 of 2013 and 108 of 2013. Mr. Orengo, SC, submitted that in one of the cases, a **Mr. Titus Omondi Sindi** alias **Breshener Omondi**, in Criminal case No.102 of 2013 was charged with making a document without authority contrary to section 357 (a) of the Penal code, particulars of which are that, the accused, with intent to deceive without lawful authority or excuse made a certain document namely Kenya Certificate of Secondary Education result sheet number 16032 for Serani Secondary School for the year 1993 purporting it to be genuine results issued by the Kenya National Examination Council. Mr Orengo submitted that the 2<sup>nd</sup> Respondent on its own volition applied to withdraw the matter under section 87 (a) of the Criminal Procedure Code. This fact has been deliberately concealed by the 3<sup>rd</sup> Respondent and this smacks of malice and bad faith.

36. Despite the foregoing, the National Police Service through the Directorate of Investigation summoned the Applicant to record a statement relating to an alleged forging of a 1992 examination result slip in his name. Counsel submitted that this shows malice, abuse of office and mala fides intention on the part of the 3<sup>rd</sup> Respondent, and amounts to an affront to the Applicant's Constitutional right to be accorded fair administrative action. Mr. Orengo submitted that the act of the 2<sup>nd</sup> Respondent in summoning the Applicant over these allegations was a decision taken with an ulterior motive or purpose clearly calculated to prejudice the Applicant's legal rights as a Kenyan citizen and as the Governor of Mombasa County. Counsel submitted that these investigations have not been conducted expeditiously or fairly in the circumstances. In view of the foregoing, it was submitted that the decision by the 2<sup>nd</sup> Respondent to re-open the investigations under the pretext that they had received a complaint from a member of the public is not only false but misleading. The reason for re-opening the investigations into the alleged forgery is actuated with malice and bad faith and therefore to allow the same to proceed would be sanctioning infringement of Applicant's rights and wanton violation of the constitution.

37. **Mr. Orengo** submitted that the application does not and will not in any way interfere with the independence of the powers of the Director of Public Prosecution under Article 157 of the Constitution and that the petition filed herein does disclose legitimate constitutional issues for determination by this Court. Further Mr. Orengo submitted that the application and petition is intended to uphold the provisions of Article 157 (11) of the Constitution which provides as follows:

**“157 (11) In exercising the powers conferred by this Article, the Director of Public Prosecution shall have regard to the public interest, the interests of administration of justice and the need to avoid abuse of legal process.”**

38. Counsel observed that, Article 157 of the Constitution does not merely mean that the director of Public Prosecution is a conveyor belt for each and every investigations and findings placed before him. The office of the DPP is duty bound to interrogate the investigations presented to it and ensure that they comply and meet the Constitutional threshold. Counsel submitted that in view of the conduct of the 2<sup>nd</sup> Respondent as stated herein any resulting process would amount to an abuse of process and therefore in breach of Article 157 (11) of the Constitution. Mr. Orengo submitted that Court is enjoined by the provisions of Article 159(2) (e) of the Constitution to protect and promote the purpose and principles of our Constitution at all times. Therefore, Counsel submitted, it is within the province of this Court in exercising its power to prohibit the abuse of the intended criminal process as it is divorced from the goals of justice, and to find that the intended prosecution is not consistent with the constitutional values as enshrined under Article 10 and the tenets of good governance and the rule of law. Mr. Orengo submitted that the material availed to the court show clearly a well-coordinated deliberate effort by the 1<sup>st</sup> 2<sup>nd</sup> & 3<sup>rd</sup> Respondents to harass, intimidate and victimize the Applicant under the pretext of carrying out investigations. **Mr. Orengo** referred the court to the unprecedented and curious move by the Ethics and anti-corruption Commission who wrote a letter to Tom Mboya Primary School in Mombasa to 'verify' whether the Applicant had indeed attended Tom Mboya Primary School. The said letter was responded to on the 5<sup>th</sup> of April 2017 where Tom Mboya Primary School indeed confirmed the Applicant's admission number, index number as well as his KCPE results. **Mr. Orengo** submitted that the above clearly show that these acts on the part of the Respondents against the Applicant are unfair, discriminatory, unreasonable, and irrational, tainted in bad faith and malice and are decisions and or acts are made in abuse of power in contravention of Article 47 of the Constitution.

39. In a summing up submission, **Mr. Orengo** stated that the express orders made here in terms of security of the governor his bodyguards are still not given back and his fire arms has not been returned. Recently he was in Migori and there was violence against him. His companies are being harassed and now even the Anti-corruption commission is after him. How many governmental agencies will come after the Applicant? Counsel emphasized that the head of state himself stated that he would **“Mnyoroha”** the governor. So it is understandable that the governor is being harassed and abused with main aim to find a basis to disqualify the governor from contesting the county governorship.

40. Adding her voice to that of Senior Counsel **Mr. Orengo, M/s Soweto** submitted that it is not their

intention to stop investigations. Their complaint is the purpose for which the investigations are being conducted and the manner in which they are being conducted. The court must address the timing of those investigations and the flurry of activities. After the president made the “**Mnyorocha**” statement, all government agencies suddenly sprang up. Where have they been since 2013? Now KRA states they are investigating his payment of tax since 2013. Why now, and why not later. In the last one year the petitioner has been investigated one investigation after another, and as soon as one investigation is over another springs up. M/S Soweto submitted that the President’s utterance came soon after **Justice Odunga** delivered a ruling on the petitioner’s firearm on 16/12/16. In January 2017 the CID began investigations on the Petitioner’s school certificate. The investigation of petitioner’s certification started in 2017. There is no reference as to who the complainant is. The Respondents appear to have initiated the investigations without a complainant. Who is the complainant, when was the complaint made. Why at this stage, posed **Ms Soweto**

41.**M/S Soweto** submitted that the aim of these investigations are devoid of criminal justice and are merely vindictive and oppressive. The court cannot turn a blind eye to president’s utterances and what followed. In law perception is as good as fact. **M/S Soweto** submitted that the court cannot ignore that this is time for general elections, and that if the investigations are to stop the appellant from contesting, that is a blunted abuse of power and is against Art. 38 of the Constitution which is a right to petitioner to engage in politics and to be elected. The investigations are meant to fetter the rights of the opponent and to tie his hands and legs and then expect him to fight fairly. If those investigations and intended charges are to be seen to be fair then they should be done after the general elections.

42.**Mr. Muteti** for the 3<sup>rd</sup> Respondent submitted in rebuttal that what the petitioner asks this court is to suspend the constituted authority of the police, the A.G and DPP by seeking orders to restrain them from doing their constitutional duties. Counsel submitted that there is one concession by the applicant that investigations can continue. It is wrong to stop investigations unless it is demonstrated that it is being done for ulterior purposes. **Mr. Muteti** submitted that the DPP exercises his powers under Article 157 to institute criminal proceedings and to direct the CID to commence investigations. Counsel submitted that the application does not disclose a case against DPP. **Mr. Muteti** submitted that from the replying affidavit of **Mr. Githathi**, the investigations were commenced upon complaint made to the Directorate of Criminal Investigations and upon directions from the DPP. That was a proper exercise of DPP’s Constitutional authority. Secondly, the DPP has not acted on the said investigations since the same are still incomplete. Counsel submitted that there is no case against the DPP in this matter, and that no issue has crystallized against the DPP. As for the police **Mr. Muteti** submitted that they are acting within their powers. What is in issue is the alleged forging of 1992 KCSE result slip. Counsel submitted that this issue had not been addressed by the Applicant. **Mr. Muteti** questioned the applicant’s silence on the issue. If there is no basis for investigating the 1992 result slip then the petitioner must give the reason. **Mr. Muteti** submitted that the reliefs sought herein are equitable in nature, and that the applicant’s hands are not clean for suppressing information. Counsel submitted that the police are investigating a forgery of result slip which was allegedly used by the applicant to secure university admission. Further, **Mr. Muteti** submitted that the case of **Titus Omondi** was concerned with alleged forgery of the 1997 result slip of Serani Secondary School. The case was later withdrawn to facilitate further investigations. It has no connection with the Applicant herein. Counsel submitted that the allegations about state machinery being deployed to vanquish the petitioner is just a smoke screen. If the police intended to arrest and charge the applicant on trump up charges, what stopped the police from doing that since 2013? There is no evidence that the police is acting without cause. **Mr. Muteti** submitted that all the applicant has done is to import politics into this matter.

43.Citing the case of **Tukamuhebwa vs. A.G. (Uganda) Petition No. 59 of 2011**, **Mr. Muteti** submitted that The DPP acts independently regardless of the utterances of the President. There is no evidence that the DPP or the Inspector General of the police acted upon instruction from the President. **Mr. Muteti** submitted that if there is any benefit that can be drawn from these proceedings it is to allow the investigations so that chapter 6 of the Constitution on integrity can be complied with. This matter has nothing to do with elections. Counsel submitted that there is no law stopping any candidate facing charges from contesting in elections. At the moment, the application and petition are merely speculative. This court cannot issue speculation orders. Once investigations are complete the DPP will look at the

same and make independent decision.

44. Mr. Muteti also cited Petition No. 2 of 2017 Mombasa **Mohamed Swaleh vs. DPP & others**, and submitted that the court in that matter disallowed an application to stop investigations, and that this case should follow suit. **Mr. Muteti** also referred to Civil Application No. 31 of 2016 (UR 22/2016) **Dr. Alfred Mutua vs. EACC, DPP and others** and submitted that **Dr. Mutua** faced the same threats as alleged in this application. However, the court allowed the investigations to continue. Counsel submitted that for consistency it is important that court should allow the executive arm of the government to perform its functions but where there are good grounds the court can intervene. However, this court takes notice that the facts in **Dr. Mutua's** case are distinguishable. **Mr. Muteti** also cited the case of **United States V. Powell 1964 (US Supreme Court)** where it was observed that investigations should not stop unless there are gross abuse of process. **Muteti** submitted that issues of fire arm and body guards have been dealt with and the same is now moot.

45. **Mr. Ndege**, also for the 3<sup>rd</sup> Respondent submitted that under Art. 157 (6) and (10) of Constitution the DPP has power to institute criminal proceedings without seeking any consent from any authority. As such the submission by appellant that since 2013 the DPP has not taken steps amounts to directing the DPP. Counsel submitted that under section 24 of National Police Service Act the police has power to summon anybody in carrying out investigations, and that the police have followed the law and so the order sought cannot be given. **Mr. Ndege** distinguished the authorities cited by the Applicant, and affirmed that the court cannot interfere with Constitutional mandate of the DPP and the police. Counsel submitted that the applicant has not demonstrated that he will not get a fair hearing under Article 50 of the Constitution.

46. **Mr. Ndege** submitted that this court cannot purport to sieve the evidence and determine whether the petitioner will be prosecuted. It would be speculative and wrong for this court to suggest that the applicant will be prosecuted after the investigation. Counsel submitted that it is in the public interest that any complaint brought to the police be investigated and determined whether there is substantial evidence or not. The petitioner's right are not absolute. They must be balanced with the rights of the public. This court is not the trial court. It is only the trial court which can make findings after hearing the evidence. In this matter investigations are ongoing. There is yet no recommendation to charge the petitioner.

47. **Mr. Wamotsa** and **Mr. Guyo** also distinguished the authorities relied on by the Applicant, and submitted that in all the authorities cited by the applicant, the applicants therein had already been charged in court. In this case there is no decision to charge. In the **Jirongo** case there was an aspect of civil dispute. In this case there is none. In the **Githunguri** case there was a promise not to charge, while in this case, the state has not made any promise whatsoever. Counsel urged the court to dismiss the application.

48. In reply to Respondents submissions **Mr. Mosota** submitted that the new Constitution completely changed the paradigm of way of life in Kenya. Counsel submitted that grounds of opposition filed by the A.G. admit that an offence has been committed except that this court is not the proper forum. Counsel submitted that the totality of grounds of opposition points to the direction of where the respondents are moving and what they intend to achieve. The investigations by the Respondents is on everything about **Ali Hassan Joho**. It is a pure harassment. **Mr. Mosota** submitted that the Applicant's case is that there is an abuse and violation of human rights. That is why the applicant's authorities only deal with violation of rights and abuse of persons. **Mr. Mosota** admitted that while the DPP has the powers to direct investigations and to charge anybody for any alleged offence, the same powers have to be exercised constitutionally. Counsel submitted that there is a deliberate attempt to drag the governor in court. This is pure harassment. **Mr. Mosota** also submitted that Judicial Review is now available even under the Constitution. He submitted that the Government proceedings Act relied on by the Respondents is an inferior legislation which cannot supersede the Constitution. Counsel submitted that the issues of firearm and body guards are not moot because the Respondents have not complied with orders of courts which reinstated the same. **Mr. Mosota** submitted that an order of court cannot be unconstitutional. The court has powers to give appropriate orders, an Article 258 gives court powers to intervene where human rights violations are proved.

49. Citing the **Jirongo** case (supra) **Mr. Mosota** submitted that court has a duty to ensure that unlawful

prosecution is stopped on its track. Further under Article 165 (3) (d) (ii), the court has the jurisdiction to question anything to establish if the same are compatible with the Constitution. Also, the powers of the police and DPP and DCI are liable to be questioned under the Constitution. Counsel submitted that the court should not allow its processes to be used as conveyor belt. It must serve justice. **Mr. Mosota** also distinguished the Ugandan case of **Dr. Tiberius Muhebwa** (Supra) as not applicable here. The Ugandan case was where the president merely commented on an issue. In the present case the President issued a direct threat. Mr. Mosota also referred to the case of **Michael Monari Republic vs. Republic Misc Application No. 68 of 2011** submitting that criminal proceedings taken in bad faith, amount to abuse of the criminal process. Counsel submitted that there is no foundation and basis for the purported investigations or intended prosecution. The court should intervene through its inherent jurisdiction to stop any further similar processes that may lead to injuring the rights of the applicant.

### **Issues For Determination**

50. From submission of parties and from pleadings, there is only one issue for determination, and that is whether or not the Director of the Public Prosecution and the Directorate of Criminal Investigations have exercised their powers properly. Before I do that however, it is necessary to look at the personality of the Applicant, who he is, and to put his present predicament into context.

### **About the Applicant**

51. The applicant/petitioner is the governor of Mombasa, County No.001. In his KCSE which he sat in 1993, he scored a D- mark, and he is content with that. That D- notwithstanding, the applicant has scored a first in many areas. He is a former member of parliament for Kisauni Constituency in Mombasa. He is currently the governor of Mombasa County. He is also the deputy leader of ODM, the largest single political party in the country. The Applicant has also improved upon his D- Mark and is now a graduate from prominent Universities in the region. Needless to add, the applicant is a leader of choice in many other areas, and is an inspiration to many young people in this country. In recent times, the applicant has been called the Sultan. Although Kenya does not have the Sultanate title, the title evokes historical emotions especially in Mombasa, with a possible future relevance, if history were to repeat itself.

### **The Sultanate**

52. The Sultanate can be traced to ancient Omani presence at the Kenyan Coast. The presence of settlers from the Arabian Peninsula, including Oman has been documented for over a millennium, aided by trade and spread of Islam. Some scholars of Antiquity have documented this in the famous *Periplus of the Erythrean Sea* which documents thriving Swahili/Arab settlements on the Kenyan Coast more than 1,000 years ago. **Ibn Battuta** who travelled on this Coast in the early 1200s made a similar observation and there is a consensus among mainstream historians that Middle Eastern or Oman settlement on the Kenyan Coast could predate the arrival of Islam on the African continent in some aspect, or that Islam arrived on the East African Coast via these settlers before reaching most of Asia and North Africa.

53. It is also a matter of consensus among historians that by the early 1600 the Sultanate of Oman had set eyes on Zanzibar as an overseas possession, eventually declaring it part of its territory in 1698. Two Omani families dominated the settler community - the Al Mazrui and Al Busaidi. By 1698 the Al Busaidi clan or dynasty ousted the Al Mazrui from many Coastal towns including Eastern Africa. Further treaties between them would enable the two dynasties control various aspects of life in the Omani East African possession. The settlers intermarried with local tribes and some experts believe this led to the founding of Swahili race and language.

54. After generations, contact with and allegiance to Oman appeared to grow cold and weaker and today many Al Mazrui and Al Busaidi confess they cannot find their lineage in Oman.

55. In 1831 or 1832 Said bin Sultan, the ruler of Oman commonly known as Sayyid Said transferred the monarchy's seat from Muscat to Zanzibar. Zanzibar covered the Kenya Coast, many parts of current mainland Tanzania and into present day Democratic Republic of Congo (**DRC**) and two islands of Pemba

and Zanzibar and parts of today's Somalia. He introduced cloves cultivation in Zanzibar and invited Indian businessmen to invest on the island.

56. Sayyid Said had been Sultan since 1804 and when he died in Zanzibar in 1856 two sons Majid bin Said and Thuwayni waged war to succeed him leading to the split of the Sultanate. Thuwayni took over Oman as Majid took over Zanzibar, effectively securing Zanzibar's independence from the old Omani Sultanate. Majid's rule is not celebrated for it strengthened the Zanzibar economy on the basis of slave trade. His successor Bargash bin Said introduced policies to abolish slave trade and the system of exploitation. His successor Khalifa bin Said further extended the anti-slavery policy and modernization of infrastructure. Meanwhile, as early as the mid-1600s tensions between Oman and Portuguese increased, partly as a result of Portugal's growing interest in the Indian Ocean and attempts to colonize East African. Before that Portugal had conquered Oman but the conquest was reversed in 1660. Portugal, after this reversal, tried to attack Oman possessions in East African including Mombasa which the Portuguese captured in the late 1690s.

57. This occupation ignited a resistance by Arabs and local Africans and ended in the famous Siege of Fort Jesus when the rebels besieged and starved Portuguese soldiers and adventurers and their families inside Fort Jesus to death for three years between March 13 1696 and December 13 1698.

58. Until 1886 the Sultanate of Zanzibar covered the Kenya Coast. History would begin to change with the arrival of new colonizers from Britain and Germany. That year during the reign of Sultan Ali bin Said Zanzibar became part of British protectorate after the signing of the Heligoland Treaty between the British and Germans. By the Treaty the Sultanate of Zanzibar ceded its East African possessions to Britain, which would later also take over the Kenya protectorate from the Imperial British East Africa Company.

59. Henceforth Zanzibar, including the Kenyan Coast were ruled as a British protectorate alongside the Kenya colony and, eventually, Tanganyika from 1918 after the latter territory was taken from Germany at the end of the first World War.

60. Britain exercised indirect rule over Zanzibar allowing no less than eight sultans to govern the territory until 1964 when the departing colonialists gave power to a constitutional monarchy led by Jamshid.

61. Following the death in 1896 of Sultan Hamid Thuwaini who had succeeded Ali bin Said there was a struggle to succeed him involving Khalid Bargash who occupied the throne against the orders of the British who preferred Hamud bin Mohamed who was considered a British stooge. When Khalid refused to vacate the palace it was attacked and he was forced into exile and Hamud bin Mohamed was installed by the British.

62. On January 12 1964 the last Sultan of Zanzibar **Jamshid Abdullah bin Said** fled the island of Zanzibar at the end of a rebellion by revolutionaries led by **John Okello**, a mysterious stone mason from Uganda or Kenya who had travelled to then British protectorate to look for work in the last days of colonialism. Jamshid's flight ended the long reign of 11 Sultans on the East Africa Coast, a monarch that traced its roots to Oman. Approximately three months later, on October 5 1963, before the revolution and the flight, Jamshid had ceded control of a part of Zanzibar to the soon to be independent Kenya in a treaty signed by him, Prime minister **Jomo Kenyatta** and Zanzibar's prime minister **Mohammed Shante**. By this treaty signed in London's Colonial Office the Kenyan Coastal strip which had been part of Zanzibar effectively since 1856 became part of the geographical and political entity called Kenya.

63. Zanzibar renounced its claim to the Kenyan Coast transferring the jurisdiction to Kenya. But by taking over the Kenya Coastal strip Kenya agreed to uphold and protect Kadhi courts to arbitrate Muslims' personal law, promote Arabic language in the new part of its territory and as much as possible allow Muslims to administer predominantly Muslim parts of Kenya. Letters exchanged by the two prime ministers obliged Kenya to allow and uphold freedom of worship for Muslims besides preservation of their buildings and institutions. Kenyatta accepted the condition that administrative officers "**in predominantly Muslim areas should, as far as is reasonably practicable, profess the Muslim**

**religion.” Without this treaty independent Kenya would be landlocked. Jamshid bin Abdulla reigned until the 1964 ouster at the Zanzibar Revolution. He fled to the UK where he died.**

64. The above is the brief history of the Sultanate, a title which for now “**seems to be firmly held**” by the Applicant. Whether the Applicant **Hassan Ali Joho**, the current governor of Mombasa will be the next Sultan, only time will tell.

**How should the Director of Public prosecutions exercise his powers under Article 157 (10).**

65. The Petitioners cited the case of **Stanley Munga Githunguri vs. Republic Criminal Application no. 271 of 1985**. The issue in that case was whether the state’s right to prosecute a citizen for an alleged criminal offence can be ended by the court. The defence case was that the decision to charge the applicant four years after it was decided by the Attorney General of the day not to prosecute was in bad faith and an abuse of the court process, oppressive and vexatious.

66. **Mr. Wamotsa** for the state distinguished the **Githunguri** case on the basis that in the **Githunguri** case State had given an undertaking that they would not charge the appellant. While the alleged offence which the appellant herein is likely to be charged with has also been investigated over a considerable period of time, the fact that in the **Githunguri** case the State had given an undertaking not to charge the appellant makes the **Githunguri** authority not quite potent on the particular issue of time. However, the **Githunguri** case raises important issues for this application, one of which is that the exercise of the power conferred on the office of the Attorney General under section 26 (3) of the Old Constitution should be fair and reasonable and should not be exercised arbitrarily or oppressively. During that time the office of the Attorney General was responsible for public prosecution, a position now under the office of the DPP under Article 157 of the Constitution. The same question shall be asked, that is, whether in the exercise of its independent powers under Article 157 of the Constitution, the DPP can do so recklessly, arbitrarily, oppressively or in a manifestly discriminating manner. I shall come back to this issue later on in this ruling.

67. On their part the DPP and the Attorney General relied on my decision in Constitutional Petition no. **2 of 2017 (MSA) Mohamed Ali Swaleh vs. the DPP & Another Ex-parte Applicant: Titus Musau Ngome**. In that case the petitioner unsuccessfully sought to stop investigations into his alleged criminal conduct, alleging that the same was a vendetta against him being pushed by business rivalry, and that if the investigations were allowed to continue and he was charged, then his business would suffer and his business competitor would have won the advantage. In that case investigations were not complete, and the court declined to stop the same, as there was no evidence that the petitioner would be charged upon the completion of the same. So that case is clearly distinguishable

68. However, it is important to trace the powers of the police to investigate possible offences. Section 52 (1) of the National Police Service Act grants a police officer power to summon any person believed to have information which may assist in investigation to appear before the police in police station. The said Section provides that –

**“(1)A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is.”**

69. The summons issued under section 52 of the National Police Service Act are among the tools used by the police in conducting investigations. They do not indicate intention to charge and/or prosecute the person summoned. This is why in this matter the Applicant has recorded statement with the police and has honoured all the summons so far given by the police. It shows that the Applicant respects lawful authority

70. It is the opinion of this court that the decision whether or not to institute criminal proceedings is made based on the evidence collected. Once the investigations established reasonable suspicion that a person

committed a crime he ought to be charged in a court of law. The rest is left to the courts of law. This position was set out in the case of **Republic vs. Commissioner of Police ex- and another ex-parte Michael Monari & Another [2012] eKLR** where it was held that:

**“...the police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court...”**

The court went on to state that:-

**“As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”**

71. So then, the issue here is whether or not the holders of authority have exercised the same in a reasonable manner so that there is no need for any intervention by the court. That is as far as the police investigation is concerned.

72. As for the DPP there is no dispute to the fact that under Article 157 (10) of the constitution the Director of Public Prosecution is independent and cannot be subject to any agent or authority in the exercise of the power of his office. The exercise of those powers are only subject to Article 157 (11), which states that:-

**“In exercising the powers conferred by the Article the Director of Public Prosecution shall have regard to the Public interest, the interest of administration of justice and the need to prevent and avoid abuse of the legal process.”**

73. In **Gatiru Peter Munya vs. Dickson Mwenda Kithinji & 2 others (2014) eKLR**, the Supreme Court at paragraphs 83 to 89 and paragraphs 93 and 95 considered the principles for grant of conservatory orders in public interest. More specifically, at paragraph 86 the court stated:

**“Conservatory orders” bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory interlocutory injunctions, linked to such private party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”**

74. The Supreme Court further expressed that in an application for conservatory orders and any other interlocutory relief, public interest is a factor to be taken into account and public interest is a condition dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through the Constitution.

75. Whereas the applicant in his submissions urged that he is not seeking to restrain the DPP from discharging the constitution mandate, the legal and practical consequences of the instant application is that the applicant is seeking orders to stop the Director of Public Prosecution from exercising the powers conferred under Article 157 (4) and (6) of the Constitution. The conservatory orders sought seek to stop arrest and prosecution of the applicant for any alleged offence under investigation.

76. The Kenya Constitution upholds, and is based on principle of separation of powers, roles and functions for various constitutional actors. The office of Director of Public Prosecution is an independent office with clear defined functions. In principle, it is not the work of court to interfere with other State organs unless it can be shown that they violate the constitution: each State organ must be allowed to function without interference. It is the duty of this court to protect not only the functional administrative and operational independence of the office of Director of Public Prosecution but also to protect the applicant and ensure that in exercise of this functions, the DPP must have regard to the public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process.

77. In this context, functional, administrative and operational independence entails that the Offices of DPP and DCI in exercising their autonomy and carrying out their functions they do so without receiving any instructions or orders from other State organs or bodies and have regard to inter alia public interest and not to abuse the legal process. The office of DPP must also adhere to the national values in Article 10 of the Constitution and in the context of this application principles of good governance, transparency and accountability in exercise of its functions.

78. In considering public interest as a criterion for determining whether this court should grant conservatory orders as prayed for in this application, I have considered whether as a general rule it is in public interest to stop the DPP from investigating any criminal offence on the basis that such investigation is a threat to fundamental rights and freedoms because it may lead to arrest and prosecution of an individual. The reason for the existence of the Office of Director of Public Prosecution is investigation and prosecution of any and all alleged criminal offence. The functionality of the Office of DPP is ensured inter alia through Article 157 (4), (6), (10) and (11) of the Constitution. Under Article 157 (10), the DPP does not require the consent of the Court to undertake any investigation or prosecution of an individual. The instant application is an indirect application to this Court to grant or decline consent to the DPP to investigate and prosecute the alleged offences relating to the Applicant's education certificates. One of the instances in which a court can intervene in relation to the powers of the DPP is if Article 157 (11) is violated. In such a case, an applicant has to prove that public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process demand intervention by the court.

79. In my view, threat of arrest itself or threat of violation of fundamental rights and freedoms per se is not a reason enough to stop the DPP from carrying out his functions. What the law seeks to prevent is arbitrary arrest without probable cause. An objective justification must be shown to validate arrest of any individual. The Kenya Constitution recognizes that if a criminal offence is committed, investigation arrest and prosecution might ensue. In this context, the Constitution anticipates arrest of individuals and that is why **Articles 49 and 50** (2) make provision for the rights of arrested persons. Therefore, a threat of arrest of a person per se is not unconstitutional so long as due process of law is followed and the rights of the arrested person are observed. So the issue here is whether or not the applicant's right have been observed. Are the alleged investigations and probably charges being preferred against the applicant abuse of the criminal process, unfair to the applicant, or against the public interest? The applicant is the governor of Mombasa County. He became a governor pursuant to the general elections held in 2013. His election was challenged on a number of grounds among them that he did not have the requisite educational requirement to hold that position. That was an issue which was heard and determined by a court of competent jurisdiction. It is not a matter before this court. However, it is one of the issues the applicant now alleges he is being investigated on afresh, and the applicant's case is that the fresh allegations are a witch hunt and are intended to harass and intimidate him and bring his political life to a halt. In that regard, the applicant's case is that the alleged fresh investigations over his education qualifications are aimed as causing him political distress and to cause his constituents to shun and alienate him politically. Again, the Applicant's case is that the President of the Republic of Kenya **H.E. Uhuru Kenyatta** has castigated the governor in public and has used unpalatable language against the person of the governor and that the action of the president has brought the issue on to the public platform, and the issue has assumed a public interest and dimension.

80. According to the pleadings herein, it is alleged that the H. E. the President uttered words to the effect that "**nitamnyorsha**", which loosely translated means that the President would teach the appellant a lesson. According to the pleadings, the appellant has been called the Sultan of Mombasa, and that all utterances are in the public domain. Arising from the alleged presidential comment, the appellant's case is that all governmental forces have suddenly acquired interest in the Applicant, and that the DCI, the KRA, the DPP and the Attorney-General have simultaneously swung into action, with the DPP and DCI and the police investigating non existing issues, and the DPP threatening to charge the applicant with the sole purpose of making sure that the applicant loses the elections scheduled for 8<sup>th</sup> August 2017.

81. The aspects of investigations alleged to be going on are now firmly documented in this ruling. Clearly then, it is important to interrogate the alleged utterances of H.E. the President, and to determine the

context in which the same were made, and to establish if those utterances have any connection with the Applicant's alleged tribulations herein.

82. For avoidance of doubt the Presidency is a powerful institution in our Constitutional democracy. Under Article 131 (1), the President is the Head of State and Government, the Commander-in-Chief of the Kenya Defence forces, the Chairperson of the National Security Council and is a symbol of national unity.

83. Under Article 133 the President has the power of mercy and can pardon or lessen punishment. Under Article 132 (4) (e), with approval of Parliament, the President can declare war.

84. Clearly the President is a very powerful personality in this country. His position is also respected and honoured. When the President says anything, it is reported over and over again. His words, even if disputed, retain the power, respect prestige and honour of the Presidency. The President's utterances can also be taken out of context by various governmental and political actors depending on what the actors intend to achieve. In the present instance, what the President is alleged to have uttered have not been denied. What matters is the context in which the same were made. In their submission the Respondents did not engage so much on this issue. I guess to them the matter was a non-issue. They could be right. This is so because the President is also a politician. He is also given to the political emotions of the moment. It cannot be taken that whatever the President utters is meant to have the force of law. Politicians say so many things which are forgotten as soon as they are uttered. In the circumstances, the court does not accept the submission by the Applicant that the aforesaid utterances by the President were in any way meant to harm or to cause discomfort to the Applicant. Those were the kind of not so friendly words that politicians spew out in a moment of annoyance, and forget the same the next moment, and continue to still relate well with one another.

85. However, the President's utterances may have effect upon actors or agencies who believe that it is their duty to find expression or meaning for what the President may have said. This appears to be the case in this matter because soon after the President uttered the said words various governmental agencies fell head over heels, to initiate all manners of investigations of the Applicant. Even investigations which were abandoned in 2013 have been revived. All over sudden, there are fresh investigations on the academic certificates of the Applicant by the Director of Criminal Investigations; all over sudden the Applicant is being charged with robbery with violence; all over sudden the Kenya Revenue Authority is investigating the Applicant for alleged tax evasion; all over sudden the applicant's body guards and security detail, and firearms are being withdrawn, and remain withdrawn despite a court order that the same be restored. The question that this court must address is this: why the flurry of investigations, why now? And what causes the government to blatantly disobey the court orders to return the firearms and security guards and detail to the Applicant?

86. In my view, the most probable answer is that the respondents have misinterpreted the President's utterance. In other words, the Respondents appear to be "**mnyoroshering**" the applicant in their belief that they are executing an executive order. If I am right, and I think I am, then the respondents are more zealous minded than the executive. Their revival of investigations abandoned in 2013 is suspect, and is not in public interest. Although the Kenya Revenue Authority (KRA) is not part of these proceedings, and so no orders from the court can bind them, nonetheless it is clear that the script is the same: the idea is to cripple the applicant and to have a cocktail of possibilities with the sole purpose of limiting, hurting, damaging or altogether getting rid of the applicant from the political contest of the governorship of Mombasa County. So, this explains the question as to why now? In that regard it is clear the DPP has fallen foul of Article 157 (11) in that his actions appear to have disregard to public interest and the interest of the administration of justice, and is an abuse of the legal process because the DPP appear not to be taking independent decision. It is also in the public interest that alleged offences are investigated as soon as possible and charges, if any, are preferred without delay. A revival of investigations abandoned in 2013, and only after the President had publicly made remarks about the applicant, appear not to be in public interest

87. The grounds upon which the Application is based reveal an applicant under siege by government

forces and agencies. He has nowhere to run to except to this court. And this court, looking at the evidence and pleadings before it cannot accept that the sudden investigations and probable charges against the applicant are merely coincidental and that the applicant is only a subject of mathematical probability, that the investigative agencies are merely interested in the applicant in much the same way as they could be interested in any one of the 50 million Kenyans.

88. In the case of **Republic vs. Attorneys General ex-parte Kipng'eno No. 406 of 2001**, the Attorney General had preferred charges against the applicant 9 years after the alleged commission of the offence, and the applicant sought to stop the persecution on account of the delay. The court observed as follows:-

**“In the case before us, the delay was nine years. No attempt has been made to explain it. Why did the state not mount a prosecution immediately? We cannot think anything else but that the criminal prosecution against the applicant was motivated by some ulterior motive. It is not a fair prosecution.”**

89. In that case the then Kenya Anti-Corruption Authority (KACA) also came under heavy criticism of the court which observed that:

**“. . . KACA had just embarked on “its mission” and maybe it was over enthusiastic when it went after the applicant: a minister in the sitting Government of the day and quite a prominent personality. Our question in this case is whether the criminal prosecution of the applicant by the Attorney General is according to due process. We do not think so.”**

90. As in the present case, the applicant is a high flying official. He is a governor of a county. Investigations about his alleged criminal conduct was ordered (4) years ago. To date he has not been charged with any wrong doing. Instead there has been escalation of further investigations with a view to charging the applicant with various offences ranging from alleged tax evasion, forging academic documents robbery with violence, trading in drugs and a host of others yet to emerge. Despite the alleged investigations the applicant is yet to be charged. As was noted in the Kipng'eno case, although the delay herein is not nine years, this court finds that the principle behind the resumed investigation is the same. It may be motivated by factors which this court may not fully ascertain.

91. Whatever the motivation however, it is the considered opinion of this court that all the alleged investigation, intimidation and harassment and intended prosecution of the applicant by the Respondents have a politically timed ending, and that at this stage the applicant has established a prima facie case that the said intended charges and prosecution are ill timed and motivated, are malicious and disclose abuse of Constitutional rights, and should be stopped pending the hearing of the petition.

92. However, this court will not stop any investigation of the applicant. The DPP has the right to carry out any investigations. But they should not harass the applicant in the process. In particular the investigations about the applicant's educational background has now reached a public comic level. The Applicant has been investigated up to his primary school. I should think that the next level of any investigations in this matter will probably go to the hospital where the applicant was born. Or perhaps the investigations will look for the schools attended by the applicant's ancestors. My view here is not to bring comic relief to these proceedings. It is actually a judicial indictment of investigative and prosecution process based on no value or principles of criminal justice system, but purely suited to the appetite of investigative agencies.

93. However, if the result of the said investigation were to lead to charging and prosecuting the applicant, the said charges or prosecution shall remain stayed until the Applicant's petition herein is heard and determined. In order to go into the 2017 elections in a fair and free manner, it is important that all perception of unfairness be avoided. The Applicant must be allowed to contest fairly. For any charges to be preferred against the applicant before his petition is heard and determined, all perceptions of fairness would be lost. A contestant cannot have his hands and legs tied by an opponent, and still be expected to contest fairly in a democracy. I am satisfied that the treatment of the Applicant by the respondents disclose a prima facie case of breach of the right to fair administrative action that is expeditious, efficient,

lawful, reasonable and procedurally fair, and that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action as provided in Articles 47 (1) and (2) of the constitution and fair Administrative Act.

94. By dint of the foregoing paragraphs of this ruling, the Respondents' Preliminary Objection is not merited and stands dismissed.

95. In conclusion, I wish to echo the wisdom of **Chief Justice C.B. Madan** in 1986 in the **Githunguri case**. The judge operated in a very politically hostile environment, with a restrictive constitution and little or no democracy. Yet it was still clear to him that Mr. Githunguri's rights were protected under the then Judicial System of Kenya. The Judge said thus to Mr. Githunguri:

**“When you leave here raise your eyes up to the hills. Utter a prayer of thankfulness that your fundamental rights are protected under the Judicial System of Kenya.”**

96. So also, I say to the Applicant thus: **Hassan Ali Joho!** Lift up your eyes, and thank your God that Kenya is now a total democracy. Your fundamental rights are secured under judicial system of Kenya.

### **Final Orders**

97. The Applicant has not prayed for an order stopping any investigations about his activities, and the Respondents are at liberty to continue with the same. However this court hereby observes that it is now abundantly clear that any further purported investigations of the Applicant by the Respondent on the same issues will be an exercise in malice and an abuse of the criminal justice system and in contradiction of Article 157 (11) of the Constitution. In any event, however, the Applicant shall not be arrested, shall not be charged, shall not be prosecuted, shall not be harassed and shall not be intimidated in any manner and howsoever, until the petition herein is heard and determined. In specific terms orders are hereby issued in terms of prayers (C) (D) (E) (G) and (I).

98. That is the Ruling of the Court.

**Dated Signed and Delivered in Mombasa this 26<sup>th</sup> day of**

**April, 2017.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

S.C. James Orengo

Mr. Mosota Denis

M/S. Julie Soweto for Applicant

Mr. Muteti

Mr. Ndege

Mr. Wamotsa

M/S Kahoro

M/S Kiara for 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

Mr. Guyo Wachira for 4<sup>th</sup> Respondent

Mr. Randu Court Assistant