



**Republic v Director of Public Prosecutions & 2 others; Wanyama (Exparte Applicant) (Judicial Review Application 17 of 2022) [2024] KEHC 7362 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7362 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
JUDICIAL REVIEW APPLICATION 17 OF 2022**

**AC MRIMA, J  
JUNE 20, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR ATE OF CRIMINAL INVESTIGATIONS ... 2<sup>ND</sup> RESPONDENT**

**THE SENIOR RESIDENT MAGISTRATE, KITALE LAW**

**COURTS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**AGNES NEKESA WANYAMA ..... EXPARTE APPLICANT**

**JUDGMENT**

**The Background and the Applicant’s case:**

1. Agnes Nekesa Wanyama, the Exparte Applicant herein, filed the Notice of Motion dated 26<sup>th</sup> October 2022 on the basis of Sections 8 and 9 of the *Law Reform Act* as read with Order 53 Rule 3 and 4 of the Civil Procedure Rules.
2. The application was supported the Affidavit and Supplementary Affidavit deposed to by the Exparte Applicant on 26<sup>th</sup> October 2022 and 7<sup>th</sup> December 2022 respectively.
3. The Applicant, sought the following reliefs: -
  - i. That this Honourable Court be pleased to issue an order of certiorari to remove into this Honourable Court and quash the entire proceedings in Kitale Senior Resident Magistrate’s Court Criminal Case No. 1391/22; Republic -versus- Agnes Nekesa Wanyama.



- ii. That this Honourable Court be pleased to issue an order of prohibition to prohibit the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent herein, that is the Director of Public Prosecutions (DPP) the Directorate of Criminal Investigations and the Senior Resident Magistrate, Kitale Law Courts from prosecuting, trying, hearing and or taking of further proceedings in Kitale Senior Resident Magistrates Court Criminal Case No. 1391/22 Republic -versus- Agnes Nekesa Wanyama.
4. In the grounds in support of the application, the Applicant stated that the decision to prosecute her in Kitale Chief Magistrates Criminal Case No 1391 of 2022, Republic -vs- Agnes Nekesa Wanyama (hereinafter referred to as ‘the Criminal Case’) with four counts of obtaining money by false pretence contrary to Section 312 as read with Section 313 of the Penal Code was premature, malicious and unconstitutional since the four complainants who purchased her land are still in possession of their respective portions pursuant to the Court Order issued on 2<sup>nd</sup> March 2022 in Kitale Chief Magistrates Court ELC Case No. 22 of 2022 Agnes Wanyama -vs- Permanent Secretary Treasury, The Land Registrar Trans Nzoia County and the Hon. Attorney General (hereinafter the ‘the land case’).
5. It was her case that the land case was yet to be heard and determined and, therefore, her prosecution was aimed at harassing and intimidating her to drop her bona-fide claim over the suit land.
6. The Applicant gave historical context of the dispute in her Statement of Particulars dated 17<sup>th</sup> October 2022.
7. It was her case that she bought 2 acres of land from one Rasito Mukisu, at Matisi Estate through the Land Sale agreement dated 6<sup>th</sup> July 1976, wherein she immediately took possession and constructed her home thereon.
8. It was her case that the land had a road passing through it thus dividing it into two portions. The Applicant asserted that she and other sixteen women registered a Self-Help Group known as Matisi Self Help Group where they constructed a fish pond on one side of the land.
9. It was her further case that the members abandoned the project in the year 2007 but the fish pond continued in existence. She stated that in the year 2006 she subdivided and sold her land that is adjacent to the fish pond to various purchasers who immediately took possession of their respective parcels and have remained thereon to date.
10. The Applicant claimed that the purchasers are the complainants in Kitale Chief Magistrates Court Criminal Case No. 1391/22 Republic -vs- Agnes Nekesa Wanyama, the subject of the instant Judicial Review proceedings.
11. It was her case that she was issued with the title deed to the subject land No. Kiminini/Kinyoro Block 3/Matisi/1524 on 22<sup>nd</sup> November 1993 and it was her belief that the Title Deed covered the entire suit land.
12. She claimed that sometime in June 2021 when she tried to process the title deed for the purchasers of her land adjacent to the fish pond, the Registrar of Lands informed her that the subject land is Kiminini/Kinyoro Block 3/Matisi/268 and that the Permanent Secretary in the Treasury was the registered proprietor.
13. The Applicant was also informed that the Permanent Secretary Treasury was also the owner of the parcel of land with the fish pond Land title No. Kiminini/Kinyoro Block 3/Matisi/267.
14. Contrary to the foregoing, the Applicant stated that she was the lawful owner of both Kiminini/Kinyoro Block 3/Matisi/268 and Kiminini/Kinyoro Block 3/Matisi/267 since the two parcels of land



were an extension of Kiminini/Kinyoro Block 3/Matisi/524 which she lawfully purchased in 1976 from Rasito Mukisu.

15. Deriving from the foregoing, the purchasers of the Applicant's land sought a refund of their purchase price. As a result, the Applicant instituted Kitale Chief Magistrates Court ELC No. 22 of 2022, Agnes Nekesa Wanyama -vs- The Permanent Secretary Treasury & 2 Others whereby the Court issued temporary injunctive reliefs on 2<sup>nd</sup> March 2022 maintaining the status quo pending the hearing and determination of the matter.
16. It was the Applicant's case that despite the existence of the Orders of 2<sup>nd</sup> March 2022, the purchasers of her land instituted the criminal case on the claim that she obtained money from them through false pretence.
17. The Applicant was eventually charged in the criminal case and thereafter instituted the instant proceedings.

#### **The Respondents' case:**

18. The Director of Public Prosecutions, The Directorate of Criminal Investigations and the Senior Resident Magistrate Kitale Law Court challenged the Notice of Motion through the Replying Affidavit of Kiptoo Jemutai Jackline, the Senior Assistant Director of Public Prosecutions Kitale County, deposed to on 21<sup>st</sup> November 2022.
19. It was her case that the entirety of the Applicant's case was speculative and devoid of merit tailored to unjustly and unfairly hoodwink the Court since the Applicant was lawfully charged with four counts of obtaining money by false pretences contrary to section 312 as read with section 313 of the Penal Code, the relevant section that criminalizes false pretence or false representation with the intention to defraud.
20. She deposed that the 1<sup>st</sup> Respondent has the constitutional mandate and authority under Article 157 of *the Constitution* to commence criminal proceedings and to perform such function having regard to the public interest and the administration of justice under article 157(11) of *the Constitution*.
21. In giving its version of the dispute, the 1<sup>st</sup> Respondent deposed that the 2<sup>nd</sup> Respondent herein through OB No. 76 of 22<sup>nd</sup> February 2022 received complaints from Judith Wanjala, Rosoa Kahindi Wanyama, Violet Nanjala Wekesa and Eunice Achulu Ipomai (hereinafter referred to as 'the complainants') to the effect that on diverse dates between 17<sup>th</sup> May 2006 and 28<sup>th</sup> May 2012, they purchased plots from the Applicant which later turned out to be part of public land known as Kiminini/Kinyoro Block 3/Matisi/267 & 268.
22. She deposed that the 2<sup>nd</sup> Respondent probed the case and it emerged that the Applicant herein represented to the complainants that she was the owner of the same parcels of land and purported to sell them to the complainants and to that end received sufficient consideration.
23. It was her case that after signing the agreements of sale with the complainants, the Applicant purported to and indeed settled that complainants on the parcel of land Kiminini/Kinyoro Block 3/Matisi/268 when she ought to have known that the said parcel was Government Land registered in the Permanent Secretary, Treasury.
24. She deposed that the Applicant misled the complainants into believing that she was capable of selling and transferring to them interests in the said land when she ought to have known that the said parcel of land was reserved for public use and that she had no interest in it.



25. On the foregoing, it was her case that the Applicant's prosecution was well grounded in law and fact aimed at protecting unsuspecting Public from being defrauded.
26. It was her case that the circumstances of the Applicant's case do not warrant this Court's intervention since the Applicant is presumed innocent and will be accorded an opportunity to defend herself. It also was the Respondent's case that no prejudice will be visited on the Applicant and as such, this Court's supervisory powers under Article 165 was not warranted.

### **The Parties' Submissions:**

27. The Applicant and the Respondents filed written submissions dated 7<sup>th</sup> December 2022 and 15<sup>th</sup> February 2023 respectively. The tenor of their respective arguments and the authorities relied upon are infused in the analysis section of this judgment.

### **Analysis:**

28. On perusal of the record and the parties' submissions, the only issue that arises for determination is whether the circumstances of the Applicant's prosecution warrant this Court's intervention.
29. The suit invites this Court to exercise its Judicial Review jurisdiction. The Supreme Court spoke to the mandate of a Judicial Review Court in Judicial Petition Nos 13 A, 14 & 15; of 2013 (Consolidated) Judges & Magistrates Vetting Board & 2 others v Centre for Human Rights & Democracy & 11 others [2014] eKLR as follows: -

[160] "Judicial review", as a process of the rule of law which bears upon the interplay between the Courts and the administrative processes, has been thus depicted by Sir Anthony Mason in his article, 'The Tension between Legislative Supremacy and Judicial Review? (2003) 77 ALJ 803 (at page 805):

- (1) what Parliament enacts as law within the limits of the powers committed to it by *the Constitution* must be respected and applied by the Courts. The responsibility of the courts to give effect to laws validly enacted by Parliament is a central element of the rule of law;
- (2) the Courts and the Courts alone, under our system of government have the jurisdiction and authority to make an authoritative determination of what the law is;
- (3) the rule of law presupposes that the individual has a right of access to the courts for the determination of his or her rights; the proposition is expressed in the presumption that the legislature does not intend to deprive the citizen of access to the courts, other than to the extent expressly stated or necessarily implied; and
- (4) judicial review is the means by which the administrative decision-maker is prevented from exceeding the powers and functions conferred by law, with the consequence that individual interests are protected accordingly.

30. The Apex Court then expressed itself thus: -

(161) When Courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, Courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights; and ensures that decision makers are not above the



law, but have taken responsibility for making lawful decisions, in the knowledge that they are reviewable.

31. The nature of judicial review in Kenya has, since the promulgation of the 2010 Constitution, undergone tremendous transformation.
32. Before 2010, Judicial review was only limited to procedural review. The Court of Appeal in *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR, delimited the role of the Judicial Review Court in the following manner: -

..... Judicial review is concerned with the decision making process, not with the merit itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether the in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters.....The court should not act as a court of appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.
33. The purview of judicial review, however, has been transformed, courtesy of the 2010 Constitution, to include merit review of decisions as well. The journey has, however, been gradual.
34. In *SGS Kenya Limited v Energy Regulatory Commission & 2 others (Petition 2 of 2019)* [2020] KESC 64 (KLR) (10 January 2020) (Judgment), the Supreme Court held to the traditional position that judicial review was limited to only procedural review of decisions.
35. Later, in *Saisi & 7 others v Director of Public Prosecutions & 2 others (Petition 39 & 40 of 2019 (Consolidated))* [2023] KESC 6 (KLR) (Civ) (27 January 2023) (Judgment), the Supreme Court rendered that judicial review would transcend the borders of procedural review of decisions into merit review, but only in instances where the evidence was uncontroverted.
36. About three years later, the Supreme Court in 2023 in *Dande & 3 others v Inspector General, National Police Service & 5 others (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated))* [2023] KESC 40 (KLR) (16 June 2023) (Judgment) further rendered that judicial review as entrenchment in *the Constitution* of Kenya, 2010 was elevated to a substantive and justiciable right under *the Constitution*. Accordingly, judicial review was no longer a strict administrative law remedy but also a constitutional fundamental right enshrined in *the Constitution*. Thus, Article 47 of *the Constitution* provided that every person had a right to an administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair.
37. The Court went on to state that the entrenchment of judicial review in *the Constitution* had led to the emergence of divergent views on the scope of judicial review. The first group postulated that judicial review was concerned with the process a statutory body employed to reach its decision and not the merits of the decision itself while the second group opined that under the current constitutional dispensation, courts could delve into both procedural and merit review in resolving disputes.
38. In reconciling the dilemma, the Apex Court stated that when a party approached a Court under the provisions of *the Constitution* then the Court ought to carry out a merit review of the case. However, if a party filed a suit under the provisions of Order 53 of the Civil Procedure Rules and did not claim any violation of rights or even violation of *the Constitution*, then the Court could only limit itself to the process and manner in which the decision complained of was reached or action taken and not the merits of the decision per se.



39. The foregoing is the prevailing law although the Supreme Court did not formally state that it was departing from its positions in the SGS case (supra) and Saisi case (supra). There is, however, no doubt that the Dande case (supra) is the now applicable law on the purview and of judicial review in Kenya.
40. Having set out the jurisdictional borders of this Court in this matter, the focus now focuses to the purpose and the manner in which the instant suit was framed.
41. This Court has carefully perused the application and the rest of the record. There is no doubt that the Applicant challenged the manner in which the Director of Public Prosecution (hereinafter ‘the DPP’ or ‘the 1<sup>st</sup> Respondent’) exercised its powers in making the decision to charge her. The matter, therefore, challenges the DPP on the basis of Article 157 of *the Constitution*. As such, and from the guidance in the Dande case (supra), since the Applicant contended that the DPP violated its mandate in Article 157(11) of *the Constitution*, then this Court is entitled to carry out both a procedural and a merit review of the matter.
42. The person’s right to approach a Judicial review Court to contest their prosecution must be understood from the premise that the prosecutorial power of the DPP under Article 157(6) of *the Constitution* is not unfettered. It is subject to important checks and balance, a constitutional function of this Court, as codified in Article 165(3)(d)(ii) of *the Constitution* as follows: -
- (3) Subject to clause (5), the High Court shall have—
    - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
      - (ii) the question whether anything said to be done under the authority of this Constitution or any other law is consistent with, or in contravention of this Constitution.
43. Therefore, the determination of the question whether the prosecutorial mandate of the DPP was exercised ‘constitutionally’ is the power bestowed upon this Court by virtue of Article 165(3)(ii) of *the Constitution*.
44. In assessing the propriety of the decision to prosecute, the parameters the High Court considers are set out in Article 157(11) of *the Constitution*. They are;
- i. Whether the prosecution was done in public interest.
  - ii. Whether the interest of administration of justice was served.
  - iii. The need to prevent and avoid abuse of legal process.
45. The Court of Appeal appreciated the foregoing in *Diamond Hassam Lalji & Anther -vs- Attorney General & 4 Others* (2018) eKLR when the Learned Judges, in reference to the decision of the Court of Appeal of Singapore in *Ramalingam Ravinthran v. Attorney General* [2012] SGCA 2, observed as follows: -
- ... there cannot be any doubt that the prosecutorial discretion of DPP is not absolute. It is limited by Article 157(11) which specifies the mandatory considerations that underlie the exercise of discretion; by the constitutional principles to which we have referred and by statute.



In *Ramalingam Ravintran v. Attorney General* [2012] SGCA 2, the Court of Appeal of Singapore said at para 53:

“The Attorney General is the custodian of prosecutorial power. He uses it to enforce criminal law not for its own sake but for the greater good of the society, i.e. to maintain law and order as well as to uphold rule of law.

Offences are committed by all kinds of people in all kinds of circumstances. It is not the policy of the law under our legal system that all offenders must be prosecuted, regardless of the circumstances in which they have committed offences. Furthermore, not all offences are provable in a court of law. It is not necessary in the public interest that every offender must be prosecuted, or that an offender must be prosecuted for the most serious possible offence available in the statute book. Conversely, while the public interest does not require the Attorney General to prosecute any and all persons who may be guilty of the crime, he cannot decide at his own whim and fancy who should or should not be prosecuted and what offence or offences a particular offender should be prosecuted for. The Attorney General’s final decision will be constrained by what public interest requires.”

46. The foregoing, therefore, sets the stage for consideration the Applicant’s case.
47. The Applicant herein instituted the land case. At the core of the dispute is the ownership of Land reference No. Kiminini/Kinyoro Block/Matisi/267 and 268, the very land that is subject of the Criminal Case and the instant Judicial Review Application.
48. The Applicant produced as evidence the Order of the Court in the Land case. It is dated 23<sup>rd</sup> February 2022 and was issued on 2<sup>nd</sup> March 2022. The Orders thereon are as follows;
  1. That a temporary Order of injunction is hereby issued restraining the Respondents their agents, employees, servants or anybody acting for them or on their behalf from acquiring, evicting, trespassing into or in any manner whoever dealing with the Land Reference Number Kiminini/Kinyoro Block/ Matisi/267 and 268 pending the hearing and determination of this suit.
  2. That the costs of this application to be in the cause.
  3. That mention to confirm compliance on 30/03/2022.
49. Drawing from the above, it is apparent that the ownership of the parcel of land subject of the criminal case is pending determination before the Land Court in the land case. In the premises, should it turn out, after hearing and final determination, that the Applicant herein is the rightful proprietor, inevitably, the complainants in the criminal case will have ownership of their respective portions restored.
50. Therefore, if the criminal case were to be left to go on, the interests of administration of justice will not have been served and the criminal case would be tantamount to entertaining the legal process to be abused, a position frowned upon by Article 157(11) of *the Constitution*.
51. This Court draws guidance from the Court of Appeal in *Commissioner of Police & Another v Kenya Commercial Bank Ltd & 4 Others* [2013] eKLR where the Court found that the High Court can stop a process that may lead to abuse of power. It was observed thus: -

... Whereas there can be no doubt that the field of investigation of criminal offences is exclusively within the domain of the police, it is too fairly well settled and needs no



restatement at our hands that the aforesaid powers are designed to achieve a solitary public purpose, of inquiring into alleged crimes and, where necessary, calling upon the suspects to account before the law. That is why courts in this country have consistently held that it would be an unfortunate result for courts to interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. The courts must wait for the investigations to be complete and the suspect charged.

By the same token and in terms of Article 157 (11) of *the Constitution*, quoted above, in exercising powers donated by the law, including the power to direct the Inspector General to investigate an allegation of criminal conduct, the DPP is enjoined, among other considerations, to have regard to the need to prevent and avoid abuse of the legal process. The court on the other hand is required to oversee that the DPP and the Inspector General undertake these functions in accordance and compliance with the law. If it comes to the attention of the court that there has been a serious abuse of power, it should, in our view, express its disapproval by stopping it, in order to secure the ends of justice, and restrain abuse of power that may lead to harassment or persecution. See *Githunguri v Republic* [1985] LLR 3090.

52. The power to prosecute and the attendant duty of the High Court to offer checks and balance was further discussed in *Bernard Mwikya Mulinge v Director of Public Prosecutions & 3 others* [2019] eKLR where it was observed;
25. It is therefore clear that the current prosecutorial regime does not grant to the DPP a *carte blanche* to run amok in the exercise of his prosecutorial powers. Where it is alleged that the standards set out in *the Constitution* and in the aforesaid Act have not been adhered to, this Court cannot shirk its constitutional mandate to investigate the said allegations and make a determination thereon. To hold that the discretion given to the DPP to prefer charges ought not to be questioned by this Court would be an abhorrent affront to judicial conscience and above all, *the Constitution* itself. I associate myself with the sentiments expressed in *Nakusa vs. Tororei & 2 Others* (No. 2) Nairobi HCEP No. 4 of 2003 [2008] 2 KLR (EP) 565 to the effect that:

... the High Court has a constitutional role as the bulwark of liberty and the rule of law to interpret *the Constitution* and to ensure, through enforcement, enjoyment by the citizenry of their fundamental rights and freedoms which had suffered erosion during the one party system...In interpreting *the Constitution*, the Court must uphold and give effect to the letter and spirit of *the Constitution*, always ensuring that the interpretation is in tandem with aspirations of the citizenry and modern trend. The point demonstrated in the judgement of *Domnic Arony Amolo vs. Attorney General* Miscellaneous Application No. 494 of 2003 is that interpretation of *the Constitution* has to be progressive and in the words of Prof M V Plyee in his book, *Constitution of the World*: “The Courts are not to give traditional meaning to the words and phrases of *the Constitution* as they stood at the time *the Constitution* was framed but to give broader connotation to such words and connotation in the context of the changing needs of time..... In our role as “sentinels” of fundamental rights and freedoms of the citizen which are founded on *laissez-faire* conception of the individual in society and in part also on the political – philosophical traditions of the West, we must eschew judicial self-imposed restraint or judicial passivism which was characteristic in the days of one party state. Even if it be at the risk of appearing intransigent “sentinels” of personal liberty, the Court must enforce the Bill of Rights



in our Constitution where violation is proved, and where appropriate, strike down any provision of legislation found to be repugnant to constitutional right.

53. In Civil Appeal No. 25 of 2002, Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others [2009] KLR 229, the Court of Appeal discussed abuse of Court process in the following terms: -

.... The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in bona fides and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it...The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice. Examples of the abuse of the judicial process are: -

- i. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- ii. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
- iii. Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent's notice.
- iv. Where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness.

54. The preceding findings sufficiently guide this Court. The circumstances of the instant suit merit the intervention of this Court. In the face of the pendency of the land dispute, the institution and continuance of the criminal case is premature, an abuse of process of Court that attracts this Court's deference.

55. The prosecution obviously ignored relevant factors in reaching its decision to prosecute. For instance, the land case was instituted in March 2022 and the criminal case was founded in September 2022. Further, the Applicant has a title deed which has not been declared invalid by a Court of law. Suppose the land truly belongs to her? As such, how can the instant charges stand? The issue of the complainants demanding a refund of their purchase prices?

56. It is, hence, apparent that the Applicant was charged as a way of compelling her to reimburse the complainants of their purchase prices and not otherwise. The prosecution was, therefore, used to achieve an ulterior motive. That is an abuse of the judicial process and an affront to the administration of justice; acts which this Court abhors. The best option to the DPP, in the unique circumstances of this matter, was to hold any criminal charges against the Applicant pending the outcome of the land case.

57. This is a matter in which the Applicant has successfully demonstrated that the DPP acted contrary to the dictates of Article 157(11) of *the Constitution*.

58. It is on that basis that this Court finds the application merited.



**Disposition:**

59. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by pressure of work in High Court at Kitale, Kapenguria and Nairobi and the appointment of Yours truly into the Presidential Tribunal investigating the conduct of a Judge. Apologies galore.
60. In the end, the following final orders hereby issue: -
- a. An Order of Certiorari be and is hereby issued to remove into this Court and quash the decision of the 1<sup>st</sup> Respondent to charge the Applicant herein, Agnes Nekesa Wanyama in Kitale Senior Resident Magistrate’s Court Criminal Case No. 1391 of 2022; Republic -versus- Agnes Nekesa Wanyama. As a result, the Charge Sheet and the entire proceedings in Kitale Senior Resident Magistrate’s Court Criminal Case No. 1391 of 2022 Republic -versus- Agnes Nekesa Wanyama be and are hereby quashed.
  - b. For avoidance of doubt, an Order of prohibition is hereby issued directed to the Respondents herein prohibiting any further proceedings in Senior Resident Magistrate’s Court Criminal Case No. 1391 of 2022; Republic -versus- Agnes Nekesa Wanyama or in any other criminal proceedings pending the hearing and determination in Kitale Chief Magistrates Court ELC Case No. 22 of 2022 Agnes Nekesa Wanyama -vs- Permanent Secretary Treasury & 2 Others.
  - c. Costs be borne by the Respondents.

Orders accordingly.

**DELIVERED, DATED and SIGNED at KITALE this 20<sup>th</sup> day of June, 2024.**

**A. C. MRIMA**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

**Judgment virtually delivered in the presence of:**

No appearance for Mr. Kimani, Counsel for the Petitioner.

No appearance for Mr. Odongo, Counsel for the Respondents.

Chemosop/Duke – Court Assistants.

