



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Okoti & 8 others v Kenyatta & 21 others; Senate of Kenya & 10 others
(Interested Parties) (Petition E216 of 2025) [2025] KEHC 8785 (KLR)
(Constitutional and Human Rights) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E216 OF 2025**

AB MWAMUYE, J

JUNE 19, 2025

**IN THE MATTER OF: THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23,
24, 27, 28, 33(1)(A), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206,
211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(G) &
6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40,
46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221,
222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2),
252(1A), AND 259 OF THE CONSTITUTION OF KENYA AS
READ WITH SECTIONS 15(2)(C), AND 50(3) OF THE PUBLIC
FINANCE MANAGEMENT ACT IN THE BORROWING AND
USE OF THE PROCEEDS OF THE EUROBOND IN THE
FINANCIAL YEARS 2014/2015 AND 2023/2024.**

**IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE PUBLIC
FINANCE MANAGEMENT (AMENDMENT) ACT 2014,
WHICH, CONTRARY TO ARTICLE 206(1) OF THE
CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT
PAYING LOAN REVENUES RAISED BY THE NATIONAL
GOVERNMENT INTO THE CONSOLIDATED FUND, AND**

PAGE 1 OF 9

WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY



**WITHOUT INVOLVING THE SENATE.
IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1),
50(6), (7)(B, C, & D), (8) & (10)(B), 50(2, 2A, 2B, 2C & 2D), 53,
AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT,
2012; AND OF SECTION 6 OF THE FINANCE
MANAGEMENT (AMENDMENT) ACT, 2023; WHICH
AMENDED SECTION 50(2) OF THE PUBLIC FINANCE
MANAGEMENT ACT 2012.**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE PUBLIC
FINANCE MANAGEMENT ACT 2012; THE FAIR
ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND
INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT
2003.**

**IN THE MATTER OF: THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION
OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE
MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE
FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7,
9, 10,
11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF
THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS
9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS
ACT.**

PAGE 2 OF 9

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY
OF THE DEBTS AMOUNTING TO KSHS.
6,950,163,132,328 INCURRED BY THE
RESPONDENTS IN THE TEN-YEAR PERIOD
SPANNING THE FINANCIAL YEARS 2014/2015 TO
2023/2024, INCLUDING THE EUROBONDS,
WHICH THE
RESPONDENTS
UNCONSTITUTIONALLY AND UNLAWFULLY
BORROWED YET THEY WERE NOT IN THE
NATIONAL BUDGETS (APPROPRIATION ACTS)**



**APPROVED BY PARLIAMENT AND SIGNED
INTO LAW BY THE PRESIDENT, AND THEY
WERE NOT TIED TO ANY DEVELOPMENT
PROJECTS.**

**IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE DEBT
CEILING SET BY PARLIAMENT BASED ON THE
GROSS DOMESTIC PRODUCT (GDP) AND NOT
ON THE REVENUES RAISED BY THE
GOVERNMENT.**

**IN THE MATTER OF: THE VALIDITY AND ENFORCEABILITY OF
SOVEREIGN LOANS AND GUARANTEES WHICH
LACK A PROPER AUTHORIZATION AND ARE
TAINTED WITH CORRUPTION.**

PAGE 1 OF 6

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF
BURDENING CURRENT AND FUTURE
GENERATIONS WITH THE REPAYMENT OF THE
STOLEN BORROWED PUBLIC MONEY.**

**IN THE MATTER OF: THE PRINCIPLES OF UNJUST ENRICHMENT AND
THE PERSONAL LIABILITY OF PUBLIC OFFICERS
RESPONSIBLE FOR THE MISSING/STOLEN
EUROBOND PROCEEDS AND THE NEED TO
RECLAIM THE STOLEN MONEY.**

**IN THE MATTER OF: SUING THE PRESIDENT OF KENYA UNDER
ARTICLE 143(4) OF THE CONSTITUTION.**

**IN THE MATTER OF: THE DOCTRINES OF ODIOS DEBT, ILLEGALITY,
OSTENSIBLE AUTHORITY, PUBLIC POLICY,
RESTITUTIONARY REMEDIES, AND LEGITIMATE
EXPECTATION**

BETWEEN

**OKIYA OMTATAH OKOITI 1ST PETITIONER
NYAKINA WYCLIFE GISEBE 2ND PETITIONER
ELUID KARANJA MATINDI 3RD PETITIONER**



BERNARD MUCHIRI MUCHERE 4TH PETITIONER
MAGARE GIKENYI BENJAMIN 5TH PETITIONER
KELVIN SAITOTI NAIKUNI 6TH PETITIONER
OLIVE NAISINKEI AMBROSE 7TH PETITIONER
DANCAN OTIENO ONYANGO 8TH PETITIONER
NAOMI NYAKERARIO MISATI 9TH PETITIONER

AND

UHURU MUIGAI KENYATTA 1ST RESPONDENT
NATIONAL EXECUTIVE 2ND RESPONDENT
CABINET SECRETARY FOR THE NATIONAL TREASURY 3RD RESPONDENT
PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY 4TH
RESPONDENT
DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE 5TH
RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT
CONTROLLER OF BUDGET 7TH RESPONDENT
AUDITOR GENERAL 8TH RESPONDENT
NATIONAL ASSEMBLY 9TH RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO 10TH
RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO 11TH RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI 12TH RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH 13TH
RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE 14TH
RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI 15TH
RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU 16TH
RESPONDENT
CONTROLLER OF BUDGET MARGARET NYAKANG'O .. 17TH RESPONDENT
AUDITOR GENERAL NANCY GATHUNGU 18TH RESPONDENT
GOVERNOR, THE CENTRAL BANK OF KENYA 19TH RESPONDENT
ETHICS AND ANTI-CORRUPTION COMMISSION 20TH RESPONDENT



FORMER EACC CEO/SECRETARY HALAKHE D. WAGO .. 21ST RESPONDENT
INTERNATIONAL MONETARY FUND 22ND RESPONDENT

AND

SENATE OF KENYA INTERESTED PARTY
LAW SOCIETY OF KENYA INTERESTED PARTY
KATIBA INSTITUTE INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ... INTERESTED
PARTY
TRANPARENCY INTERNATIONAL INTERESTED PARTY
INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) ... INTERESTED PARTY
COMMISSION OF JURISTS (ICJ-KENYA) INTERESTED PARTY
KENYA DEBT ABOLITION NETWORK (KDAN) INTERESTED PARTY
NATIONAL TAXPAYERS ASSOCIATION (NTA) INTERESTED PARTY
COMMITTEE FOR THE ABOLITION ILLEGITIMATE DEBTS
(CADTM) INTERESTED PARTY

RULING

1. This Ruling addresses the Petitioners' Application dated 24th April 2025 seeking certification under Article 165(4) of the Constitution Petition No. E216 of 2025 raises substantial questions of law, and for a consequential referral to the Hon. Chief Justice for the empanelment of a bench of not less than three judges.
2. Certification is unanimously supported by the other parties. It has also been pointed out to this Court that there is another pending matter on the same broad subject matter as this Petition, which other matter is HCCHRPET E248/2023 which is before a three-judge bench comprising of Hon. Lady Justice R.E. Aburili, Hon. Mr. Justice J. Chigiti (SC), and Hon. Mr. Justice L.N. Mugambi. I note that that matter is indeed on the same broad subject matter, and there is significant overlap between the two petitions; with HCCHRPET E248/2023 coming up for highlighting of written submissions on 20/06/2025, which is tomorrow.
3. Having considered the matter in light of the applicable caselaw, and having compared this Petition to that in HCCHRPET E248/2023, I am satisfied that the Petition herein raises substantial questions of law touching on various aspect of Article 165(3) of the Constitution. Consequently, I certify this Petition as raising substantial questions of law pursuant to Article 165(4) of the Constitution and I hereby forward this file to the Hon. The Chief Justice for empanelment of a bench of no less than three Judges of the High Court to hear and determine this Petition and any interlocutory applications therein.
4. Administrative actions required to be taken forthwith.

DATED, SIGNED, AND DELIVERED ON THIS 19TH DAY OF JUNE 2025.



.....
BAHATI MWAMUYE.

JUDGE.

In the presence of:

Mr. Okiya Omtatah Okoiti - 1st Petitioner

Mr. Bernard Muchere - 4th Petitioner

Dr. Magare Gikunyi - 5th Petitioner

Mr. Kelvin Naikuni - 6th Petitioner

Mr. Nganyi - for the 9th Respondent

Mr. Jaoko - for the 9th Respondent

Mr Paul Gichana and Mr. Malidzo Nyawa - for the 3rd and 7th Interested Parties

Ms. Mwanzia for the 6th Interested Party

Ms. Weru holding brief Mr. Munyu for the 19th Interested Party

Ms Neema – Court Assistant

