REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE NO. E103 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

FRED MUKA……PETITIONER /APPLICANT

VS

DR. BERNADETTE MUNGAI, CHAIRPERSON

KAFUCOUNCIL……1ST RESPONDENT

THE CABINET SECRETARY,

MINISTRY OF EDUCATION……2ND RESPONDENT

PROF PETER NYAMUHANGA MWITA……3RD RESPONDENT

THE HON. ATTORNEY GENERAL……4TH RESPONDENT

AND

PROFESSOR OGODO NANDI……1ST INTERESTED PARTY

STEPHEN CHAHASI LUMWAJI ……2ND INTERESTED PARTY

PROF MARY O. ABUKUTSA ONYANGO…..3RD INTERESTED PARTY

SIMON SHIMEKHA INDASI……4TH INTERESTED PARTY

RULING

1 The 2nd Interested Party/Applicant filed a Notice of Motion dated 7th November 2025 seeking orders that: -

1) *spent*

2) *this Honourable Court be pleased to review, vary, or correct the ruling and orders issued on 7th November 2025 by Hon. Justice Hellen Wasilwa in ELRC Petition No. E103 of 2025, to reflect the correct position that no valid stay orders exist from the Court of Appeal.*

3) *the Honourable Court be pleased to reconsider and issue appropriate consequential directions on the pending Contempt of Court and Enforcement Applications dated 16th June 2025, in light of the clarified record.*

4) *the Court be pleased to hear and determine this Application based on the record and submissions already on file, there being no new factual or legal issue requiring fresh submissions.*

5) *the Court be pleased to make such further orders as are just and expedient to preserve the authority of the Court and the integrity of its orders*

2nd Interested Party/Applicant's Case

2 The Applicant avers that this court's ruling was founded on a factual misapprehension that stay orders existed from the Court of Appeal (Civil Applications E010 & E028 of 2025). However, correspondence and formal confirmation from the Court of Appeal registry confirm no appeal was ever filed, and the 30-day stay lapsed automatically under Rule 34(1) of the Court of Appeal Rules.

3 The Applicant avers that the Hon. Judge, upon being informed in open court the presence of these documents, stated: *"Had I known this, I would have reached a different decision,"* and the same was not brought to her attention by the court clerk who was not in Court, thereby admitting an error apparent on the record.

4 The Applicant avers that the review sought is purely corrective, affects all parties equally, the entire public and is necessary to prevent grave miscarriage of justice

5 The Applicant avers that the urgency arises from the upcoming graduation and intended Vice Chancellor's inauguration on 19th November 2025, which will be conducted under an illegal appointment contrary to subsisting court orders.

6 The Applicant avers that on 4th July 2025, the Court of Appeal delivered a ruling on his application dated the 24th January 2025 wherein it granted *status quo* orders preserving the position obtaining in the office of the Vice Chancellor, Kaimosi Friends University, pending the hearing and determination of the Applicant's intended appeal.

7 Vide the same ruling, this Court also directed that he should file his Record and Memorandum of Appeal within thirty (30) days of the ruling, failing which the *status quo* would automatically lapse.

8 The Applicant avers that after the delivery of the judgment in ELRCPET/E014/2024, his Advocates wrote to the Hon. Deputy Registrar on 19th December, 2024 requesting for the typed and certified copy of the proceedings. Unfortunately, as at 4th July 2025, these proceedings were yet to be availed.

9 Immediately after delivery of the ruling and in view of the orders of this Court, the Applicant's Advocates re-applied for the typed and certified proceedings on numerous occasions to enable compliance with these directions.

10 The Applicant aver that the typed and certified proceedings were only availed on 26th September,2025, which was well after the lapse of the 30-day period stipulated in the Court's ruling. A certificate of delay was subsequently issued on the 27th October, 2025.

11 The Applicant avers that it is a procedural requirement under the Court of Appeal Rules that the Record of Appeal must include certified proceedings and as such, the Record of Appeal could not be filed without them. Therefore, the delay in filing the Record of Appeal was wholly occasioned by circumstances beyond his control, and not by any indolence or neglect.

12 The Applicant avers that he has filed the substantive appeal, *COA 951/2025- Prof. Mary O. Abukutsa Onyango versus Prof. Manyasa J. O Nandi and 3 Others*. And that the appeal is arguable, raises substantial questions of law and has high chances of success.

Petitioner's Case

13 The Petitioner filed a replying affidavit dated 2nd December 2025 in support of the application.

14 The Petitioner avers that on 29th May 2025, this Court issued an interim order suspending the decision of the 1st Respondent purporting to appoint the 3rd Respondent as the Vice Chancellor of Kaimosi Friends University and the order was duly served upon all the Respondents.

15 The Petitioner avers that orders have been extended from time to time by this Court, in the presence of all parties, however, in blatant disregard thereof, the 1st, 2nd and 4th Respondents proceeded to confirm the appointment of the 3rd Respondent as the Vice Chancellor of Kaimosi Friends University.

16 It is the Petitioner's case that the appointment was made in the pendency of the orders of this court, as such, the same amounts to wilful disobedience of the orders of a court of law.

17 The Petitioner stated that the status quo orders were pegged on the filing of the memorandum and record of appeal in respect to *COACAPPL/E028/2025-of . Mary Abukutsa versus Prof. J O Nandi and Others* within thirty (30) days from the date of the ruling, which is 4th July, 2025. There was a delay in filing the appeal but, it has since been filed and served upon all parties.

18 The Petitioner avers that the contempt as contemplated by the 2nd Interested Party touched on the disregard of the orders of this Court and it was immaterial whether the stay orders had lapsed. There was a valid order of this Court that needed to be respected accordingly.

19 It is the Petitioner's case that by going against this order and proceeding to appoint the 3rd Respondent as the Vice Chancellor, the Respondents were all in contempt.

1st Interested Party's Case

20 The 1st Interested Party avers that Respondents' actions, including the installation of the 3rd Respondent as Vice Chancellor while the matter is pending before this Honourable Court, are in blatant disregard of subsisting court orders and undermine the authority and dignity of the Court.

21 He avers that Subsequent to the said ruling, it has been established through official correspondence from the Court of Appeal Registry that no appeal was filed against the judgment of this Court and that the 30-day stay granted by the Court of Appeal lapsed automatically pursuant to Rule 34(1) of the Court of Appeal Rules, 2022.

22 The 1st Interested Party avers that the letter confirming the lapse of the stay orders was not brought to the attention of this Court at the time of the ruling and constitutes a new and important matter within the meaning of Order 45 Rule 1 of the Civil Procedure Rules.

23 The 1st Interested Party avers that the 3rd Respondent cannot suffice as there is no decision on merit that is being appealed, and the bar to the determination of the contempt application has been removed.

24 It is the 1st Interested Party's case that the Hon. Judge's statement in open court that *"had I known this, I would have reached a different decision"* demonstrates that the ruling was premised on an incorrect factual basis.

25 He avers that Order 45 Rule 1 of the Civil Procedure Rules, 2010 and Section 80 of the Civil Procedure Act (Cap 21) empower this Court to review its orders where there is discovery of new and important matter or evidence, or for any other sufficient reason

26 The 1st Interested Party contends that the application does not seek correction of a clerical or arithmetical error but seeks substantive review on the basis of new evidence, which is within the purview of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.

27 The 1st Interested Party avers that Court's ruling based on an erroneous assumption about the existence of stay orders violates this principle of fair administrative action and justifies review.

28 He avers that the parties in the appeal referenced by the 1* Respondent; Civil Appeal 950 of 2025 are State Law Office -vs- Okatch & Partners Advocates. Whereas the

parties involved in Civil Applications E010/2025 and E028/2025 were the CS of Education, Council of Kaimosi Friends University Council, the Chairperson of Kaimosi Friends University Council, Prof. Manyasa Nandi and Prof. Mary Abukutsa Onyango.

29 Therefore, the parties in Civil Appeal No. E950 of 2025 were neither involved in Civil Applications No. E028/2025 nor E010/2025 and thus have no relation to the issues at hand.

30 The 1st Interested Party avers that any appeal that is filed arising from the said applications are done so out of time and have only been brought forth after the lapse of the 30 days and this Court should not place reliance on vexatious and frivolous appeals that will eventually be struck out.

31 The 1st Interested Party further avers that the interim orders issued by this Court on 29th May 2025 remain in force and have not been set aside or varied. Any actions taken in contravention thereof are null and *void ab initio*.

1st Respondent's Case

32 In opposition to the Application, the 1st Respondent filed grounds of opposition dated 17th November 2025 on the following grounds:

1. *That the alleged urgency in the Application dated 7 November 2025 is self-created misconceived, and unmerited, and is aimed at reopening matters already determined by this Honourable Court.*

2. *That the Applicant has not demonstrated any new or exceptional circumstance to warrant an urgent review of a ruling that was lawfully delivered on 7th November 2025,*
3. *That the impending University graduation and Vice Chancellor's inauguration are routine administrative functions which do not, by themselves, create judicial urgency or justify the invocation of the Court's review jurisdiction.*
4. *That the ruling delivered by Hon. Justice Hellen Wasilwa on 7th November 2025 was properly founded on the record before the Court and based on the prevailing legal and factual circumstances presented by the parties.*
5. *That the Applicant's contention that the Court acted on "lapsed" or "non-existent" stay orders is factually inaccurate and legally untenable, as the record clearly indicated that the Court of Appeal had been seized of related matters and the issue of stay was properly canvassed.*
6. *That no sufficient evidence has been presented by the Applicant to demonstrate the alleged "error apparent on the face of the record" as required under Rule 33(1) of the ELRC (Procedure) Rules, 2016.*
7. *That an "error apparent on the face of the record" must be self-evident and not one requiring elaborate argument or further evidence (**see National Bank of Kenya Lid v Ndungu Njau [1997] eKLR**), which is not the case here.*

8. *That the Applicant is in effect inviting the Court to sit on appeal over its own decision, which is expressly prohibited under Rule 33(2) of the ELRC Rules and the established jurisprudence.*
9. *That the Applicant's claim that the Honourable Judge made an "admission of error" in open court is false, misleading, and taken out of context, intended to scandalize the Court and question its impartiality.*
10. *That judicial remarks made in the course of proceedings do not constitute findings or admissions capable of forming a basis for review.*
11. *That the proper avenue for challenging the decision of 7th November 2025 lies in appeal to the Court of Appeal, not by way of review before the same Court.*
12. *That the Honourable Court, having rendered its decision on the contempt and enforcement applications, became functus officie in respect of those issues.*
13. *That the Applicant's attempt to have the Court "reconsider" or "revisit" those rulings under the guise of review amounts to an abuse of the court process and violates the principles of finality in litigation.*
14. *That the Applicant has failed to meet the threshold for review as laid down in* ***Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR*** *— namely, the discovery of new evidence, mistake or error apparent on the face of the record, or other sufficient reason.*

15. *That no such new evidence has been tendered, and the Applicant's allegations are merely argumentative and repetitive of issues already canvassed.*
16. *That the alleged prejudice to the public and graduating students is speculative and unsubstantiated, and cannot override the principles of orderly judicial process.*
17. *That the continued administration of Kaimosi Friends University under the current leadership is lawful and supported by valid government instruments, pending determination of any appeal or subsequent proceedings.*
18. *That the purported "illegality" of the Vice Chancellor's appointment is a contested issue already determined by the Court, and cannot be re-litigated through this application.*
19. *That the Applicant's assertions are in bad faith, intended to frustrate the University's operations and embarrass lawful authority.*
20. *That the Applicant, as an Interested Party, lacks the requisite locus standi to seek substantive review orders that affect the Respondents' administrative and judicial rights.*
21. *That the power to seek review of a decision lies primarily with parties directly aggrieved by the ruling — in this case, not the 2° Interested Party who is neither a judgment debtor nor a beneficiary of the impugned orders.*

22. That this Application therefore offends the doctrine of res judicata and abuse of process, and should be dismissed with costs.

23. That this Honourable Court rendered a lawful, reasoned, and final ruling on 7th November 2025, which has not been shown to contain any error apparent on the face of the record.

24. That the present Application is a thinly veiled attempt to re-open, re-argue, and relitigate issues conclusively determined by the Court.

25. That the same is vexatious, frivolous, incompetent, and an abuse of judicial process, and should be dismissed with costs to the Respondents.

33 The 1st Respondent further filed a replying affidavit dated 17th November 2025 sworn by its current Chairperson, Prof. Stanley Khainga.

34 The 1st Respondent avers that the application is incompetent, misconceived, and fatally defective as it does not meet the legal threshold for review under the law and the principles established in judicial precedents.

35 It contends that the information relied upon by the Applicant is immaterial and irrelevant to the determination of the Application dated 16th June 2025.

36 The 1st Respondent avers that as at the time of filing the application dated 23rd May 2025, there existed a valid status quo order issued by the Court of Appeal on 25th March 2025 in Nairobi Civil Appeal No, E010 of 2025. By

virtue of the said order, the Court of Appeal was already seized of the substratum of this Petition, thereby divesting this Court of jurisdiction to issue the Orders dated 29th May 2025.

37 The 1st Respondent avers that the Court of Appeal expressly stayed proceedings in ELRC Petition No. E103 of 2025 until 6th June 2025. Therefore, the proper forum for canvassing issues relating to alleged contempt was the Court of Appeal, where the dispute was actively pending.

38 The 1st Respondent avers that the application improperly relies on remarks made by the court after determining the application in finality, and which remarks cannot constitute a basis for review.

39 It is the 1st Respondent's case that upon delivery of the impugned ruling on 29th May 2025, this Court became *functus officio* and therefore lacks jurisdiction to reopen or reconsider the matter.

40 The 1st Respondent avers that the assertion that Kaimosi Friends University intends to hold a graduation and Vice-Chancellor inauguration on 19th November 2025 under a "suspended and impugned appointment" is misleading. The 3rd Respondent has been serving lawfully prior to commencement of these proceedings, and there is no suspended appointment.

41 It is the 1st Respondent's case that public interest and continuity of essential university operations strongly favour that Kaimosi Friends University continues to

discharge its statutory obligations pending the conclusion of appellate processes relating to the Vice Chancellor's appointment.

42 The 1st Respondent avers that it is aware that the appeal against the impugned orders was duly filed and is pending as Nairobi Civil Appeal No. E950 of 2025, wherein the Court of Appeal remains seized of the substratum of this Petition.

43 The 1st Respondent avers that the ruling delivered on 29th May 2025 was issued without jurisdiction, rendering it a nullity ab initio and incapable of grounding the subsequent application dated 16th June 2025.

44 It is the 1st Respondent's case that any alleged errors arising from the impugned Ruling are errors of judgment which go to the merits and can only be addressed by the Court of Appeal, not through review proceedings.

2nd and 4th Respondent's Case

45 In opposition to the Application, the 2nd and 4th Respondent filed grounds of opposition dated 7th November 2025 based on the following grounds:

1. *THAT the application is an abuse of court process as the Applicant has not met the threshold for a case for review of the court ruling as set out in Rule 74 of the Employment and Labour Relations Rules 2024 read together with the Court of Appeal decision in* ***National Bank of Kenya Ltd v Ndungu Njau***

[1997] eKLR *as there is no clear case for review by the Honourable Court.*

2. *THAT the Honourable Court lacks jurisdiction to hear and determine the instant application as the question of whether or not there is a valid stay order by the Court of Appeal in* ***Civil Application E010 & E028 of 2025*** *is a question for determination by the Appellate Court under Article 164 of the Constitution.*
3. *THAT the Honourable Court lacks jurisdiction to hear and determine the instant application for being functus officio the Court having rendered its decision on the matter vide its ruling dated 7th November, 2025, a party aggrieved by the Court's decision has an absolute right of appeal to the Appellate Court which the Applicant has chosen not to exercise in the circumstances.*
4. *THAT grant of orders sought would override the great public interest leading to interruption of smooth running of the Institution which might greatly hamper the upcoming graduation process affecting hundreds of students who have lawfully completed their studies, based on unverified allegations and personal grievances being fronted by an alleged public interest litigant.*
5. *THAT the 2nd Respondent's priority remains to protect the students' academic progression, uphold the integrity of higher education, and respect ongoing judicial processes and granting the orders sought would effectively paralyse the University's*

operations, prejudice students' rights under Articles 43(1)(f) and 55.

6. *THAT the Applicant is abusing the Court process, he is a mere Interested Party who has clearly not demonstrated any identifiable stake or legal interest or duty in the proceedings before the court and his role is limited to his position and cannot purport to take over the proceedings as the petitioner.*
7. *THAT the Application is frivolous, vexatious, and speculative, intended to attract publicity rather than genuine protection of constitutional rights and it would be in the great public interest the application dated 7th November, 2025 be dismissed in its entirety.*

3rd Respondent's Case

46 In opposition to the Application, the 3rd Respondent filed grounds of opposition dated 17th November 2025 based on the following grounds:

1. The main issue, of fact, relied upon, to advance the application, is that no appeal has been filed. The application of necessity must fail, and be dismissed by this [ELRC] court considering that: -

1.1. Based on the averments of the 1st Respondent an appeal was already filed. The appeal is Nairobi Civil Appeal No. E950 of 2025.

1.2. The question of whether or not there is an appeal before the court of appeal to sustain (i) the orders of stay of proceedings (ii) the maintenance of the status quo (iii) and on whether stay of orders and maintenance of status

quo have been discharged are all question that belongs to the Court of Appeal, not this ELRC court.

1.3. This court cannot decide a contested question of fact without hearing and testing the rival averments and its related evidence.

2. It is admitted that all the material upon which the court should have found that no appeal was filed are on record, and the court had them when drawing its ruling. Therefore: -

2.1. In the situation, the court having had it before itself and having had notice of the said all material, then the court can only have arrived at a 'wrong' decision according to the applicants hence the issue is limited to a matter of an appeal and not a review.

2.2. As held in ***Nyamogo & Nyamogo Advocates v Kogo [2001] EA 174,*** *the Court cannot be asked to use the process of 'REVIEW' to correct an alleged wrong decision already made.*

2.3. The Application in effect seeks to invite the Court to sit on appeal of its own decision, contrary to the principles established in ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR****, where the Court of Appeal held that a review is not an avenue for re-evaluating evidence or reconsidering a decision on its merits.*

2.4. That the alleged "error apparent on the face of the record" does not exist, and has not been demonstrated within the legal meaning of that phrase, being error that is apparent, that must be self-evident, and not one which requires elaborate argument or re-litigation or the new

evidence, like the alleged correspondence as the existence of an appeal.

2.5. That the grounds relied upon by the Applicant:-

2.5.1. Are factually misleading. The Court's ruling and the record shows that the Honourable Court properly considered all relevant materials and was aware of the position regarding the stay orders. The assertion that the Judge made an "admission" of error is an unverified and inaccurate characterization.

2.5.2. The Honourable Court's ruling of 7th November 2025 was reasoned, lawful, and based on the material before it. No sufficient basis has been shown to justify its variation or review

2.5.3. The Applicant's claim that "the Court admitted an error" is speculative and amounts to attributing extrajudicial statements to the Court, which is impermissible and disrespectful to the judicial process.

2.6. That the alleged correspondence from the Court of Appeal Registry does not form part of the record, and its introduction at this stage amounts to an attempt to adduce new evidence after judgment a procedure not permitted in review applications. ***Evan Bwire v Andrew Nginda [2000] eKLR****, where the Court held that review is not a forum for introducing fresh evidence.*

2.7. That the Honourable Court lacks jurisdiction to entertain a review application on matters that are subject of appellate jurisdiction. Once a decision is rendered, the appropriate remedy for an aggrieved party lies in appeal, not review. ***Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR****.*

3. That the Court is functus officio in relation to the ruling delivered on 7th November 2025, the same having conclusively determined the issues before it. As was held in ***Telkom Kenya Limited v John Ochanda (Suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR****, once a court has pronounced itself on a matter, it becomes functus officio and cannot revisit its decision except as permitted by law.*

4. That the Applicant has no locus standi to seek a review of a ruling in a petition filed by another party (the Petitioner, Fred Muka), and particularly against Respondents in whom he has no direct employment or administrative relationship. Review jurisdiction under Rule 33 is reserved to a party aggrieved by a decree or order — not an interested party seeking to re-litigate issues already canvassed.

5. The 2nd Interested Party, who is not a petitioner, has improperly invoked the Court's review jurisdiction under Rule 33 of the ELRC (Procedure) Rules, 2016, in a manner inconsistent with the law and settled jurisprudence.

6. That the Application

6.1. Improperly invokes urgency as a ground for review. Urgency, public perception, or alleged prejudice to students cannot ground a review under Rule 33; which limits review to:

6.1.1. Discovery of new and important matter or evidence;

6.1.2. Mistake or error apparent on the face of the record;

6.1.3. Clarification of an ambiguous order; or

6.1.4. Any other sufficient reason strictly analogous to the above. ***Republic v Public Procurement Administrative Review Board & 2 others ex parte PPARB [2018] eKLR****.*

6.2. The claim that the graduation scheduled for 19th November 2025 will occur under an "illegal appointment" is unfounded. The Court of Appeal already applied it's mind and maintained the 3rd Respondent be in office for all material purposes. The appointment of the 3rd Respondent remains lawful and in effect on the Court of Appeal considering determination, and unless and until quashed by a superior court or set aside through a proper appellate process.

6.3. The allegation that failure to review will "undermine public confidence in justice" is rhetorical and not a legal basis for review. Courts are guided by law, not perceived optics.

7. The Applicant herein would be overreaching in seeking the ELRC court to exercise its review discretionary jurisdiction:

7.1. As held in ***Otieno, Ragot & Co. Advocates v National Bank of Kenya Ltd [2020] eKLR****, the jurisdiction for review should be exercised "sparingly and with circumspection," lest it undermines the principle of finality.*

7.2. The principle of finality was captured by Supreme Court in ***Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd [2014] eKLR****. The court in that case set out that finality of litigation is an overriding principle, and courts must guard against endless*

reopening of concluded matters under the guise of "review".

*7.3. Similarly, in **Pancras T. Swai v Kenya Breweries Ltd [2014] eKLR**, the Court of Appeal held that a review cannot be based on a party's discovery of new arguments or evidence that could have been presented earlier with due diligence.*

8. The 1st Respondent respectfully submits that the Application dated 7th November 2025 is an abuse of the Court process, lacks merit, and offends both procedural and substantive law.

9. The Application fails to meet the threshold for review under Rule 33 of the ELRC (Procedure) Rules, 2016 and should therefore be dismissed.

4th Interested Party's Case

47 In opposition to the Application, the 4th Interested Party filed grounds of opposition dated 15th November 2025 based on the following grounds:

1. *The application is vehemently opposed since the issues raised are a thinly disguised attempt to re-litigate matters already determined, that the application offends the settled principles on review and that it is both incompetent and an abuse of the court process.*
2. *Review is not an appeal in disguise. It may only be granted for a glaring omission or patent mistake which stares one in the face and not for correction of an erroneous view of the evidence or law. The Applicant's real grievance lies with the outcome of*

the ruling, not with any clerical or inadvertent mistake which squarely falls in the province of an appeal, not a review.

3. *The assertion that the Judge's verbal remark in court ("had I known this...") amounts to an admission of error is misconceived. Judicial remarks made during proceedings do not constitute part of the formal record or a binding finding.*
4. *Moreover, under section 99 of the Civil Procedure Act, the "Slip Rule" allows correction of clerical or arithmetical mistakes or errors arising from accidental slips or omissions. The present application however, seeks a substantive reversal of judicial reasoning which falls outside that provision.*
5. *The application also offends the principle of finality of litigation.*
6. *The Application is frivolous, vexatious and an abuse of this Honourable Court's process and should be dismissed with costs.*

2nd Interested Party/Applicant's Submissions

48 The Applicant submitted that the application was brought under the Article 159(2)(d) of the Constitution, Rule 33 of the ELRC Rules 2016, Rule 74(1)(b) of the ELRC Rules 2024 and Section 99 Civil Procedure Act.

49 The Applicant submitted that under the governing jurisprudence, a review lies where: The error is self-evident and does not require elaborate argument; The Court overlooked a material fact already on the record; The decision is founded on a mistaken factual premise; The

error results from accidental omission; There are not “two possible opinions” on the matter.

50 The Applicant submitted that an error is “apparent” when it is factual, undisputed, and visible from the record.

51 It is the Applicant’s submission that the record shows that the court declined to hear the contempt application was declined as no appeal existed as at 7th November 2025; no filing fees were paid; no record of appeal existed; the 30-day stay (E028/2025) granted on 4th July 2025 lapsed on 8th August 2025; and the Court of Appeal registry confirmed no subsisting stay.

52 The Applicant submitted that this is a self-evident factual error, directly visible on the face of the record, requiring no interpretation. In such circumstances, the court is entitled to correct the error so as to prevent injustice.

53 The Applicant submitted that the application seeks review of the ruling delivered on the same date on the ground that the Court relied on a mistaken assumption that there existed subsisting stay orders from the Court of Appeal, whereas no such stay existed at the time of the ruling

54 The Applicant submitted that the Application is brought pursuant to Article 159(2)(d) of the Constitution, Rule 33 of the Employment and Labour Relations Court Rules, Section 99 of the Civil Procedure Act, and Rule 74(1)(b) of the ELRC Rules 2024, which empower the Court to review its decisions where there is an error apparent on the face of the record or for any sufficient reason

55 The Applicant submitted that the error apparent on the face of the record arose from the Court's belief that there was a subsisting stay order issued by the Court of Appeal, yet the evidence on record demonstrated that no appeal had been filed, no filing fees paid, and no record of appeal existed as at 7th November 2025

56 The Applicant submitted that the conditional stay orders issued in Court of Appeal Application No. E028 of 2025 on 4th July 2025 lapsed automatically on 3rd August 2025 upon failure by the Respondents to comply with the conditions imposed, and this lapse was confirmed by the Court of Appeal Registry.

57 The Applicant submitted that reliance on a non-existent stay order constituted a material factual error warranting review, as contemplated in ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR*** and ***Muyodi v Industrial & Commercial Development Corporation & Another [2006] 1 EA 248***, where the court held that review lies where a court overlooks a material fact or proceeds on an incorrect factual premise.

58 The Applicant submitted that the threshold for review was met since the error was self-evident, undisputed, and did not require elaborate argument, and that there could not be two possible opinions as to whether a stay existed or not.

59 The Applicant submitted that the Court acknowledged the existence of the error in open court by stating that had it been aware that the stay orders had lapsed, it would have arrived at a different decision, thereby confirming the presence of an error apparent on the face of the record.

60 The Applicant submitted that Section 99 of the Civil Procedure Act empowers the Court to correct errors arising from accidental slip or omission at any time, and that the failure to place critical registry documents before the Court amounted to such an omission.

61 The Applicant submitted that review was further justified on the basis of "any other sufficient reason," as allowing the ruling to stand would perpetuate injustice, illegality, and abuse of the Court process by rewarding reliance on a stay order that did not exist.

62 The Applicant submitted that subsequent to the ruling, on 19th November 2025, the graduation and formal installation of the 3rd Respondent as Vice-Chancellor proceeded despite subsisting court orders and while the legality of the appointment remained under challenge.

63 The Applicant submitted that the events of 19th November 2025 constituted fresh, new, and material evidence within the meaning of Rule 33(1)(d) of the ELRC Rules 2016, which could not have been placed before the Court at the time the ruling was delivered.

64 The Applicant submitted that the installation of the 3rd Respondent amounted to continuing and aggravated contempt of court and administrative illegality, relying on ***Republic v County Government of Migori ex parte Makungu and Teachers Service Commission v KNUT [2015] eKLR***, which recognise contempt as a continuing wrong.

65 The Applicant submitted that the Court retains jurisdiction to enforce its orders and address contempt notwithstanding the pendency or existence of appellate proceedings, as held in ***Hadkinson v Hadkinson [1952] 2 All ER 567*** and ***Kiru Tea Factory Ltd v Stephen Maina Githiga & 14 Others [2019] eKLR***.

66 The Applicant submitted that the doctrine of *functus officio* does not bar the Court from correcting an admitted factual error or addressing fresh violations occurring after delivery of a ruling, as affirmed in ***Benjoh Amalgamated Ltd v Kenya Commercial Bank Ltd [2014] eKLR*** .

67 The Applicant submitted that the Respondents' objection on jurisdiction was misconceived since no valid appeal or stay existed as at the date of the ruling, and therefore nothing divested this Court of jurisdiction to review its decision or enforce its orders.

68 The Applicant submitted that the application does not amount to an appeal but a corrective review intended to rectify a factual mistake acknowledged by the Court, consistent with the principles set out in ***Multichoice***

(Kenya) Ltd v Wananchi Group (Kenya) Ltd & 2 Others [2020] eKLR.

69 The Applicant submitted that as an Interested Party, he had *locus standi* to move the Court in the public interest, particularly to safeguard the integrity of court orders and protect students and the public from unlawful administrative actions in a public university, relying on Articles 47 and 232 of the Constitution.

70 The Applicant submitted that the Respondents and the 4th Interested Party misrepresented material facts to the Court by asserting the existence of appeals and stay orders, and that a party cannot benefit from its own illegality or misrepresentation, as held in ***Benjoh Amalgamated Ltd v KCB [2014] eKLR***.

71 The Applicant submitted that finality of litigation cannot be invoked to shield a ruling founded on a mistake of fact, particularly where refusal to correct the error would occasion substantial injustice and undermine judicial authority.

72 The Applicant submitted that upon correction of the factual error regarding the alleged stay orders, the contempt and enforcement applications ought to be reinstated and heard on their merits in order to uphold the rule of law, preserve public confidence in the judiciary, and enforce compliance with court orders.

73 The Applicant submitted that in the circumstances, the Court should review and vary the ruling of 7th November 2025, admit the fresh evidence arising from the events of 19th November 2025, reinstate the contempt and enforcement applications, and issue appropriate consequential orders, with costs in the cause.

Petitioner's Submissions

74 The Petitioner submitted that Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, provides that a person aggrieved by a decree, judgment or ruling may, within a reasonable time, apply for review where there is: (a) discovery of new and important matter or evidence (b) a mistake or error apparent on the face of the record, (c) where the judgment or ruling requires clarification, or (d) for any other sufficient reason. Therefore, this court is clothed with discretion to review its own decisions in appropriate circumstances.

75 The Petitioner submitted that Court had on 29th May 2025 issued an interim order suspending the appointment of the 3rd Respondent as Vice-Chancellor, Kaimosi Friends University. The order was served on all Respondents and has been extended from time to time, however, the 1st, 2nd and 4th Respondents proceeded to confirm the appointment of the 3rd Respondent while the order remained in force.

76 It is the Petitioner's submission that the flagrant disregard of the court order constitutes not only contempt but also materially undermines the efficacy and purpose of the Court's earlier orders, thereby rendering the earlier decision hollow or ineffectual.

77 The Petitioner submitted that if the confirmed appointment is allowed to stand despite contempt, any attempt to vindicate rights later may be rendered meaningless as the status quo has changed.

78 The Petitioner submitted that the Court's orders are not advisory; they are binding. An order loses public confidence if parties simply ignore it.

79 The Petitioner submitted that the refusal to comply renders the Court's authority illusory. In such a situation, review becomes imperative to uphold the integrity of the judicial process and maintain public trust in the law.

80 The Petitioner submitted that universities, as public institutions, are central to public confidence and governance. Confirming an appointment of the 3rd Respondent in contempt of Court undermines not only private rights but also public institutional legitimacy. Review is therefore justified in furtherance of public interest and the rule of law.

81 The Petitioner submitted that costs should follow the event. That is to say, the successful party should be

awarded his costs as provided for in Section 27 of the Civil Procedure Act (Cap. 21) Laws of Kenya.

1st Interested Party's Submissions

82 The 1st Interested Party submitted on three issues: Whether the application for review meets the threshold under Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act; Whether the grounds of objection and opposition filed by the Respondents have merit; Whether the Honourable Court should grant the orders sought in the application.

83 On the first issue, the 1st Interested Party submitted that Order 45 Rule 1 of the Civil Procedure Rules provides that any person considering himself aggrieved by a decree or order from which no appeal has been preferred and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, may apply for a review of the judgment or order. Section 80 of the Civil Procedure Act further empowers the court to review its own orders for sufficient cause.

84 The 1st Interested Party submitted that the letter dated 29th October 2025 that included correspondence from the Court of Appeal Registry confirming that no appeal was filed and that the stay orders had lapsed is a new and important matter that was not within the knowledge of the Applicant or the Court at the time of the ruling. Thus, this satisfies the requirements of Order 45 Rule 1.

85 The 1st Interested Party submitted that the letter dated 29th October 2025 was not brought to the attention of this Court once the ruling was delivered on 7th November 2025. Thus, this constitutes new and important evidence that was not within the knowledge of this Court or that of the Applicant.

86 The 1st Interested Party submitted that the parties as per the CTS in Civil Appeal E950 of 2025 are State Law Office -vs- Okatch & Partners Advocates. These were not the parties involved in Nairobi Court of Appeal Civil Applications E010/2025 and E028/2025 as the parties in these applications were the CS of Education, the Council of Kaimosi Friends University & 2 others -vs- Prof. Manyasa Nandi and Prof. Mary Abukutsa Onyango.

87 The 1st Interested Party submitted that regardless of any appeal that has been recently filed, the stay orders automatically lapsed due to failure of the 2nd and 4th Respondent to file the record of appeal within the 30 days as stipulated in the rulings delivered on 4th July 2025 and 6th August 2025 by the Court of Appeal.

88 It is the 1st Interested Party's submission that the application for review meets the requisite threshold and ought to be allowed by this Court.

89 On the second issue, the 1st Interested Party submitted that the assertion that judicial remarks made during proceedings do not constitute part of the formal record is misconceived. The substance of the error is not the

remark itself but the fact that the court's decision was based on an incorrect factual premise, which is a proper ground for review.

90 The 1st Interested Party submitted that the reliance on Section 99 of the Civil Procedure Act regarding the "Slip Rule" is misplaced. The application does not seek correction of a clerical or arithmetical error but seeks substantive review on the basis of new evidence, which is within the purview of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. Therefore, the grounds of objection and opposition filed by the Respondents lack merit and should be dismissed with costs.

91 On the third issue, the 1st Interested Party submitted that Article 47 of the Constitution of Kenya 2010 and Section 4 of the Fair Administrative Action Act guarantee the right to fair administrative action, which extends to judicial decisions. The Honourable Court's ruling based on an erroneous assumption about the existence of stay orders violates this principle and justifies review.

92 The 1st Interested Party submitted that Article 159(2)(d) of the Constitution enjoins the court to administer justice without undue regard to procedural technicalities and to ensure that justice is done to all parties.

93 The 1st Interested Party submitted that the interim orders issued by this Court on 29th May 2025 remain in force and have not been set aside or varied. Any actions taken in contravention thereof are null and *void ab initio*.

94 It is the 1st Interested Party's submission that the 3rd Respondent's appointment as Vice Chancellor in blatant violation of court orders and overall conduct of the Respondents if left unchecked, risks eroding public confidence in the judiciary, undermining the constitutional order, and setting a dangerous precedent for administrative anarchy.

1sr Respondent's Submissions

95 The 1st Respondent submitted that Rule 74(1) of the ELRC (Procedure) Rules limits review to specific, exceptional circumstances, namely: a) discovery of new and important evidence not available despite due diligence; b) error apparent on the face of the record; c) need for clarification; or d) other sufficient reason. She cited the Court of Appeal in ***Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR*** wherein it was held that review is not an avenue to re-argue or re-litigate a matter, and that parties cannot use review to challenge a decision simply because they are dissatisfied with it.

96 The 1st Respondent submitted that the Applicant has not produced any new evidence, nor demonstrated that such evidence existed and could not, with diligence, have been produced earlier.

97 The 1st Respondent submitted that judicial remarks from the bench do not constitute errors for purposes of review. The law requires an error to be clear, self-evident and not one that calls for extensive reasoning. She cited ***National***

Bank of Kenya v Ndungu Njau [1997] eKLR, the Court of Appeal held that an error apparent must be self-evident and cannot be based on differences in legal interpretation or opinion.

98 The 1st Respondent submitted that the Judge's remarks were made outside a written ruling which had already been delivered.

99 It is the 1st Respondent's submission that the Applicant's so-called "error" is nothing of the kind. It is a disagreement with the Court's evaluation of facts and law, an appeal issue, not a review issue.

100 The 1st Respondent submitted that upon delivering its Ruling on 7th November 2025, this Court became *functus officio* regarding the issues determined therein. The doctrine of *functus officio* bars a court from revisiting merits of its own final decision. This principle is well settled and promotes finality in litigation. She cited ***Telkom Kenya Ltd v John Ochanda [2014] eKLR***, the Court of Appeal reaffirmed that once a court renders a final decision, it cannot revisit the merits except as permitted under strict review grounds.

101 The 1st Respondent submitted that under Rule 74 a party cannot disguise an appeal as a review application. The proper forum for such grievances is the Court of Appeal, not this Court.

102 The 1st Respondent submitted that the Respondents' evidence demonstrates that: avalid status quo order was

issued in Civil Appeal No. E010 of 2025 on 25th March 2025; the Court of Appeal stayed proceedings in ELRC Petition No. E103 02025 until 6th June 2025; an appeal challenging the impugned ELRC orders has been filed as Civil Appeal No. E950 of 2025, and is actively before the Court of Appeal. The Court correctly analysed and appreciated these facts. There is no error, let alone one apparent on the face of the record.

103 The 1st Respondent submitted that the alleged error is neither obvious nor self-evident, it stems from the Applicant's dissatisfaction with the Court's interpretation as held in ***National Bank v Ndungu Njau (supra)*** such disagreements belong to appellate, not review, processes.

104 The 1st Respondent submitted that the impending university graduation and inauguration ceremonies scheduled for 19th November 2025. These are routine, predictable administrative events that do not create legal urgency or justify disturbance of a final judicial determination. Therefore, the assertion that the University intends to act under "a suspended appointment" is incorrect.

105 The 1st Respondent submitted that the 3rd Respondent is lawfully serving in an acting capacity, and there is no suspended appointment. Public interest favours certainty, the finality of court decisions and continuity of public institutional operations not incessant litigation.

106 The 1st Respondent submitted that the 2" Interested Party lacks the legal standing to seek the substantive review

orders it now pursues, as the orders do not affect it directly. Review is a remedy available only to a party aggrieved by the Ruling. The Applicant is not a beneficiary nor a judgment debtor.

107 It is the 1st Respondent's submission that application offends the doctrine of locus standi, the principle of finality of litigation and the doctrine of res judicata.

2nd and 4th Respondent's Submissions

108 The Respondents' submitted that the Court lacks jurisdiction to hear and determine the instant application as the question of whether or not there is a valid stay order by the Court of Appeal in Civil Application E010 & E028 of 2025 is a question for determination by the Appellate Court under Article 164 of the Constitution the same having been granted by the Appellate Court. It is only the Court of Appeal which can determine there is no valid stay order after hearing parties and issuing an order or finding to that effect and not this Court nor any other person. The Court has to pronounce itself through ruling or orders and not any other means.

109 The Respondents submitted that the Court having rendered its decision on merit through its ruling on 7th November, 2025 is *functus officio* and a party aggrieved by the Court's decision has an absolute right of appeal to the Appellate Court which the Applicant has chosen not to exercise in the circumstances.

110 The Respondents submitted that the Applicant has not met the threshold for a case for review of the court ruling issued on 7th November, 2025. Rule 74 of the Employment and Labour Relations Rules 2024 provides for review if there is discovery of new and important matter or evidence, on account of mistake or error apparent on face of record, ruling requires clarification or sufficient reason. They cited the Court of Appeal in ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR.***

111 The Respondents submitted that the issues were canvassed before the Court and the Court made a decision in exercise of its discretion. Thus, there is no ground for review as alleged by the Applicant.

112 It is the Respondents' submissions that grant of orders sought would override the great public interest leading to interruption of smooth running of the Institution which might greatly hamper the operations of the University based on unverified allegations and personal grievances being fronted by an alleged public interest litigant. It is in the interest of justice that the Court dismisses the application and allow the institution's operations to go on. In the instant matter, the great public interest tilts in favour of dismissing the instant application.

113 The Respondents submitted that Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, is the rule that defines an interested party to mean a person or entity that has an identifiable stake or legal interest or duty in the

proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation." Black's Law Dictionary on the other hand defines an Interested Party as "a party who has a recognizable stake (and therefore standing) in the matter."

114 The Respondents submitted that the Interested Party purely has no state in the proceedings before Court and his role is limited. He has taken up the role of principal parties in the proceedings while he is not.

3rd Respondent's Submissions

115 The 3rd Respondent submits that on 7thNovember 2025, this Court delivered a ruling, having before it all relevant material, including correspondence relating to any purported appeal or stay of orders from the Court of Appeal. On the other hand, any material that was not in the preceding application cannot now be introduced as a basis of Appeal. The Court stated:

> *"…….. given that the Court of Appeal is rightfully seized with this matter and the decision thereof has a direct bearing on this matter, it would be futile and a breach of protocol for this Court to continue to entertain the application therein. I will therefore respectfully down my tools at this stage and await the Court of Appeal's consideration before any further proceedings. Costs will abide the Court of Appeal decision."*

116 The 3rd Respondent submitted that an appeal, Nairobi Civil Appeal No. E950 of 2025, was filed and everything relating

to the Appeal therefore is in the exclusive jurisdiction of the Court of Appeal. The questions of whether an appeal exists, or whether it was filed on time or, whether the orders made by Court of Appeal for stay and status quo still obtain are matters exclusively within the jurisdiction of the Court of Appeal. It cannot be determined or adjudicated by this Court.

117 It is the 3rd Respondent's submission that this court cannot decide a contested question of fact without hearing and testing the rival averments and related evidence. As such, the Applicant's claim falls outside the scope of Review Jurisdiction under Rule 33(1) of the ELRC Procedure Rules.

118 The 3rd Respondent submitted that if the Applicants considers the materials relied upon by the Court in drawing its ruling on 7th November 2025be erroneous, then it is a matter of saying the ELRC Court was wrong, therefore it becomes a matter of appeal and not review. Any alleged "wrong decision" is limited to a matter of appeal and not review.

119 The 3rd Respondent submitted that Rule 33(1) of the ELRC Procedure Rules provides for review requires evidence to be both previously unavailable and critical to the decision. The Applicant has not demonstrated this.

120 The 3rd Respondent submitted that the alleged correspondence from the Court of Appeal Registry does not constitute new evidence, as it was available prior to the ruling. Introducing it at this stage amounts to improper

adduction of new evidence post-judgment, which is impermissible in review proceedings

121 The 3rd Respondent submitted that theere is no error on the face of the record that is self-evident and does not require elaborate argument or re-litigation to warrant review in this case. The mere disagreement by the applicant or claim that the Court has “admitted error” are misrepresentative and do not warrant the review sought.

122 The 3rd Respondent submitted that the Applicant’s claim effectively seeks to re-argue or appeal the Court’s decision, which is outside the scope of review.

123 The 3rd Respondent submitted that the ruling of 7th November 2025 is clear and unambiguous, directing that proceedings should await the Court of Appeal’s decision. There is no uncertainty requiring judicial clarification.

124 The 3rd Respondent submitted that this court is *functus officio* with respect to the 7th November 2025 ruling, and the Court has no jurisdiction to entertain the Application. The invite to re-visit the decision amounts to an impermissible attempt to re-litigate matters already conclusively determined.

125 The 3rd Respondent submitted that the Applicant has no locus standi to seek a review of a ruling in a petition filed by another party (the Petitioner), against Respondents. The Applicant is neither a principal party nor can he allege

in law to have injury arising from the ruling of 7th November 2025.

126 It is the 3rd Respondent's submission that Interested Parties may only participate in a subsidiary or supportive capacity; they cannot extend the proceedings, introduce new issues, or reframe the dispute before the Court. Their role is to assist the Court or provide input where their indirect interests are implicated, but they are not empowered to litigate on behalf of the principal parties or mount collateral challenges. Reliance was place in the Supreme Court decision ***Francis Karioko Muruatetu & 3 Others v Republic & 5 Others (2016) eKLR***.

127 The 3rd Respondent submitted that the Applicant contends that impending graduation ceremonies constitute urgency and justify disturbing the ruling of 7th November 2025. This contention is untenable. The invocation of urgency, alleged illegality, or public perception is rhetorical and does not meet the strict legal thresholds under Rule 33 for review, it is not a ground upon which a review can be considered. Review proceedings are not intended to address speculative concerns, public sentiment, or anticipated events.

128 The 3rd Respondent submitted that he continues to lawfully serve under the orders of the Court of Appeal. Public interests in whatever event this context is better served by upholding settled rulings and ensuring the stability and continuity of University governance, rather than entertaining speculative interventions. Further in

respecting the Court of Appeal Orders and its higher hierarchy.

4th Interested Party's Submissions

129 The 4th Interested Party submitted that Rule 33 limits the Court's review jurisdiction to narrowly defined grounds, namely: discovery of new and important evidence not available despite due diligence, an error apparent on the face of the record, clarification of an ambiguous judgment or ruling, or any other sufficient reason, which courts have interpreted restrictively.

130 The 4th Interested Party submitted that the Applicant's Motion is a disguised appeal, as it seeks to challenge the Court's evaluation of facts and reasoning rather than pointing to a clerical or manifest error. Reliance was placed on ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR***, where the Court of Appeal held that review cannot be used to re-argue a case or question the correctness of a court's reasoning.

131 The 4th Interested Party submitted that there is no error apparent on the face of the record. Whether the Court of Appeal stay orders had lapsed is a matter requiring argument, interpretation, and factual evaluation, and therefore does not qualify as a self-evident error warranting review.

132 The 4th Interested Party submitted that the Court considered all the material placed before it and arrived at

a reasoned determination, and that any dissatisfaction with that conclusion is a matter for appeal, not review. Reliance was placed on ***Muyodi v ICDC & Another [2006] 1 EA 243***, which defines an error apparent as one that is obvious and does not require elaborate argument.

133 The 4th Interested Party further relied in ***Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR***, where the Court held that an error must be patent and not one capable of two interpretations or requiring extensive legal analysis, which is the case in the Applicant's challenge.

134 The 4th Interested Party submitted that in ***Republic v PPARB & 2 Others ex parte Selex Sistemi Integration [2008] eKLR***, the Court reaffirmed that review is not an appeal in disguise and cannot be used to correct an alleged erroneous interpretation of facts or law, which is precisely what the Applicant seeks to do.

135 The 4th Interested Party submitted that alleged judicial remarks made from the bench do not form part of the record and cannot ground an application for review. He cited ***Teachers Service Commission v KNUT & 3 Others [2015] eKLR***, where the Court held that oral remarks are not reviewable.

136 The 4th Interested Party submitted that the Applicant has not identified any clerical, typographical, or arithmetical error capable of correction under Section 99 of the Civil Procedure Act, and that the section does not permit reconsideration of substantive judicial reasoning

137 The 4th Interested Party submitted that no new evidence has been disclosed, as the Applicant admits that the documents now relied upon were within his knowledge and possession prior to delivery of the ruling, thereby failing to satisfy Rule 33(1)(a) of the ELRC Rules.

138 The 4th Interested Party submitted that the application is a deliberate attempt to re-litigate issues already determined, undermines the principle of finality in litigation, and amounts to an abuse of the court process.

139 The 4th Interested Party submitted that the Applicant has failed to meet any of the statutory or jurisprudential grounds for review, and consequently, the application should be dismissed in its entirety with costs to the 4th Interested Party.

140 I have examined all the averments and submissions of the parties herein. The applicant has sought orders to review this court's orders and ruling issued on 7th November 2025 to reflect that there are no orders of stay from the Court of Appeal.

141 The applicant thus wants this court to proceed based on the said fact and issue direction on the pending contempt application dated 16/1/25.

142 The petitioner supported the application averring that this court should proceed and determine the contempt

application as the same should not be pegged on whether the Court of Appeal orders had lapsed or not.

143 The 1st interested party on their part aver that there are orders issued by this court on 29th May 2025 which remain in force unless varied and any action taken in contravention thereof are null and void *ab initio.*

144 The respondents opposed the application averring that there is no need to review order of 7th November 2025 which were properly founded on the record before court. They aver that the record showed that the Court of Appeal had been properly seized of a related matter and issue of stay properly canvassed. They averred that the application is vexations and abuse of the judicial process and should be dismissed.

145 The 2nd and 4th respondents opposed the application indicating this court lacks jurisdiction to hear and determine this application as the question on whether or not there is a valid stay order by the Court of Appeal in CA 010/25 and 028 of 2025 is a question to be determined by the appellate court under article 164 of the Constitution.

146 On 7th November 2025 this court delivered a ruling in this petition and indicated that the Court of Appeal was seized of the matter and so it will be futile and a breach of protocol for the court to continue to entertain the application. The court honourably proceeded to down its tools.

147 The applicant want this court to review this position indicating that in essence there are no stay orders pending in the Court of Appeal. The applicants sought to rely on the communication from the Court of Appeal Assistant Deputy Registrar dated 27/10/25 indicating that no application has been filed in Nrb CA No E010 and E028 of 2025.

148 The 3rd respondent submitted and rightly so that the issue of really determining whether or not there is an appeal before the Court of Appeal and whether orders of stay and maintenance of status quo have been discharged belong to the Court of Appeal and not the ELRC.

149 I have not been supplied with an order from the Court of Appeal to indicate that there is no appeal before the Court of Appeal. No order has been extracted that are before the Court of Appeal to demonstrate this position. The only communication is the email from the Assistant Deputy Registrar of the Court of Appeal which is not what is envisaged to confirm orders of the Court of Appeal.

150 The fact that there was an appeal pending before the Court of Appeal informed this court not to proceed with the contempt application. This court determined that since a higher court was handling the issues related to this petition, it would be a traverse of justice and breach of protocol to proceed and give contrary orders.

151 In my view, nothing has since changed as the applicant has not submitted any order from the Court of Appeal to indicate any contrary position. It is for the same reason

that I will down my tools and desist from meddling unto the Court of Appeal's jurisdiction provided under article 164 of the Constitution and especially in view of the fact that same court is capable of punishing any contempt committed against its orders. Costs shall be in the petition.

Dated, Signed and Delivered Virtually at Nairobi this 15th Day of January, 2026.

HELLEN WASILWA

JUDGE