REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E293 OF 2024

BETWEEN

SUNJAY GUPTA RADHEYLAL..PETITIONER

VERSUS

THE DIRECTOR OF IMMIGRATION SERVICES................1ST RESPONDENT

CABINET SECRETARY INTERIOR COORDINATION OF NATIONAL GOVERNMENT... 2ND RESPONDENT

THE OFFICE OF THE INSPECTOR GENERAL....................3RD RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL......................4TH RESPONDENT

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J U D G M E N T

Introduction:

1. In the Petition dated 27th May2024, the Petitioner challenges his deportation by the 1st and 2nd Respondents in the month of March 2022 and the subsequent listing as *'a prohibited immigrant'* contending that these actions were done in fragrant disregard of

the relevant statutory provisions and in breach of his right to fair administrative action under Article 47 of the Constitution hence unlawful and unconstitutional.

2. The Petitioner thus seeks the following reliefs:

   i) ***A Declaration that the Petitioner's constitutional rights have been infringed by the 1st and 2nd Respondent.***

   ii) ***Declaration that the 1st and 2nd Respondent's decision was procedurally unfair and purposefully calculated to prejudice the legal rights of the Petitioner.***

   iii) ***An order quashing the 1st and 2nd Respondent's decision to deport the Petitioner and allow the Petitioner permanently back into the country.***

   iv) ***A permanent injunction restraining the Respondents by their agent, servants or anyone acting under them from arresting or deporting back the Petitioner upon his re-entry into the country.***

   v) ***An order for mandamus directing the 1st and 2nd Respondent to remove or otherwise cancel the Petitioner's name in the List of Prohibited***

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Immigrants permanently within 30 days.

vi) ***A permanent injunction prohibiting the 1st, 2nd, 3rd and 4th Respondents from preventing the Petitioner from leaving, returning and remaining in the Republic of Kenya.***

vii) ***That costs of this petition be provided for.***

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Petitioner's Case

3. The Petitioner, **SANJAY GUPTA RADHEYLAL**, an Indian national swore that he moved to Kenya in the year 2009.

4. He was issued with a permanent residence certificate in the year 2018 and on 3rd November 2021, he lodged his application for citizenship.

5. He stated that the 1st Respondent approved the application for the citizenship on the 17th of November 2023 and he was invited to was to collect the Citizen Certificate. However, by the time his approval was being officially communicated, he had already been maliciously deported in

March, 2022, which was, over a year earlier.

6. The Petitioner there was malice in the actions of the 1st Respondent in deporting him considering that more than a year later after deporting him, the Respondent was approving his citizenship application stating that if he had truly been deported on valid reasons; the 1st Respondent would not have granted the approval.

7. The Petitioner deposed that he has was not informed of any reasons for his deportation was not served me with a Deportation Order prior to his deportation hence the action of deporting him by the 1st

   Respondent was procedurally unfair, unlawful and unconstitutional.

8. He expressed fears that unless the unlawful and unconstitutional deportation is lifted, he may never come to Kenya which has been his home since 2009.

Respondent's Case

9. The Respondent's filed a replying affidavit sworn on 22nd September, 2025 by RONNIE AKEDI, an Assistant Director, Immigration Services

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working in the Compliance and Enforcement Division of the Directorate of Immigration under the Ministry of Interior and National Administration.

10. He stated that the 1st and 2nd Respondents' mandate includes enforcement and ensuring compliance with The Constitution of Kenya, the Kenya Citizenship and Immigration Act, and other enabling legislations.

11. He confirmed that the Petitioner was previously a permanent resident in Kenya which gave him legal status allowing him to reside in Kenya at the time but he ceased being a Permanent resident by operation of law -***Section 39 (c)-*** of the Kenya Citizenship and Immigration Act, 2011 after being declared a Prohibited Immigrant and removed pursuant to a removal order that was issued against him by the 2nd Respondent.

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12. He clarified that the Petitioner had in fact had applied to be registered as a Citizen of Kenya but this process was never completed and was thus neither issued with a Certificate of registration as a Kenyan citizen nor did he take the "Oath of allegiance" which are pre-conditions for conferment of citizenship hence the Petitioner continues to be a foreigner. He disputed that the Petitioner was at any time requested to go and collect the Citizenship Certificate. On the contrary, the Respondent stated that the Petitioner was merely sent a notification requiring him to visit the Immigration office for further administrative procedures as part of the application process as evidenced by a copy of the notification *-exhibit "RAI*".

13. According to the Respondent, during the pendency of the citizenship application by the Petitioner, the 1st Respondent received the National Intelligence Service Report marked "Secret" that indicated that the Petitioner was involved in international criminal network engaging in international economic crimes and that at the material time, the Petitioner was a fugitive from his home country India where

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he was wanted for numerous economic crimes including tax evasion and liability.

14. The Respondent deposed that transnational economic crimes pose a grave threat to the national interest, national security, stability and prosperity of Kenya. He stated that such crimes implicate Article 238 (1) of the Constitution. Consequently, when these facts came to the attention of the Respondents, it was while the process of the Petitioner's application for citizenship was ongoing, and the 2nd Respondent was obliged to exercise the powers conferred by Section 33 (2) (g) of the Citizenship and Immigration Act, 2011 having been satisfied that the Petitioner posed a threat to the national security.

15. The Respondent described the allegation by the Petitioner that he did not know the reason for his deportation as deceptive insisting that he was informed of the reasons for his removal and being declared a Prohibited Immigrant and served with the removal order.

16. The Respondent averred that it is premature and ill-advised for the Petitioner to approach this Honorable as a person

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who is declared prohibited and inadmissible immigrant should first direct the matter to the Cabinet Secretary through the **"Prohibited Immigrants Committee"** as contemplated by **Section 33 (8) of the Kenya Citizenship and Immigration Act, 2011.** The Respondent thus asserted that the Petitioner has not exhausted all administrative remedies as *he has not presented his case to the relevant Cabinet secretary through the 'Prohibited Immigrants Committee' under Section 33 (8) of the Kenya Citizenship and Immigration Act, 2011* and therefore the entire petition ought to be dismissed "ab initio".

17. The Respondent urged the Court, for the sake of national interest and national security, the Petitioner herein should not be allowed to return to Kenya. The Respondent explained that the under the '***doctrine of sovereignty of Nations***' the right to enter and live in Kenya is the preserve of Kenya citizens only and that all foreigners are subject to the National immigration laws of Kenya. The Respondent thus asserted it is misplaced for the Petitioner to imagine that he has innate legal right to enter and reside in Kenya.

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18. The 1st Respondent affirmed that it has been conferred with discretionary statutory power to vet and screen persons intending to enter and reside in Kenya and may deny entry and residence, if necessary, hence the Petition does not disclose any justiciable controversy.

SUBMISSIONS

Petitioner Submissions

19. Gitonga Mureithi & Company Advocates filed written submissions dated 20/1/2025 and Supplementary submissions dated 22/10/2025.

20. Counsel briefly reviewed the facts upon which the Petition is anchored and then narrowed his submissions to the following issues:

(a) Whether the deportation violated the Petitioner's constitutional rights and freedoms.

(b) Whether the deportation of the Petitioner complied with the due process requirements under the Kenya Citizenship and Immigration Act, 2011, and other relevant legal provisions.

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(c) Whether the Petitioner is entitled to the reliefs sought.

21. On the issue of whether the deportation violated the Petitioner’s constitutional rights and freedoms, Counsel alluded to Article 47 of the Constitution and contended that the Respondents violated the Petitioner's right to administrative justice by failing to furnish him with a deportation order outlining the reasons for their action. Further, he cited Section 4 (2) of the Fair Administration Actions Act 2015 and submitted that by neglecting and/or refusing to inform the Petitioner of the reasons for his deportation or afford him an opportunity to controvert, the 1st and 2nd Respondents violated his right to a fair administrative action and fair hearing.

22. Counsel argued that the Replying affidavit of the Respondent sworn by Ronnie Akedi contained profound internal contradictions in which in Paragraph 8, he stated the Petitioner’s deportation was predicated upon a “National Intelligence Service report” expressly marked “Secret” and hence withheld from disclosure of its contents yet in

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paragraph 11 of the same affidavit he claims that the Petitioner was "duly informed of the reasons" for his removal.

23. Counsel maintained that the deportation was premised on a secret report which the Petitioner was neither given particulars of nor afforded an opportunity to controvert hence amounted to abuse of the legal process and a gross violation of his rights and fundamental freedoms under Articles 47 and 50 of the Constitution. He buttressed the submission that deportation cannot be justified when material upon which it is based is concealed from the affected person and the Court through judicial precedents, locally and internationally.

24. He relied on the decision of Judicial Committee of the Privy Council, in the cerebrated case of **Kanda v Government of Malaya [1962] AC 322,** where **Lord Denning at page 337** observed:

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know

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what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other."

25. Further reliance was placed on **R *v Secretary of State for the Home Department, ex parte Hosenball [1977] 1 WLR 766*** where Lord Denning, speaking for the Court of Appeal stated as follows regarding security dossiers as pg.783:

    "This is a case of a man's liberty. He is to be deported. He is told nothing about it except in the most general terms. He is not confronted with the evidence against him. He is not allowed to know the witnesses, or what they have said. In truth he has not had a fair hearing at all."

26. Further reliance was placed on United States Supreme Court case of **Greene v McElroy 360 U.S. 474 (1959)** in which **Chief Justice Warren** held at page 496:

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"In the absence of explicit authorization from either the President or Congress, we are unwilling to sanction procedures whereby a government agency may deprive a person of his livelihood, by invoking security requirements, without giving him the chance to confront and cross-examine witnesses against him. Traditional concepts of due process forbid condemnation on the basis of secret evidence."

27. Moving on with international jurisprudence, the High Court of Australia in **Plaintiff M47/2012 v Director General of Security [2012] HCA 46, Justice Gummow**, at paragraph 164, of the judgment held:

"The adverse security assessment was communicated neither to the plaintiff nor to his legal representatives. This failure was fatal. It is contrary to the minimum content of procedural fairness to allow a person's liberty or immigration status to be determined by material that is never disclosed to

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them. Fairness requires disclosure sufficient to permit a meaningful opportunity to respond."

28. In the Kenyan context, counsel cited the case of **Republic v Minister of State for Immigration and Registration of Persons ex parte C.O. [2013] eKLR**, where the Court held:

    "The reliance on so-called secret reports which are never furnished to the affected person or even to the court is inimical to the constitutional requirement of fair administrative action. No person may be condemned unheard on the basis of undisclosed material."

29. Further, **Muslims for Human Rights (MUHURI) v Attorney General [2012] eKLR** where the Court stated:

    "The State cannot, by mere recourse to claims of national security, justify the exclusion of affected persons from knowing the case they have to meet. Secrecy, without more, is an invitation to arbitrariness and abuse."

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30. Counsel submitted that the Petitioner was denied an opportunity to communicate with his advocate by the 1st and 2nd Respondent hence violated his right to a fair hearing under Articles 50 and 49. In addition, Counsel submitted that in breach of Article 29 of the Constitution, the Petitioner was held in conditions that he was unable to access basic needs such as water and food which constituted inhuman and degrading treatment.

31. On violation of procedural safeguards provided by the Kenya Citizenship and Immigration Act, 2011; Counsel; submitted that while the 1st and 2nd Respondents are vested with the power to deport individuals, such authority must be exercised in strict compliance with the laid down statutory provisions. Counsel made reference to Section 43 (1) of the Kenya Citizenship and Immigration Act, 2011, which states:

> ***"(1) The Cabinet Secretary may make an order in writing, directing that any person whose presence in Kenya was, immediately before the making of that order, unlawful under this Act or in respect of whom a recommendation has been made to him or***

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her under section 26A of the Penal Code (Cap. 63), shall be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the order."

32. He argued that the above section makes it clear that where the presence of a person in Kenya is unlawful, the Cabinet Secretary is to make an order in writing directing the removal of such persons. He maintained that the Petitioner, to date, has never been furnished with a deportation order outlining the reasons for his deportation.

33. He reiterated that the 1st Respondent had conceded that it had granted Permanent Residency to the Petitioner and submitted that this being the case, such conferred legal status cannot lightly be revocable merely at the whims of the executive fiat. He argued that termination of such status can only be occur in strict compliance with the statute. Court further argued that there is no evidence that the Petitioner's permanent residence was revoked.

34. In support of this contention, Counsel relied on the House of Lords decision in, **Ridge v Baldwin [1964] AC 40**, where it

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was held that administrative bodies exercising statutory powers must respect natural justice when vested rights are at stake. **Lord Reid** at page 65 stated:

> ***"The body which has power to deprive a man of his office is bound to act judicially; and to deny him the opportunity of being heard is a plain breach of natural justice. The fact that Parliament gave the power without prescribing the procedure does not mean that it can be exercised arbitrarily."***

35. Mr. Gitonga contended that even Kenyan courts have consistently held that even in deportation cases, Article 47 applies to guarantees fair administrative action that is lawful, reasonable and procedurally fair, and that no person may be condemned unheard or removed from the country on the basis of secret, undisclosed material. Reliance was placed on **Oumarou** ***Moumouni Ali v Director General, Kenya Citizens & Foreign Nationals Management Services [2020] eKLR***, where the High Court held as follows:

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"The decision to revoke the petitioner's lawful status, without furnishing him with a deportation order or reasons, is a nullity. <u>Immigration status cannot be extinguished by stealth or by vague reference to 'operation of law</u>.' The Constitution demands transparency, fairness and adherence to procedure."

36. He thus submitted that the Respondents' reliance on the bare phrase "operation of law" without producing a formal deportation order under Section 43 of the Kenya Citizenship and Immigration Act collapses into illegality.

37. Further, Mr. Gitonga submitted that the failure by the Respondent to provide the Petitioner with the reasons for the deportation had deprived him of the opportunity to challenge the ensuing decision through an appeal, as provided for by **Section 57** of the Kenya Citizenship and Immigration Act, 2011. The Petitioner relied on the case of **Grace Dola & another v Director, Directorate of Criminal Investigations & 2 others [2021] eKLR quoting the case of Republic v Minister of State for**

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Immigration and Registration of Persons Ex-Parte C.O. [2013] eKLR, where the court stated: -

"The requirement in removing an alien from a state's territory, as provided under the above conventions and in accordance with the constitutional provisions contained in Article 47, is that such removal should be 'in accordance with the law', that due process should be followed."

38. On whether the Petitioner should be granted the reliefs sought, Counsel submitted that the Respondents' actions subjected the Petitioner to undue hardship, uncertainty, and psychological distress. They deported the Petitioner without furnishing him with reasons. This omission, he argued subjected him to further prejudice as he cannot appeal the decision to deport him under Section 57 of the Kenya Citizenship and Immigration Act, 2011. The Petitioner continues to reside in India yet he is a Kenyan citizen with a family and business in Kenya.

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43. He thus underscored that the deportation was unlawful and procedurally irregular. According to Counsel, the Petitioner prays for an opportunity to return to his home in Kenya and see his family again from which he has been separated since 2022 and to oversee the running of his business. Counsel relied on the case of **Grace Dola (Supra) quoting the case of Republic v Minister of State for Immigration and Registration of Persons Ex-Parte C.O. [2013] eKLR,** where the Court reasoned as follows:

"I would hold that it is contrary to law that the Minister should have the Petitioner, a family man living in Kenya as his domicile, doing normal business and possessed of relevant certificates of legitimate presence, arrested and detained without any hearing at all, deprived of his own properties, extracted from his family environment, detained for long, and then deported. Such actions are telltale instances of violation of the fundamental rights of the individual as set out in detail in Chapter V of the Constitution."

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39. Counsel submitted that in case the Petitioner committed any wrongdoing to warrant his deportation, he is entitled to be subjected to the due process of the law.

40. Countering the Respondents' submission that the Petitioner has failed to exhaust the administrative remedies under the Citizenship and Immigration Act for failing to present the matter of his immigration status to ***the 'Prohibited Immigrants Committee'***, Counsel submitted that this contention cannot be made where it is apparent that the internal remedies are ineffective, illusory, biased, or constitutionally inadequate as was held in **William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR.**

41. Further, in **Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR it** where it was held that it is within the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is

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proportionate to the interests the party wishes to advance in a suit especially where the Petition raises genuine violations not merely framed in constitutional language to evade procedure.

42. Counsel was unequivocal that in the present case, the alternative remedy is plainly futile. He reiterated that the deported on the strength of a "National Intelligence Service" report marked "Secret" thus expecting him to appeal before a committee about allegations he has never seen is to demand a meaningless ritual rather than a remedy.

43. Further, Counsel argued that the Petition directly impugns the deportation as a violation of Articles 47 (Fair Administrative Action) and 50 (Fair Hearing) and as such, this Court has jurisdiction under Article 165(3)(b) to determine the matter. He cited the case of **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)** where it was held that where the impugned administrative process itself offends the Constitution, this Court is not merely empowered but duty-bound to intervene.

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44. Furthermore, Counsel observed that this Honourable Court, in its ruling dated 15th May 2025, considered and dismissed the Respondents' Preliminary Objection founded on Section 9(2) of the Fair Administrative Action Act and Section 57 of the Kenya Citizenship and Immigration Act. The Court expressly held that the Petitioner had taken reasonable steps to exhaust internal mechanisms, including addressing the Chairperson of the Review and Appeal Committee by letters dated 16th and 25th September 2024, which bore official acknowledgment stamps, but received no response. The Court concluded that the Respondents' silence rendered the internal mechanism ineffective hence the matter cannot be reopened.

45. Regarding the Respondents' contention that it relied on a "secret" dossier and Section 33(2)(g) of the Kenya Citizenship and Immigration Act, which permits the Cabinet Secretary to declare a person inadmissible on grounds of national security or national interest, Counsel argued that it cannot be used to justify violation of constitutional guarantees on due process. He submitted that whereas

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Section 33(2)(g) empowers the Cabinet Secretary to declare a person inadmissible on grounds of national interest, the law demands that such actions strictly comply with due process, including service of notice, disclosure of reasons, and opportunity to be heard and this Court had in its ruling underscored that even in cases involving national security or prohibited-immigrant listings, such actions are still bound by Articles 10 and 47 of the Constitution hence such power is to be exercised judicially, rationally, and fairly as was held in **Republic v Minister of State for Immigration and Registration of Persons ex parte C.O. [2013] KEHC 5766 (KLR),** where the Court in *paragraph 33* of the judgment stated:

"To hold that the Minister is the sole judge when it comes to the exercise of discretion would be to throw the rule of law out of the window. When Constitutional safeguards provided under Article 47 of the Constitution are destroyed by being whittled and judicial officers are put at the sufferance of the Executive or at the whims of the Legislature, the

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independence of the judiciary is the first victim. It must always be remembered that under Article 25 of the Constitution, one of the rights and fundamental freedoms which cannot be limited is the right to a fair trial…….”

46. Counsel termed as inaccurate the Respondents’ contention that the Petitioner was informed of the reasons for declaring him a prohibited immigrant and served with a removal order asserting that no such notice or reasons were ever furnished.

Respondents’ Submissions

47. The Respondents filed their written submissions dated 16th October, 2025 through **Ms. P.A Chibole, Principal State Counsel**.

48. The Respondents commenced by briefly outlining the foundational basis of the Petitioner’s case against them as well as the Respondents rebuttal.

49. The Respondents thus identified and submitted on the following issues:

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a) Whether there is any violation of rights by the Respondents against the petitioner;

b) Whether the Petitioner has exhausted all available administrative and internal remedies before moving to a court of law;

c) Whether the petitioners are entitled to the reliefs sought

50. On the issue of whether the Respondents violated the rights of the Petitioner, Ms. Chibole submitted that no constitutional rights of the Petitioner were violated by the Respondents as alleged.

51. Ms. Chibole argued that under Article 24 of the Constitution, the rights Petitioner complains were violated by the Respondents can be limited as they are not among the rights enshrined under Article 25 of the Constitution as non-derogable rights.

52. She argued that under Section 33 (1) of the Kenya Citizenship and Immigration Act, 2011 (Cap. 170), prohibited immigrants are foreign nationals who are barred from entering or remaining in Kenya due to various serious legal,

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security, health, or public order concerns and includes individuals who have committed or are suspected of committing serious crimes such as human trafficking, terrorism, money laundering, war crimes, or who threaten national security. Additionally, any person whose presence is unlawful or has an order for removal is classified as a prohibited immigrant.

53. Ms. Chibole contended that the 2nd Respondent acted as mandated in law under Section 33 (2) (g) of the Kenya Citizenship and Immigration Act, 2011 to declare any foreigner to be inadmissible on grounds of national security national interest.

54. Furthermore, the Petitioner was duly informed of the reasons behind his declaration as a Prohibited Immigrant and consequently a removal order and the order was duly served and therefore the petitioner cannot pretend to be unaware of his removal from the country. The Respondents relied on the case of **Ebuka v Director of Immigration Services & 2 others (Petition E256 of 2022) [2025] KEHC 4138 (KLR) (Constitutional and Human Rights)**

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(27 March 2025) (Judgment), where the court stated as follows:

> *It is thus my finding from the foregoing that in the present case, the actions and decision of the Cabinet Secretary in the Ministry of Interior and Coordination of National Government were lawful, as he acted within his statutory mandate, and has also demonstrated a good reason to place the Petitioner under a recognized category of prohibited immigrants.''*

55. On the issue of whether the Petitioner exhausted all available administrative and internal remedies before moving to a court of law the Respondents argued that the petitioner lost his permanent residence status when the removal order against him came into force under section 43(1) of the Kenya Citizenship and Immigration Act 2011 which provides as follows:

> ***(1) The Cabinet Secretary may make an order in writing, directing that any person whose presence in Kenya was, immediately before the making of that order, unlawful under this Act or in respect of whom***

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a recommendation has been made to him or her under section 26A of the Penal Code (Cap. 63), shall be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the order.

56. The Respondents argued that the issuance of a deportation order was in exercise of administrative powers of the Cabinet Secretary. Ms. Chibole submitted that Section 33 (8) of the Kenya Citizenship and Immigration Act, 2011, the Cabinet Secretary, may from time to time, review the status of prohibited immigrants and inadmissible persons, subject to the advice of the relevant committee in this case, the Prohibited Immigrant Committee where the petitioner ought to have channelled his grievances before filing a judicial review application.

57. Ms. Chibole argued that the Petitioner ought to have exhausted all the available internal appeal or review mechanisms provided by the Act before approaching the Court. In support, Counsel relied on various judicial decisions including **Mombasa High Court Constitutional Petition**

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No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 (2020) eKLR; which cited with approval **R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR**, and the **Speaker of National Assembly v Karume [1992] KLR 21** in underscoring the that where there are prescribed procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Also relied by Counsel to drive this point home was the case of **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR),** the court upholding the doctrine of exhaustion stated:

"We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the

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various plaintiffs' disputes had they filed them within the church set up.And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely".

58. Counsel thus urged this Honourable Court should to allow the appropriate forum, in this case, the Prohibited Immigrant Committee, to address the issues within its jurisdiction before resorting to this Court for a constitutional intervention.
59. On whether the petitioners are entitled to the reliefs sought, Counsel argued that the Petitioner has not proved his case that his rights were violated by the Respondents hence does not deserve any reliefs. Further, being public interest litigation, the Petitioner is not entitled to any costs.

Analysis and Determination

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60. Having carefully examined the pleadings and the submissions of all the Parties, this Court considers the following to be the issues that arise for determination in this Petition:

1) Whether the Petition is premature and therefore incompetent for offending the doctrine of exhaustion of remedies.

2) Whether the Petitioner is a Kenyan citizen

3)Whether the process adopted by the 1st and 2nd Respondent of deporting the Petitioner, removing him from Kenya and declaring him a prohibited immigrant complied with the mandatory provisions of the Citizenship and Immigration Act, 2011.

4) Whether the actions of the Respondent violated the Petitioner's constitutional right to fair administrative action under Article 47 of the Constitution as read together with Section 4 (3) of the Fair Administrative Action Act, 2015.

5) Whether the Petitioner is entitled to the reliefs sought.

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Whether the Petition is premature and therefore incompetent for offending the doctrine of exhaustion of remedies.

61. In the submissions by the Respondents, they argued that the Petition was prematurely filed because the Petitioner failed to exhaust the administrative remedies provided under the Kenya Citizenship and Immigration Act, in particular, the Respondents argued that the Petitioner ought to have first appealed the decision to declare him a prohibited immigrant to the Cabinet Secretary through the Prohibited Immigrants Committee envisaged under Section 57 of the Kenya Citizenship and Immigration Act.

62. This Position was fiercely opposed by the Petitioner who argued that the Respondents are attempting to reopen an issue that was heard and determined by the Court in a Preliminary Objection that the Respondents raised earlier in these proceedings. Further, the Petitioner, relying on judicial precedents argued where there are genuine constitutional violations and the alternative remedy was ineffective, illusory, biased or constitutionally ineffective, the Court must

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assume jurisdiction and determine the matter. The Petitioner contended that he was deported on the strength of a "National Intelligence Service" report marked "Secret" and to expect him to appeal before the Prohibited Immigrants Committee about allegations he was never given an opportunity to even see or informed of the reasons for such deportation is to demand a meaningless ritual rather than a remedy.

63. On this issue, I fully concur with the Petitioner's submission that the Respondents litigated this issue in their Notice of Preliminary objection dated 8/9/2024. This Honourable Court, after extensively and exhaustively considering all the parties submissions on the issue which was premised under Section 9 (2) of the Fair Administrative Action Act and Section 57 of the Kenya Citizenship and Immigration Act dismissed the Respondent's Preliminary Objection. This issue having been conclusively determined, Respondents cannot reintroduce it with a view to relitigating with an imaginary hope of getting a different result. It is abuse of Court process to revive issues that have been determined by

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the Court with finality. For the sake of clarity, I would wish to reiterate the finding of this Court on this issue in its Ruling of 15/5/2025. This Court held as follows:

"… The respondents' preliminary objection is anchored in Section 57 of the Kenya Citizenship and Immigration Act which provides as follows:

Review and Appeal

- ***Any person aggrieved by a decision of a public officer made under this Act may apply to the High Court for a review of the decision.***
- ***An appeal against the decisions of the Cabinet Secretary or of the Service under this Act may be made to the High Court.***

According to the respondents the petitioner failed to exhaust this mechanism before filing this petition. Conversely, the petitioner submitted that he had sought to exhaust this mechanism however the same was frustrated by the respondents hence his move to petition this Court.

A look at the material before this Court reveals that the petitioner's advocate on 16th September 2024 wrote to the Chairperson of the Review and Appeal Committee appealing the petitioner's deportation order. A further letter was sent by the petitioner's Counsel on 25th

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September 2024. No response is registered to have been received from the respondents.

While the respondents argued that the petitioners had failed to exhaust this mechanism, they remained silent on these two letters yet the same bear an acknowledgment stamp of receipt by the Ministry of Immigration.

At this juncture it is vital to note that this Court is obliged to look at whether the dispute resolution mechanism established by the respondents is not only competent but also the efficacious in regard to the remedies if any, that are available to the petitioner.
To my mind a couple of things are noteworthy. First, the Act under Section 57 provides a clear dispute resolution mechanism. This provision provides an appeal mechanism to the High Court where a party is dissatisfied with the decision of the 1st and 2nd respondents.
It is my considered opinion that the petitioner's actions were in line with the law. I say so because once the respondents failed to respond, the petitioner proceeded to petition this Court to review the 1st and 2nd respondent's decision. While the petitioner complied with the dictates of the law, the respondents who are obliged to carry out their mandate in line with

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the principles set out under Article 10 of the Constitution, failed to do so. This left the petitioner with the single option of approaching this Court for redress. Considering this, I reason that the respondents Notice of Preliminary Objection is not merited in the circumstances of this case…”

Whether the Petitioner is a Kenyan citizen

64. The Petitioner stated that the 1st Respondent approved his application for the citizenship on the 17th of November 2023 and was thus invited to collect the Citizen Certificate. However, by the time his approval was being officially communicated, he had already been maliciously deported in March, 2022, which was, over a year earlier.

65. The Respondent denied assertion of citizenship and clarified that the Petitioner had in fact applied to be registered as a Citizen of Kenya but this process was never completed and was thus neither issued with a Certificate of registration as a Kenyan citizen nor did he take the "Oath of allegiance" which are pre-conditions for conferment of citizenship hence the Petitioner continues to be a foreigner. They disputed

that the Petitioner was at any time requested to go and collect the Citizenship Certificate. On the contrary, the Respondent stated that the Petitioner was merely sent a notification requiring him to visit the Immigration office for further administrative procedures as part of the application process.

66. This issue featured earlier in the Ruling of this Court of 15/5/2025 and I equally addressed it. In the Application dated 28/2/2025, the Petitioner had opposed his being declared and listed as prohibited immigrant citing Section 33 (1) of the Kenya Citizenship and Immigration Act that he cannot be termed an immigrant yet his citizenship immigration application had been approved.

67. This Court after review of the submissions returned the verdict that going by the requirements of the Kenya Citizenship and Immigration Act, 2011, the Petitioner had not lawfully acquired the status of a Kenyan Citizen. This Court reasoned as follows:

"In the supporting affidavit, petitioner annexes a notice that was generated on 17th November 2023

that conveys information to the effect that his application for citizenship had been received hence he was required to present the relevant documents to the 1st and 2nd respondent at Nyayo House.

There is no Certificate of registration of citizenship that is annexed or provided.

> ***Section 18 of the Kenya Citizenship and Immigration Act provides:***
>
> ***'a person who qualifies to be registered as a citizen of Kenya under this Act, shall upon taking the oath or affirmation or allegiance, in the prescribed manner, be issued with a certificate of registration as a citizen of Kenya'.***

Two vital requirements must be fulfilled before one is ultimately registered as a Kenyan citizen, namely:

- ***a) the applicant must take the oath or affirmation of allegiance***
- ***b) must subsequently be issued with a certificate of registration as a citizen of Kenya.***

The Petitioner has not revealed one, that he has taken the oath or affirmation of allegiance, and two, has not demonstrated that he has been issued with the Certificate of registration specified in Section 18.

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Having an application form and the payment of fees is a journey that may lead to acquisition of citizenship but until full fulfilment of the requirements of Section 18 the document remains part of that process. Until the actual crossover is completed by satisfying the conditions under Section 18 of the Act, the claim of citizenship by an applicant is an aspiration.

<u>If the Certificate of registration of citizenship is not issued, no citizenship is conferred and thus without it, there can be no talk of revocation of citizenship as none exists</u>.”

68. That position remains unchanged hence for all purposes, the Petitioner was, and still is a foreigner, not a Kenyan Citizen.

Whether the process adopted by the 1st and 2nd Respondent of deporting the Petitioner, removing him from Kenya and declaring him a prohibited immigrant complied with the mandatory provisions of the Citizenship and Immigration Act, 2011.

69. According to the Respondents, the Petitioner was deported and removed from Kenya and further declared a prohibited immigrant upon receipt of a secret report by the National Intelligence Service which associated the Petitioner with

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international crime syndicate involving white collar crimes. He was further accused of tax evasion and liability from his own Country of origin India. These facts, according to the Respondents implicated the provisions of Article 238 (1) of the Constitution as they could the potentially harm Kenya's national interest, national security interest, stability and prosperity hence the 2nd Respondent exercised his discretion under Section 33 (2) (g) of the Kenya Citizenship and Immigration Act and ordered the deportation, removal and declaration of the Petitioner as a prohibited immigrant. Based on the issuance of the removal order his permanent residence was extinguished by law, to wit, Section 39 (c) and the Petitioner became prohibited immigrant under Section 33 (1) (g) which includes a person who has an order for removal. The Respondents refuted the Petitioner's contention that he was not informed about the reasons for deportation. They insisted that he was notified of the reasons behind his deportation, removal and subsequent declaration as a prohibited immigrant.

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70. Opposing the contention, the petitioner argued that the fact that the 1st and 2nd Respondent's though vested with the power to deport, must nevertheless exercise that authority in strict compliance with the laid down statutory provisions. He argued that whereas Section 43 (1) of the Kenya Citizenship and Immigration Act requires the Cabinet Secretary may make an order directing that any person whose presence in Kenya is unlawful shall be removed from and remain out of Kenya, such an order, the Act provides must be **in writing,** yet the Petitioner, to date, has never been furnished with a written deportation order outlining the reasons for his deportation. The Petitioner thus contended that relying on a bare phrase "operation of law" without exhibiting a formal deportation order under Section 43(1) of the Kenya Citizenship and Immigration Act was legally unsustainable. The Petitioner further argued that the failure to provide the Petitioner with the reasons for the deportation prejudiced his statutory right to appeal the decision as provided for in Section **57** of the Kenya Citizenship and Immigration Act, 2011

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71. He reiterated that the 1st Respondent had conceded that it had granted Permanent Residency to the Petitioner and submitted that this being the case, such conferred legal status cannot lightly be revocable merely at the whims of the executive fiat. He argued that termination of such status can only be occur in strict compliance with the statute. He further argued that there is no evidence that the Petitioner's permanent residence was revoked.

72. It is imperative that before I embark on the determination of this issue that I set out the relevant provisions of the Citizenship and Immigration Act.

73. **33 (1) For purposes of this Act, a prohibited immigrant is a person who is not a citizen of Kenya and who is—**

    ……………………

    g) a person in respect of whom there is in force an order made or deemed to be made under section 43 directing that such person must be removed from and remain out of Kenya;

74. ***Section 33 (2) (g) provides that:***

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(2) For purposes of this Act, an inadmissible person is a person <u>who is not a Kenyan citizen and who</u>—

(g) is, by order of the Cabinet Secretary, declared inadmissible on grounds of national security or national interest.

75. **<u>Section 34. Residence</u>**

    (1) A person who is not a citizen of Kenya or an asylum seeker shall not enter or remain in Kenya unless she or he has a valid permit or pass.

76. **39. Loss of permanent residence status**

    A person shall lose permanent residence status—

    (a) upon acquisition of Kenya citizenship;

    (b) upon failing to comply with obligations and conditions under section 38;

    (c) when a removal order against him comes into force;

    (d) upon communicating in writing to the Director the intention to cease holding the permanent residence status; and

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(e) where the marriage is not bona fide.

77. **43. Power to remove persons unlawfully present in Kenya**

*(1) The Cabinet Secretary **may make an order in writing**, directing that any person whose presence in Kenya was, immediately before the making of that order, unlawful under this Act or in respect of whom a recommendation has been made to him or her under section 26A of the Penal Code (Cap. 63), shall be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the order.*

78. This Court's understanding of Section 43 (1) of the Citizenship and Immigration Act is that**, firstly,** it is mandatory that the order made by the Cabinet Secretary under this provision **be in writing**. **Secondly**, immediately before the making of the order, the presence of the person affected by the removal order must have been unlawful. This condition of '*unlawful presence immediately before the order is made'* does not however apply when the Cabinet

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Secretary acts on the recommendation made under Section 26A of the Penal Code.

79. The essence of this provision is that a removal order cannot be substitute backdoor procedure for invalidating a lawfully issued permanent residency. Permanent residence can only be invalidated if the conditions spelt out in Section 39 of the Act or 42 occur, making the presence of the subject unlawful hence the Cabinet Secretary may then invoke the powers under Section 43 (1) of the Act. The order of removal cannot thus be made against a person enjoying permanent residency status that has been lawfully issued unless that status is first invalidated so that the power under Section 43 (1) is then exercised. In other words, a status lawfully issued cannot be terminated by issuance of an order of deportation, invalidation of status must precede the deportation order, not vice-versa. It is only after the status has been lost or declared invalid that the person's presence becomes *'immediately unlawful under the Act'* and only then that the Cabinet Secretary can exercise the powers under Section 43 (1) of the Act.

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80. In this case, despite the Respondents admitting that the Petitioner had been issued with permanent residence status, there was no evidence presented that prior to issuance of the deportation, removal and subsequent declaration as a prohibited person, his permanent residence status had been invalidated to qualify him as a person '*whose presence in Kenya was, immediately before the making of that order unlawful under the Act*.' It means the removal order was made against a person who still held a lawfully issued Permanent resident status which was illegal and that explains why even after the purported deportation, the Department of immigration still went ahead with processing his citizenship application as there was no invalidation of the permanent residence status. To date, the Court has no invalidation of that status as none was exhibited to the Court.

81. The argument by the Respondents that the deportation/removal order terminated the Permanent residence status of the Petitioner in view of Section 39 (c) of the Act holds no water. Section 39 (c) states that permanent

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residency is lost when removal order against the subject comes into force. The removal order must however be valid, meaning it must comply with the conditions specified set out in Section 43 (1) Act. Section 39 (c) does not take away those conditions; it merely recognises that a validly issued deportation order can invalidate the Permanent residency status. Section 39 (c) does authorise the Cabinet Secretary to issue the removal order contrary to the requirements of Section 43 (1) to invalidate the status of the person who still enjoys lawful status which must be invalidated first before the Cabinet Secretary can invoke the powers under Section 43 (1) of Kenya Citizenship and Immigration Act.

82. Further, despite the Respondents insisting they issued a formal deportation order to the Petitioner that gave reasons, for the deportation, no copy of a valid deportation order was exhibited in Court thus did not effectively rebut the Petitioners standpoint that no written deportation order was served on him. The claim by the Respondents that there was an official written deportation order by the 2nd Respondent were thus bald allegations not backed by tangible evidence.

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83. The Respondents did not thus comply with strict provisions of the Kenya Citizenship and Immigration Act, in particular Section 43 (1) before deporting, removing and declaring the Petitioner a prohibited/inadmissible immigrant. There is no proof of any formal/written deportation order and further, it is manifest that if any such order was issued, which is doubtful, it was done while his Permanent residency status was still validly in force hence was issued irregularly as the condition of '*unlawful presence immediately before the issuance of the removal order could not be met*'. The removal order cannot be used as tool to invalidate legitimate status The deportation/removal order and declaration of prohibited immigrant was thus done in contravention of the provisions of Section 43 (1) of the Act.

Whether the actions of the Respondent violated the Petitioner's constitutional right to fair administrative action under Article 47 of the Constitution as read

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together with Section 4 (3) of the Fair Administrative Action Act, 2015.

84. The Constitution provides for the right to fair administrative action as follows:

Article 47:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall –

a) provide for review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

b) promote efficient administration.

85. The Fair Administrative Actions Act, 2015, enacted to give effect to Article 47 significantly amplifies and expounds the protection accorded to a person likely to be affected by an administrative decision.

Section 4 – of the Act provides:

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(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to Section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to–

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(a) *attend proceedings, in person or in the company of an expert of his choice;*

(b) *be heard;*

(c) *cross-examine persons who give adverse evidence against him; and*

(d) *request for an adjournment of the proceedings, where necessary to ensure a fair hearing.*

(5) *Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.*

(6) *Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.*

86. The Court, in the case of **Kenyan Human Rights Commission & another v. Non-Governmental Organization Co-ordination Board & another (2018) eKLR,** underscored the significance of Article 47 of the Constitution as follows:

"40. … Administrative actions that flow from statutes, must now meet the constitutional test of legality, reasonableness and procedural fairness. Accordingly, a party, a hearing before taking action against him is no longer discretionary. It is firmly entrenched in our

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Constitution as an inviolable right. It is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and quasi-judicial functions. These no longer have place in our constitutional dispensation…”

87. It is thus manifest that the Constitution as read together with the Fair Administrative Actions Act, 2015 provide for prior notice, reasons for the decision, an opportunity to be heard as key defining standards of any reasonable and procedurally fair administrative action. Administrative actions that do not abide by these constitutional and statutory benchmarks are unconstitutional and unlawful, unless where the right is specifically limited by law, and such limitation satisfies the strict requirements of Article 24 of the Constitution, that is, limitation is reasonable and justifiable in an open and democratic society taking into account the nature of limitation, the extent and whether less restrictive means were available.

88. The Petitioner contended that the order to deport, remove him and declare him prohibited immigrant was issued against him without giving him any reasons or affording him an opportunity to respond or be heard on the matter.

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89. The Respondent insisted the Petitioner was provided with reasons for deportation.

90. This Court has already made a finding that the Petitioner was not furnished with any formal deportation order despite Section 43 (1) of the Kenya Citizenship and Immigration Act specifying that that such an order by the Cabinet Secretary be formally made in writing.

91. The Respondent further stated it acted on the basis of a '***secret report'*** provided by the National Intelligence Service which indicated that the Petitioner was involved in an international criminal ring associated with white collar crime and was also a fugitive who was wanted by his own country for evading tax and tax liability. There was no such request from the Petitioner's own country of India that was exhibited before this Court.

92. Apart from bald allegations that there existed a National Intelligence Service Report, which was equally not exhibited, there is no other reason that was given for the administrative action taken against the Petitioner.

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93. The Respondent did not make any application to the Court, on grounds of public interest immunity, to consider viewing any such report, if it ever existed, in camera proceedings or file an affidavit under Article 24 (3) of the Constitution demonstrating the need to suppress such a report, if any, considering that a fundamental freedom can only be limited by law and to the extent reasonable in an open and democratic society. My view is that the Respondents cannot find refuge in an 'secret' unproven report that they singularly used to take drastic action affecting the vested rights of the Petitioner.

94. The said 'secret report' was the only reason cited for the action of deporting, removal and declaring the Petitioner a Prohibited immigrant. In my considered view, it would have been necessary to disclose to the Petitioner, the material affecting his status to enable him confront the allegations in order to serve the interest of a fair administrative action and the public interest of administration of justice.

95. On the contrary, the 'secret' undisclosed report was used against him without him being given any reasons for the

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deportation or being afforded a chance to respond to those allegations. The extreme action taken against the Petitioner was not justified and not even this Court has any material been presented to justify the deportation. The deportation, removal and declaration of the Petitioner as prohibited immigrant was therefore arbitrary.

96. The International Covenant on Civil and Political Rights Convention applies to Kenya pursuant to Article 2 (6) of the Constitution which provides that '*any treaty or convention ratified by Kenya shall form part of law of Kenya under this Constitution*.' Article 13 of the Convention provides for removal of a non-citizen states:

'An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law ***and shall, except where compelling reasons of national security otherwise require****, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.'*

97. I am further guided by the decision of **Oumarou Moumouni Ali v Director General Kenya Citizens and Foreign Nationals Management Services & 3 others [2020] KEHC 9787 (KLR)** where the Court held:

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> ***"27. The Respondents in exercise of their functions as state officers are bound by provisions of Article 10 of the Constitution thus the National Values and Principles of Governance which includes the rule of law, democracy, human dignity, equity, social justice, human rights, non-discrimination and protection of the marginalized, transparency and accountability. It is not for them to urge that they should be accorded the autonomy vested in them by statute without unnecessary intervention of the Court when it is clear such autonomy has been abused by issuing deportation order, failing to serve the same and failing to accord the Petitioner the right to be heard. In view of the above, I find that the due process was not followed in the Petitioner's deportation… This very act goes against the dictates of our constitution and International Law and should not be allowed at all."***

98. I therefore find the Respondents action violated the Petitioner's rights under Article 47 (1) of the Constitution as read together with Section 4 (3) of the Fair Administrative Action Act. Equally, given that the decision was taken in contravention of Section 43 (1) as read with Section 39 of the Kenya Citizenship and Immigration Act, 2011; and without giving any reasons or a chance to the Petitioner to respond same was unlawful and in violation of Article 13 of International Covenant on Civil and Political Rights.

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Whether the Petitioner is entitled to the reliefs sought.

99. The Petitioner has proved that he was unlawfully removed from Kenya through an irregular, unlawful and unconstitutional deportation order that was in violation of his Constitution rights.

100. He was removed almost 4 years ago and between then and today, it is now almost 4 years. He had applied for Kenyan Citizenship, was invited for further processing but by then he had been removed through the unlawful deportation in March, 2022.

101. He has expressed his strong desire to return to Kenya to his family and to oversee the running of his businesses. Between then and now, a lot may have changed including the expiry of his residency permit. The status of his permanent residency that entitled him to live and work in the Country is unascertainable for now. Further, having been out of the country for long and being a foreigner, it is reasonable that he undergoes fresh vetting for purposes of considering the suitability of his application to be given

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residence status. This Court lacks the capacity to perform due diligence to determine the eligibility of the Petitioner and doing so would also be a usurpation of legal responsibility specifically vested on the 1st and 2nd Respondent which would be a violation of the doctrine of separation of powers. Nevertheless, where there is a wrong, there must be a remedy. In this case, the Court has to determine the appropriate right that balances the interest of justice and the need to maintain institutional comity. As to what amounts to an appropriate remedy, I am guided by the South African case of **Hoffmann *v South African Airways*** **(CCT17/00) [2000] ZACC 17;** where the Court held as follows:

"[45] The determination of appropriate relief…calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third to make an order that can be

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complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case…"

102. Consequently, the Court has to make appropriate orders that would meet the ends of justice in this case while respecting the area of responsibility of the 1st and 2nd Respondent. The Court cannot thus order for automatic return of the Petitioner into the country which the Petitioner prayed for, but will instead make the following orders:

1. ***A Declaration is hereby issued that the 1st and 2nd Respondents violated the Petitioner's constitutional rights under Article 47 as read together with Section 4 (3) of the Fair Administrative Action Act, 2015.***
2. ***A Declaration is hereby issued that the deportation order issued against the Petitioner by the 2nd Respondent was irregular and ultra vires Section 43 (1) of the***

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Kenya Citizenship and Immigration Act, 2011.

3. ***An order is hereby issued quashing the 1st and 2nd Respondent's decision to deport and declare the Petitioner a prohibited immigrant.***
4. ***The 1st and 2nd Respondent shall pay compensation to the Petitioner of Kenya shillings two million shillings (2,000,000/-)only.***
5. ***The 1st and 2nd Respondent shall within 45 days from the date of this judgment facilitate the Petitioner's re-entry into Kenya by:***
   a) ***Issuing the Petitioner with necessary travel documents, entry visa or special pass to enable the Petitioner travel to Kenya***
   b) ***Ensuring the Petitioner is not treated as a prohibited/inadmissible immigrant or otherwise barred from entry on account of the now quashed deportation order***

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6. ***Upon the re-entry, the 1st and 2nd Respondents (authorized officers) shall within 45 days or such other reasonable time as may be required undertake fresh assessment on the eligibility of the Petitioner for residence status in line with Sections 37-39 of Kenya Citizenship and Immigration Act or any other permit or authority in accordance with the law and shall in the process accord the Petitioner fair administrative action including the right to be heard and give reasons for any decision made.***
7. ***The Respondents shall within 120 days of this judgement file an affidavit before this Court confirming compliance with the order number 5 and 6 above and decisions made pursuant to this judgment.***
8. ***In the event of any dispute in implementation, any Party shall be at liberty to apply to this Court for directions.***

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9. ***Costs of this Petition shall be borne by the 1st and 2nd Respondent.***

Dated, signed and delivered virtually at Nairobi this 23rd day of April, 2026.

...

L N MUGAMBI

JUDGE

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