

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(CONSTITUTION & HUMAN RIGHTS DIVISION)**  
**PETITION NO. E216 OF 2025**

- IN THE MATTER OF:** THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA
- IN THE MATTER OF:** THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.
- IN THE MATTER OF:** THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.
- IN THE MATTER OF:** THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.

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

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

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

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

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

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

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

**BETWEEN**

<b>OKIYA OMTATAH OKOITI .....</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>NYAKINA WYCLIFE GISEBE .....</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>ELIUD KARANJA MATINDI .....</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>BERNARD MUCHIRI MUCHERE .....</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>DR. MAGARE-GIKENYI BENJAMIN .....</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>KELVIN SAITOTI NAIKUNI .....</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>OLIVE NAISINKEI AMBROSE .....</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>DR. DANCAN OTIENO ONYANGO .....</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>NAOMI NYAKERARIO MISATI .....</b>	<b>9<sup>TH</sup> PETITIONER</b>

**VERSUS**

<b>H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE NATIONAL EXECUTIVE .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>THE CABINET SECRETARY FOR THE NATIONAL TREASURY .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>

THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY .....	4 <sup>TH</sup> RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 <sup>TH</sup> RESPONDENT
THE HON. ATTORNEY GENERAL .....	6 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET .....	7 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL .....	8 <sup>TH</sup> RESPONDENT
THE NATIONAL ASSEMBLY .....	9 <sup>TH</sup> RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO .....	10 <sup>TH</sup> RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO .....	11 <sup>TH</sup> RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI .....	12 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH .....	13 <sup>TH</sup> RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE .....	14 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI .....	15 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU .....	16 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET MARGARET NYAKANG'O .....	17 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU .....	18 <sup>TH</sup> RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA .....	19 <sup>TH</sup> RESPONDENT
THE ETHICS AND ANTI-CORRUPTION .....	20 <sup>TH</sup> RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO .....	21 <sup>ST</sup> RESPONDENT
INTERNATIONAL MONETARY FUND (IMF) .....	22 <sup>ND</sup> RESPONDENT

**AND**

THE SENATE OF KENYA .....	1 <sup>ST</sup> INTERESTED PARTY
LAW SOCIETY OF KENYA .....	2 <sup>ND</sup> INTERESTED PARTY
KATIBA INSTITUTE .....	3 <sup>RD</sup> INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION .....	4 <sup>TH</sup> INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .....	5 <sup>TH</sup> INTERESTED PARTY
TRANSPARENCY INTERNATIONAL .....	6 <sup>TH</sup> INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) .....	7 <sup>TH</sup> INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) .....	8 <sup>TH</sup> INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN) .....	9 <sup>TH</sup> INTERESTED PARTY
NATIONAL TAXPAYERS ASSOCIATION (NTA) .....	10 <sup>TH</sup> INTERESTED PARTY
COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM) .....	11 <sup>TH</sup> INTERESTED PARTY

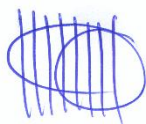
**CERTIFICATE OF URGENCY**

We, OKIYA OMTATAH OKOITI, NYAKINA WYCLIFE GISEBE, ELIUD KARANJA MATINDI, BERNARD MUCHIRI MUCHERE, DR. MAGARE-GIKENYI BENJAMIN, KELVIN SAITOTI NAIKUNI, OLIVE NAISINKEI AMBROSE, DR. DANCAN OTIENO ONYANGO, AND NAOMI NYAKERARIO MISATI, the applicants/petitioners herein, acting in person, do hereby certify that, for the reasons stated in the Notice of Motion application herein dated 30<sup>th</sup> January, 2025, and its Supporting Affidavit of even date, this matter is **extremely urgent** and should be heard on priority.

**DATED at NAIROBI this 24<sup>th</sup> day of April, 2025.**



**OKIYA OMTATAH OKOITI  
THE 1<sup>ST</sup> PETITIONER**



**NYAKINA WYCLIFE GISEBE  
THE 2<sup>ND</sup> PETITIONER**



**ELIUD KARANJA MATINDI  
THE 3<sup>RD</sup> PETITIONER**

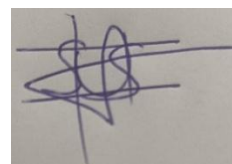


**BERNARD MUCHIRI MUCHERE  
THE 4<sup>TH</sup> PETITIONER**

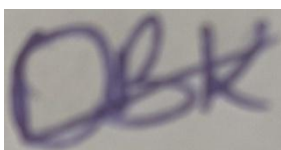


DR. MAGARE-GIKENYI J. BENJAMIN  
CONSULTANT TRAUMA AND GENERAL SURGEON  
(Dr. Magare-Gikenyi J. Benjamin is a Consultant Trauma and General Surgeon, holding a Fellowship in Trauma and General Surgery from the Royal College of Surgeons in Kenya, and a Fellowship in Trauma and General Surgery from the American College of Surgeons, and a Fellowship in Trauma and General Surgery from the Royal College of Surgeons in England.)

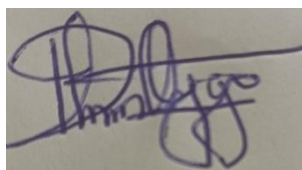
**DR. MAGARE-GIKENYI  
THE 5<sup>TH</sup> PETITIONER**



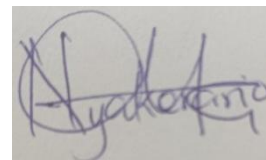
**KELVIN SAITOTI NAIKUNI  
THE 6<sup>TH</sup> PETITIONER**



**OLIVE NAISINKEI AMBROSE  
THE 7<sup>TH</sup> PETITIONER**



**DR. DANCAN O. ONYANGO  
THE 8<sup>TH</sup> PETITIONER**



**NAOMI NYAKERARIO MISATI  
THE 9<sup>TH</sup> PETITIONER**

**DRAWN & FILED BY:**

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MATINDI, BERNARD MUCHIRI MUCHERE, DR. MAGARE-GIKENYI BENJAMIN,  
KELVIN SAITOTI NAIKUNI, OLIVE NAISINKEI AMBROSE, AND NAOMI  
NYAKERARIO MISATI,  
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**TO BE SERVED UPON:**

1. **H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA**

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3. **THE CABINET SECRETARY FOR THE NATIONAL TREASURY,  
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10. **FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO,**
11. **FORMER AUDITOR GENERAL EDWARD OUKO,**
12. **FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI,**
13. **FORMER TREASURY CABINET SECRETARY HENRY ROTICH,**
14. **FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE,**
15. **FORMER TREASURY CABINET SECRETARY UKUR YATANI KANACHO**
16. **FORMER TREASURY CS and FORMER CBK GOVERNOR PROF. NJUGUNA NDUNGU,**  
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17. **Ms. MARGARET NYANG'ATE NYAKANG'O,**  
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**19. THE GOVERNOR OF THE CENTRAL BANK OF KENYA**

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**21. HALAKHE D. WAQO**

**Phone No. 0733778208**

**22. THE INTERNATIONAL MONETARY FUND (IMF)**

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

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

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

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

**BETWEEN**

<b>OKIYA OMTATAH OKOITI .....</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>NYAKINA WYCLIFE GISEBE .....</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>ELIUD KARANJA MATINDI .....</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>BERNARD MUCHIRI MUCHERE .....</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>DR. MAGARE-GIKENYI BENJAMIN .....</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>KELVIN SAITOTI NAIKUNI .....</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>OLIVE NAISINKEI AMBROSE .....</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>DR. DANCAN OTIENO ONYANGO .....</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>NAOMI NYAKERARIO MISATI .....</b>	<b>9<sup>TH</sup> PETITIONER</b>

**VERSUS**

<b>H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE NATIONAL EXECUTIVE .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>THE CABINET SECRETARY FOR THE NATIONAL TREASURY .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>

THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY .....	4 <sup>TH</sup> RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 <sup>TH</sup> RESPONDENT
THE HON. ATTORNEY GENERAL .....	6 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET .....	7 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL .....	8 <sup>TH</sup> RESPONDENT
THE NATIONAL ASSEMBLY .....	9 <sup>TH</sup> RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO .....	10 <sup>TH</sup> RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO .....	11 <sup>TH</sup> RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI .....	12 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH .....	13 <sup>TH</sup> RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE .....	14 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI .....	15 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU .....	16 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET MARGARET NYAKANG'O .....	17 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU .....	18 <sup>TH</sup> RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA .....	19 <sup>TH</sup> RESPONDENT
THE ETHICS AND ANTI-CORRUPTION .....	20 <sup>TH</sup> RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO .....	21 <sup>ST</sup> RESPONDENT
INTERNATIONAL MONETARY FUND (IMF) .....	22 <sup>ND</sup> RESPONDENT

**AND**

THE SENATE OF KENYA .....	1 <sup>ST</sup> INTERESTED PARTY
LAW SOCIETY OF KENYA .....	2 <sup>ND</sup> INTERESTED PARTY
KATIBA INSTITUTE .....	3 <sup>RD</sup> INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION .....	4 <sup>TH</sup> INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .....	5 <sup>TH</sup> INTERESTED PARTY
TRANSPARENCY INTERNATIONAL .....	6 <sup>TH</sup> INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) .....	7 <sup>TH</sup> INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) .....	8 <sup>TH</sup> INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN) .....	9 <sup>TH</sup> INTERESTED PARTY
NATIONAL TAXPAYERS ASSOCIATION (NTA) .....	10 <sup>TH</sup> INTERESTED PARTY
COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM) .....	11 <sup>TH</sup> INTERESTED PARTY

## **CHAMBER SUMMONS**

*(Under articles 20, 22, 50(1), 23(3), 159(2)(d), 165, and 258 of the  
Constitution of Kenya 2010, Sections 19 and 24 of the Constitution of  
Kenya (Protection of Rights and Fundamental Freedoms) Practice and  
Procedure Rules 2013, and all other enabling provisions of the Law)*

**LET ALL PARTIES CONCERNED** attend the Honourable Judge in Chambers on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2025 at 9.00 O'clock in the  
forenoon or as soon thereafter for hearing of an Application by the Applicant for

**ORDERS:**

1. **THAT** this application be certified as urgent and fit to be heard forthwith.
2. **THAT** the Honourable Court be pleased to grant the applicant leave for this application to be heard during the current vacation/recess of the Court.
3. **THAT** the costs of this application be provided for.

**THIS APPLICATION** is based on the following grounds, **THAT**:

1. **THAT** matter is extremely urgent since the National Executive is on a borrowing spree, and is incurring huge loans without the due process. Even as this case is being filed today, the President is reported to have incurred loans worth Kshs143 billion without the approval of Parliament. Subsequently, the National Treasury is repaying loans without caring how they were incurred. Hence, the matter is extremely urgent.
2. **THAT** given the enormity of the petition, which alleges that, since the Financial Year 2014/2017 to 2024/2025 (up to November 30<sup>th</sup> 2024) the National Executive had incurred odious debts of Kshs.10.7 trillion and that Kenyans had overpaid the country's public debts by more than Kshs.2 trillion, this matter raises a substantial question of law.
3. **THAT** the petition involves a **substantial question of law** in the meaning of Article 165(4), concerning the basic structure of the Constitution, requiring a seminal interpretation of the Constitution, since there are no settled general principles whose mere application would be applied to determine the matter.
4. From the foregoing, the National Executive has failed to respect, uphold and defend the Constitution of Kenya 2010.
5. To uphold the rule of law and the good governance, it is necessary that the application dated 24<sup>th</sup> April, 2025.

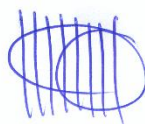
6. Hence, it is necessary that this Honourable Court intervenes in the dispute immediately to protect the public interest.
7. Unless the application is urgently heard and determined, the applicant/petitioner and the people of Kenya will suffer great loss as the Constitution and the rule of law, as regards public borrowing, will continue to be violated and/or threatened by the National Executive.
8. The applicant/petitioner has a right of access to the Constitutional Court to protect the Constitution and to safeguard his rights and those of other Kenyans which have been, are being and are in danger of further infringement.
9. This Honourable Court has unfettered powers and jurisdiction to make the orders sought.
10. It meets the ends of justice and equity and the overarching purpose of constitutional integrity and rule of law, to make the orders sought.
11. The balance of convenience favours the granting of the orders sought in this application.

**AND FURTHER SUPPORTED** by the affidavit of **OKIYA OMTATAH OKOITI** annexed herewith, the nature of the case and other grounds and reasons to be adduced at the hearing hereof.

**DATED** at **NAIROBI** this **24<sup>th</sup>** day of **April, 2025**.



**OKIYA OMTATAH OKOITI**  
**THE 1<sup>ST</sup> PETITIONER**



**NYAKINA WYCLIFE GISEBE**  
**THE 2<sup>ND</sup> PETITIONER**



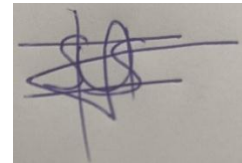
**ELIUD KARANJA MATINDI**  
**THE 3<sup>RD</sup> PETITIONER**



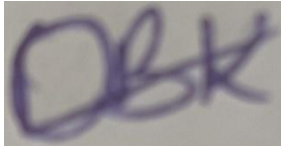
**BERNARD MUCHIRI MUCHERE  
THE 4<sup>TH</sup> PETITIONER**



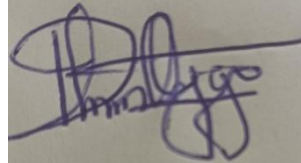
**DR. MAGARE-GIKENYI  
THE 5<sup>TH</sup> PETITIONER**



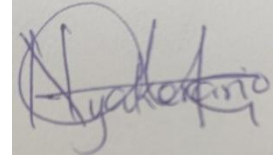
**KELVIN SAITOTI NAIKUNI  
THE 6<sup>TH</sup> PETITIONER**



**OLIVE NAISINKEI AMBROSE  
THE 7<sup>TH</sup> PETITIONER**



**DR. DANCAN O. ONYANGO  
THE 8<sup>TH</sup> PETITIONER**



**NAOMI NYAKERARIO MISATI  
THE 9<sup>TH</sup> PETITIONER**

**DRAWN & FILED BY:**

**DRAWN & FILED BY:**

**OKIYA OMTATAH OKOITI, NYAKINA WYCLIFE GISEBE, ELIUD KARANJA  
MATINDI, BERNARD MUCHIRI MUCHERE, DR. MAGARE-GIKENYI BENJAMIN,  
KELVIN SAITOTI NAIKUNI, OLIVE NAISINKEI AMBROSE, AND NAOMI  
NYAKERARIO MISATI,  
5<sup>TH</sup> FLOOR, TAJ TOWER, WING B,  
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**TO BE SERVED UPON:**

1. **H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA  
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2. **THE NATIONAL EXECUTIVE**  
**C/O OFFICE OF THE PRESIDENT,**  
**HARAMBEE HOUSE,**  
**HARAMBEE AVENUE, NAIROBI.**  
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3. **THE CABINET SECRETARY FOR THE NATIONAL TREASURY,**  
**THE NATIONAL TREASURY,**  
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5. **THE DIRECTOR GENERAL, PUBLIC DEBT MANAGEMENT OFFICE**  
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**TREASURY BUILDING,**  
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Phone: +254 20 2252299.  
Email: [cs@treasury.go.ke](mailto:cs@treasury.go.ke), [ps@treasury.go.ke](mailto:ps@treasury.go.ke)
6. **THE HON. ATTORNEY GENERAL**  
**THE HON. ATTORNEY GENERAL'S CHAMBERS,**  
**7<sup>TH</sup> FLOOR, SHERIA HOUSE,**  
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7. **THE CONTROLLER OF BUDGET**  
**THE OFFICE OF THE CONTROLLER OF BUDGET,**  
**12<sup>TH</sup> FLOOR, BIMA HOUSE,**  
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**Phone: 0709 910 000.**

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**8. THE AUDITOR GENERAL**

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**9. THE NATIONAL ASSEMBLY**

**5<sup>TH</sup> FLOOR, PROTECTION HOUSE,  
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NAIROBI.**

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**10. FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO,**

**11. FORMER AUDITOR GENERAL EDWARD OUKO,**

**12. FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI,**

**13. FORMER TREASURY CABINET SECRETARY HENRY ROTICH,**

**14. FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE,**

**15. FORMER TREASURY CABINET SECRETARY UKUR YATANI KANACHO**

**16. FORMER TREASURY CS and FORMER CBK GOVERNOR PROF. NJUGUNA NDUNGU,**

**Phone: 072 8900 059**

**17. Ms. MARGARET NYANG'ATE NYAKANG'O,**

**THE CONTROLLER OF BUDGET,  
HEADQUARTERS,  
12TH FLOOR, BIMA HOUSE,  
HARAMBEE AVENUE,  
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**18. Ms. NANCY GATHUNGU**

**THE AUDITOR GENERAL  
OFFICE OF THE AUDITOR GENERAL,  
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**NAIROBI.**  
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**EMAIL: [info@oagkenya.go.ke](mailto:info@oagkenya.go.ke)**

**19. THE GOVERNOR OF THE CENTRAL BANK OF KENYA**  
**THE CENTRAL BANK OF KENYA,**  
**CENTRAL BANK OF KENYA BUILDING,**  
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**20. THE ETHICS AND ANTI-CORRUPTION COMMISSION**  
**INTEGRITY CENTRE JAKAYA KIKWETE/VALLEY ROAD**  
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**21. HALAKHE D. WAQO**  
**Phone No. 0733778208**

**22. THE INTERNATIONAL MONETARY FUND (IMF)**  
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**23. THE SENATE OF KENYA**  
**THE SENATE, 5<sup>TH</sup> FLOOR,**  
**PROTECTION HOUSE, PARLIAMENT ROAD,**  
**P. O. BOX 418426 – 00100,**  
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**24. THE SENATE OF KENYA: [Senate.litigation@gmail.com](mailto:Senate.litigation@gmail.com),**  
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**29. TRANSPARENCY INTERNATIONAL, [transparency@tikenya.org](mailto:transparency@tikenya.org)**

**30. THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA): [info@tisa.or.ke](mailto:info@tisa.or.ke)**

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- 32. THE KENYA DEBT ABOLITION NETWORK (KDAN):  
[kenyadebtabolitionnetwork@gmail.com](mailto:kenyadebtabolitionnetwork@gmail.com)
- 33. NATIONAL TAXPAYERS ASSOCIATION (NTA): [admin@nta.or.ke](mailto:admin@nta.or.ke)
- 34. COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM):  
[info@cadtm.org](mailto:info@cadtm.org)

***Note: If any party served does not appear at the time and place above mentioned such orders will be made and such proceedings taken as the Court may deem just and expedient.***

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(CONSTITUTION & HUMAN RIGHTS DIVISION)**  
**PETITION NO. E216 OF 2025**

- IN THE MATTER OF:** THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA
- IN THE MATTER OF:** THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.
- IN THE MATTER OF:** THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.
- IN THE MATTER OF:** THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.

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

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

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

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

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

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

**BETWEEN**

<b>OKIYA OMTATAH OKOITI .....</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>NYAKINA WYCLIFE GISEBE .....</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>ELIUD KARANJA MATINDI .....</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>BERNARD MUCHIRI MUCHERE .....</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>DR. MAGARE-GIKENYI BENJAMIN .....</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>KELVIN SAITOTI NAIKUNI .....</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>OLIVE NAISINKEI AMBROSE .....</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>DR. DANCAN OTIENO ONYANGO .....</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>NAOMI NYAKERARIO MISATI .....</b>	<b>9<sup>TH</sup> PETITIONER</b>

**VERSUS**

<b>H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE NATIONAL EXECUTIVE .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>THE CABINET SECRETARY FOR THE NATIONAL TREASURY .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>

THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY .....	4 <sup>TH</sup> RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 <sup>TH</sup> RESPONDENT
THE HON. ATTORNEY GENERAL .....	6 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET .....	7 <sup>TH</sup> RESPONDENT
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FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO .....	10 <sup>TH</sup> RESPONDENT
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THE CONTROLLER OF BUDGET MARGARET NYAKANG'O .....	17 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU .....	18 <sup>TH</sup> RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA .....	19 <sup>TH</sup> RESPONDENT
THE ETHICS AND ANTI-CORRUPTION .....	20 <sup>TH</sup> RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO .....	21 <sup>ST</sup> RESPONDENT
INTERNATIONAL MONETARY FUND (IMF) .....	22 <sup>ND</sup> RESPONDENT

**AND**

THE SENATE OF KENYA .....	1 <sup>ST</sup> INTERESTED PARTY
LAW SOCIETY OF KENYA .....	2 <sup>ND</sup> INTERESTED PARTY
KATIBA INSTITUTE .....	3 <sup>RD</sup> INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION .....	4 <sup>TH</sup> INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .....	5 <sup>TH</sup> INTERESTED PARTY
TRANSPARENCY INTERNATIONAL .....	6 <sup>TH</sup> INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) .....	7 <sup>TH</sup> INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) .....	8 <sup>TH</sup> INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN) .....	9 <sup>TH</sup> INTERESTED PARTY
NATIONAL TAXPAYERS ASSOCIATION (NTA) .....	10 <sup>TH</sup> INTERESTED PARTY
COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM) .....	11 <sup>TH</sup> INTERESTED PARTY

## **AFFIDAVIT SUPPORTING CHAMBER SUMMONS**

I, **OKIYA OMTATAH OKOITI**, a resident of Kenya and of care of **5<sup>TH</sup> FLOOR, TAJ TOWER, WING B, UPPER HILL ROAD, UPPER HILL, P. O. BOX 60286-00200, NAIROBI**, do hereby solemnly make oath and state as follows:

1. **THAT** I am competent to swear this affidavit on my own behalf as the 1<sup>st</sup> Applicant/Petitioner herein, aware of the matters in issue and hence.

2. **THAT** my co-petitioners have authorised me to swear this affidavit on their behalf.
3. **THAT** I swear this affidavit in good faith.
4. **THAT** I swear this affidavit in support of the application herein.
5. **THAT** I have perused the application herein and confirm that the facts stated therein are true and correct.
6. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the application, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief.
7. **THAT** it is extremely urgent that the instant Notice of Motion application be heard on priority basis during this Honourable Court's vacation/recess.
8. **THAT** it meets the purposes of justice and equity and the overarching purpose of constitutional integrity and rule of law, to make the orders sought.
9. **THAT** unless the application is urgently heard and determined, the applicant and the people of Kenya will suffer great loss and damage if the impugned tender is concluded.

10. **THAT** unless adjudicated by this Honourable Court, the dispute will not resolve itself.

11. **THAT** in view of the above, and pursuant to this Honourable Court's duty to promote and safeguard constitutionalism and the rule of law, I verily believe that it is now incumbent for this Honourable Court to determine the issues raised in this Application to ensure that best practice, rules, regulations, statutes and the Constitution are protected, and that the law will henceforth be applied with certainty.

12. **THAT** what is deponed to herein is true to the best of my knowledge save what has been deponed to on information and belief the sources and grounds whereof have been respectively specified.

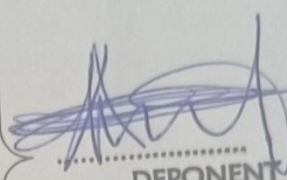
SWORN by the said OKIYA OMTATAH OKOITI  
at Nairobi this 24<sup>th</sup> Day of April, 2025  
BEFORE ME

P. K. KAMAU  
Advocates & Commissioners For Oaths  
Lower Hill Duplex Apartments  
P. O. Box 756 - 00100, Nairobi

COMMISSIONER OF OATHS / MAGISTRATE

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI,  
5<sup>TH</sup> FLOOR, TAJ TOWER, WING B,  
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DEPONENT

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(CONSTITUTION & HUMAN RIGHTS DIVISION)**  
**PETITION NO. E216 OF 2025**

- IN THE MATTER OF:** THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA
- IN THE MATTER OF:** THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.
- IN THE MATTER OF:** THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.
- IN THE MATTER OF:** THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.



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

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

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

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

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

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

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

**BETWEEN**

<b>OKIYA OMTATAH OKOITI .....</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>NYAKINA WYCLIFE GISEBE .....</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>ELIUD KARANJA MATINDI .....</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>BERNARD MUCHIRI MUCHERE .....</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>DR. MAGARE-GIKENYI BENJAMIN .....</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>KELVIN SAITOTI NAIKUNI .....</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>OLIVE NAISINKEI AMBROSE .....</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>DR. DANCAN OTIENO ONYANGO .....</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>NAOMI NYAKERARIO MISATI .....</b>	<b>9<sup>TH</sup> PETITIONER</b>

**VERSUS**

<b>H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE NATIONAL EXECUTIVE .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
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**AND**

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## **NOTICE OF MOTION**

*(Under Articles 1, 2, 3(1), 20, 22, 23, 47, 48, 50, 159(2)(d), 165 and 258 of the Constitution; the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013; Section 24 of the Government Proceedings Act (CAP. 40); the inherent powers of the court; and all other enabling provisions of law)*

**TAKE NOTICE THAT** this Honourable Court will be moved on \_\_\_\_\_ **day** of \_\_\_\_\_, **2025** at 9.00 a.m. O'clock in the forenoon or soon thereafter by the Applicant for Orders:

1. **THAT** the Honourable Court be pleased to certify this application as extremely urgent and hear it *ex-parte* at the earliest opportunity during the current Court Vacation/Recess.
2. **THAT** pending the *inter-partes* hearing and determination of this Application and/or the Petition herein, the Honourable Court be pleased to issue a temporary order prohibiting the National Executive and its agents, howsoever acting, from borrowing any loans or incurring any new debts which are not approved/contained in an Appropriation Act.
3. **THAT** pending the *inter-partes* hearing and determination of this Application and/or the Petition herein, the Honourable Court be pleased to issue a temporary order prohibiting the National Executive and its agents, howsoever acting, from repaying any loans or debts which were borrowed or incurred without being approved/contained in an Appropriation Act.
4. **THAT** the petitioners be allowed to serve the amended petition on the 1<sup>st</sup>, 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents through substituted service through the Press, being either through *The Standard* or the *Daily Nation* newspapers.
5. **THAT** this Honourable Court be pleased to certify that the Petition herein raises substantial questions of law and forthwith refer the case to the Honourable Lady Chief Justice for appointment of a bench of at least five judges pursuant to Article 165(4) of the Constitution of Kenya, 2010.
6. **THAT** consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
7. **THAT** costs be in the cause.

**WHICH APPLICATION** is supported by the annexed affidavit of **OKIYA OMTATAH OKOITI** and is founded on the following grounds and provisions of law listed hereunder, the nature of the case, and other grounds and reasons to be adduced at the hearing hereof:

**Urgency and the need for injunctions**

1. **THAT** matter is extremely urgent since the National Executive is on a borrowing spree, and is incurring huge loans without following the Constitution and the law. Even as this case is being filed today, the President is reported to have incurred loans worth **Kshs143 billion** from China without the approval of Parliament. The money is borrowed outside the national budget (i.e., the Appropriation Act, 2024) and, therefore, is not tied to any development projects.
2. In a period of nine (9) months from 1<sup>st</sup> July 2024 to 28<sup>th</sup> March, 2025, the National Executive has borrowed **Kshs.1.045 trillion** against a development expenditure in the national budget of **Kshs.170 billion**. That means that over the period, they have unlawfully and unconstitutionally borrowed approximately **Kshs875 billion**, which amounts to **Kshs97 billion**. Computed per day, the amount is approximately **Kshs3.24 billion**. And per hour it is **Kshs. 135 million** per hour.
3. The petitioners have computed that, as of 30<sup>th</sup> November, 2024, Kenya's **odious debt**, which was similarly incurred unlawfully and unconstitutionally amounted to **Kshs13,114,602,305,902 (Kenya shillings thirteen trillion, one hundred and fourteen billion, six hundred and two million, three hundred and five thousand, and nine hundred and two)**.
4. According to the *Central Bank of Kenya's Weekly Bulletin* dated 27<sup>th</sup> December 2024, the total outstanding public debt was **Kshs10,790,080,000,000**, comprising **Kshs5.6 trillion** domestic and **Kshs5.188 trillion** external debts.
5. Kenya's public debt, which was borrowed lawfully in the last ten (10) financial years (**2014/2015 to 2024/2025**) aggregated to **Kshs5,255,796,104,913**. Of which, **Kshs2,370,255,820,000** was carried forward from the **2013/2014** financial year. The other is **Kshs2,791,543,336,707** only, which the National Assembly, through the Appropriation Acts for the respective years, cumulatively authorised to be borrowed in the financial years **2014/2015 to 2024/2025**.
6. From **Table 1** below, repayment of public debt (including interest) as recorded in the statement of actual revenue and net exchequer issues aggregated to **Kshs8,918,021,659,782** in the financial years 2014/2015 to 2025/2025 (up to 30<sup>th</sup> November 2024). If the repayments are applied to the amount borrowed aggregating to **Kshs5,255,796,104,913**, it means that, **without factoring in interest and other costs of the loans, Kenyan taxpayers have paid Kshs3,662,225,554,869 more than the loans borrowed.**

**TABLE 1**

<b>Financial Year</b>	<b>Exchequer Issues - Repayment of Public Debts - Direct Charge in Consolidated Fund</b>
2014/2015	399,310,622,509
2015/2016	397,035,494,249
2016/2017	466,514,040,169
2017/2018	649,396,727,245
2018/2019	870,615,957,746
2019/2020	768,847,893,016
2020/2021	904,703,671,211
2021/2022	1,169,165,030,917
2022/2023	1,161,579,454,767
2023/2024	1,596,641,830,604
*2024/2025	534,210,937,349
<b>Total</b>	<b>8,918,021,659,782</b>

*\*Up to 30<sup>th</sup> November 2024*

7. If we factor in a high interest rate of **Kshs. 1,337,703,248,967** (being 15% of **Kshs8,918,021,659,782**), it follows that taxpayers have repaid all the public debts with a surplus of **Kshs2,324,522,305,902** (**Kshs3,662,225,554,869** - **Kshs1,337,703,248,967**).
8. Based on the foregoing computations, the petitioners confidently state that Kenya's odious debt is **Kshs13,114,602,305,902** (being the entire **Kshs10,790,080,000,000** from the Central Bank plus the overpayment of **Kshs2,324,522,305,902**.)
9. But of the **Kshs13,114,602,305,902** odious debt, only **Kshs6,950,163,132,328** (which includes a fraudulent internal debt redemption roll-over of **Kshs 2,503,596,813,045** (shown in **Table 6**)) is traceable from the National Treasury's financial records. The **Kshs6,164,439,173,574** difference between the Central Bank's records and those of the National Treasury points to the fact that the former could be incurring debt, which is not recorded by the latter.
10. Further, the petitioners conclusively state that the amount borrowed over the last ten financial years (**2014/2015 to 2024/2025**), aggregated to **Kshs17,337,845,839,782** (being,  $\text{Kshs10,790,080,000,000} + (\text{Kshs8,918,021,659,782} - \text{Kshs2,370,255,820,000})$ ).
11. From **Table 2** below, over the 10-year period, the gross development expenditure was **Kshs7,505,400,275,266**, financed by **Kshs4,713,856,938,559** in tax revenue, and **Kshs 2,791,543,336,707** in external loans.

**TABLE 2**

Gross Expenditure Estimates and Sources of Finance

Financial Year	Gross Estimates	Amount financed by taxes	Amount financed by Debt
2014/2015	494,892,120,733.00	358,507,118,798	136,385,001,935
2015/2016	721,288,541,960.00	440,418,948,724	280,869,593,236
2016/2017	820,161,449,551.00	471,905,309,201	348,256,140,350
2017/2018	642,897,327,706.00	438,630,011,332	204,267,316,374
2018/2019	677,225,634,213.00	430,408,353,462	246,817,280,751
2019/2020	704,213,809,308.00	443,517,981,026	260,695,828,282
2020/2021	633,308,563,243.00	382,969,235,979	250,339,327,264
2021/2022	668,378,861,891.00	394,847,691,251	273,531,170,640
2022/2023	711,405,784,936.00	418,648,442,772	292,757,342,164
2023/2024	807,643,508,015.00	536,009,044,326	271,634,463,689
2024/2025	623,984,673,710.00	397,994,801,688	225,989,872,022
<b>Total</b>	<b>7,505,400,275,266.00</b>	<b>4,713,856,938,559</b>	<b>2,791,543,336,707</b>

12. Given that **Section 15(2)(c) of the PFMA** provides that “over the medium term, the national government’s borrowings **shall be used only for the purpose of financing development expenditure** and **not for recurrent expenditure**”, then **Kshs22,051,702,778,341** (being, Kshs 17,337,845,839,782 (in loans) + Kshs 4,713,856,938,559 (in tax revenue)) has purportedly been invested in development projects. That translates to investments in development projects worth approximately **Kshs2.2 trillion** in every financial year.
13. On the contrary, a review of the Appropriation Acts for the period **2014/2015 - 2024/2025**) reveals development expenditure estimates (projects) of **Kshs0.75 trillion** only in a financial year. Hence, approximately **Kshs1.45 trillion**, out of **Kshs2.2** trillion purportedly spent on development expenditure in every financial year between **2014/2015 to 2024/2025**, is fictitious.
14. The **Kshs22 trillion** could have been used to develop **35 projects of the size of the Standard Gauge Railway (SGR)**, which reportedly cost **Kshs500 billion** (although even that is said to have been inflated).
15. Further, from the annual reports of the Controller of Budget, the average absorption of the development expenditure per financial year over the said period was approximately **Kshs0.506 trillion**. Therefore, based on those reports, which give the actual expenditure, **Kshs1.694 trillion** per financial year, aggregating to **Kshs. 16.94 trillion**, in the ten financial years **2014/2015 to 2024/2025**, cannot be accounted for.

#### **Analysis of the Public Debt Comparing the National Treasury’s Official Documents to the Appropriation Acts**

16. **Table 3** below gives an analysis of Kenya’s **actual borrowings** as stated in the National Treasury’s monthly *Statement of Actual Revenue and Net Exchequer Issues* (published in the *Kenya Gazette*), against borrowings authorised by the

National Assembly in the annual Appropriation Acts for the period spanning the financial years **2014/2015 to 2024/2025** (up to November 2024).

**TABLE 3**

Financial Year	Actual totals of both authorised and unauthorised Domestic Debt and External Loans borrowed over the years. A	Borrowings Authorised by Appropriation Acts B	Actual Amount Borrowed Unlawfully A-B
2014/2015	407,165,356,983	136,385,001,935	270,780,355,048
2015/2016	683,479,898,205	280,869,593,236	402,610,304,969
2016/2017	645,856,974,239	348,256,140,350	297,600,833,889
2017/2018	751,731,497,696	204,267,316,374	547,464,181,322
2018/2019	975,837,147,991	246,817,280,751	729,019,867,240
2019/2020	858,552,450,338	260,695,828,282	597,856,622,056
2020/2021	1,167,727,891,453	250,339,327,264	917,388,564,189
2021/2022	1,116,650,720,849	273,531,170,640	843,119,550,209
2022/2023	1,184,613,281,653	292,757,342,164	891,855,939,489
2023/2024	1,500,731,102,136	313,806,128,015	1,186,924,974,121
*2024/2025	449,360,147,492	277,815,155,902	171,544,991,590
<b>Total</b>	<b>9,741,706,469,035</b>	<b>2,791,543,336,707</b>	<b>6,950,163,132,328</b>

\*Up to 30<sup>th</sup> November 2024

17. Subsequently, the National Treasury is repaying loans without caring how they were incurred. Hence, the matter is extremely urgent.

### **Need for Substituted Service**

18. **THAT** the applicants/petitioners don't have 1<sup>st</sup>, 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents' addresses of service.
19. **THAT** to avoid delaying this case, the applicants/petitioners should be allowed to serve the amended petition on the 1<sup>st</sup>, 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents through substituted service through the Press, being either *The East African Standard* or the *Daily Nation* newspapers.
20. **THAT** given the enormity of the petition, which alleges that, since the Financial Year 2014/2017 to 2024/2025 (upto November 30<sup>th</sup> 2024) the National Executive had incurred odious debts of Kshs.10.7 trillion and that Kenyans had overpaid the country's public debts by more than Kshs.2 trillion, this matter raises a substantial question of law.

### **A Substantial Question of Law**

21. **THAT** the petition involves a **substantial question of law** in the meaning of Article 165(4), concerning the basic structure of the Constitution, requiring a

seminal interpretation of the Constitution, since there are no settled general principles whose mere application would be applied to determine the matter.

22. **THAT** the matter herein meets the objective standard by which the discretion of this Court should be exercised judicially to certify the petition as raising a substantial question of law.
23. **THAT** the applicants/petitioners aver that though the expression "substantial question of law" is not defined in the Constitution, it is possible to discern the true meaning and connotation of this important expression from the Constitution itself, and from various judicial pronouncements on the matter from other jurisdictions where the question of the substantial question of law is well settled.
24. **THAT** the test laid down by the Supreme Court of India in **Sir Chunilal V. Mehta and Sons Ltd. v Century Spinning and Manufacturing Co. Ltd.** to determine whether a substantial question of law is involved are:
  - a. Whether directly or indirectly it affects the substantial rights of the parties;
  - b. Whether the question is of general public importance;
  - c. Whether it is an open question in the sense that the issue has not been settled by pronouncement of the highest court in the land;
  - d. The issue is not free from difficulty; or
  - e. It calls for a discussion for alternative view.
25. **THAT** in **Santosh Hazari vs. Purushottam Tiwari** (2001) 3 SCC 179 it was held that:

**"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."**
26. **THAT** in **Okiya Omtatah Okoiti & Another vs Anne Waiguru, The Cabinet Secretary, Devolution and Planning & 3 Others [2015] eKLR**, the Court of Appeal held:



**By Article 165 (4) of the Constitution, the High Court can certify a matter as one that raises a substantial question of law if there is a question as to “whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened” or where it involves a question regarding “the interpretation of this Constitution including the determination of (i) the question whether any law is inconsistent with or in contravention of this Constitution; (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution...”**

27. **THAT** in **Okiya Omtatah Okiiti & Another vs. Anne Waiguru** (supra), the Court of Appeal stated:

**“The question therefore arises as to whether the jurisprudence arising from a determination of a question of law by a court comprising three or more judges would be of equal weight as a question of law that is determined by a court comprising of just one judge.**

**Our preliminary view in answer to this question is that while both the courts envisaged would be exercising the same jurisdiction, the decision of three or more judges would have more jurisprudential weight than the decision of a single judge. To our minds, the inclusion of Article 165(4) of the Constitution, requiring that a matter of substantial importance be heard by a bench of more than three judges, infers that a substantial question will yield a substantial decision, and as such that decision would bear more weight.”**

28. **THAT** in **Okiya Omtata Okiiti & 4 others v Attorney General & others [2019] eKLR**, the High Court (Odunga J.) held:

7. ... it is clear that the only constitutional provision that expressly permits the constitution of bench of more than one High Court judge is Article 165(4). Under that provision, for the matter to be referred to the Chief Justice for the said purpose the High Court must certify that the matter raises a substantial question of law:

1. **Whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; or**
2. **That it involves a question respecting the interpretation of the Constitution and under this is included (i) the question whether any law is inconsistent with or in contravention of the Constitution; (ii) the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution; (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional**

**relationship between the levels of government; and (iv) a question relating to conflict of laws under Article 191.**

29. **THAT** in **Okiya Omtatah Okiiti & another v Anne Waiguru - Cabinet Secretary, Devolution and Planning & 3 others [2017] eKLR**, the Court of Appeal held:

42. There are, in our view, parallels to be drawn between certification for purposes Article 163(4)(b) of the Constitution and certification for purposes of Article 165(4) notwithstanding that the drafters of the Constitution, in providing for certification of matters for purposes of appeal to the Supreme Court under Article 163(4)(b) stipulated that a matter should be of “general public importance”. The word, “substantial” in its ordinary meaning, means “of considerable importance”. There is therefore wisdom to be gained from the pronouncements of the Supreme Court of Kenya respecting interpretation of Article 163(4)(b). In **Hermanus Phillipus Steyn v Giovanni Gnechi- Ruscone [2013] eKLR** the Supreme Court of Kenya pronounced governing principles for purposes of certification under Article 163(4)(b) some of which are relevant in the context of certification under Article 165(4). Drawing therefrom, we adopt, with modification, the following principles:

- (i) *For a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest;*
- (ii) *The applicant must show that there is a state of uncertainty in the law;*
- (iii) *The matter to be certified must fall within the terms of Article 165 (3)(b) or (d) of the Constitution;*
- (iv) *The applicant has an obligation to identify and concisely set out the specific substantial question*

30. **THAT** the Honourable Court has the jurisdiction to grant the orders prayed for.

31. **THAT** the respondents and the interested parties will not suffer any prejudice if the orders are granted.

32. **THAT** if the documents are not produced in Court prior to the hearing of Petition, the Petitioners will be prejudiced since the Court will not be able to hear and determine the instant Petition on its merits.

33. **THAT** it is in the public interest to uphold the rule of law by being transparent and accountable.

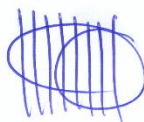
34. **THAT** the balance of convenience favours the production of the documents.

35. **THAT** the State has an obligation to be transparent and accountable.

**DATED at NAIROBI this 24<sup>th</sup> day of April, 2025.**



**OKIYA OMTATAH OKOITI  
THE 1<sup>ST</sup> PETITIONER**



**NYAKINA WYCLIFE GISEBE  
THE 2<sup>ND</sup> PETITIONER**



**ELIUD KARANJA MATINDI  
THE 3<sup>RD</sup> PETITIONER**

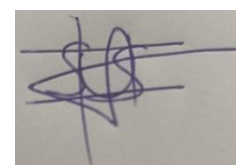


**BERNARD MUCHIRI MUCHERE  
THE 4<sup>TH</sup> PETITIONER**

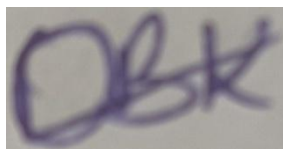


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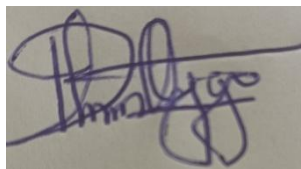
**DR. MAGARE-GIKENYI  
THE 5<sup>TH</sup> PETITIONER**



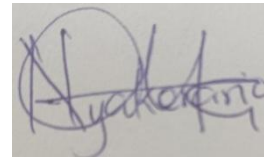
**KELVIN SAITOTI NAIKUNI  
THE 6<sup>TH</sup> PETITIONER**



**OLIVE NAISINKEI AMBROSE  
THE 7<sup>TH</sup> PETITIONER**



**DR. DANCAN O. ONYANGO  
THE 8<sup>TH</sup> PETITIONER**



**NAOMI NYAKERARIO MISATI  
THE 9<sup>TH</sup> PETITIONER**

**DRAWN & FILED BY:**

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**14. FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE,**

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***Note: If any party served does not appear at the time and place above mentioned such orders will be made and such proceedings taken as the Court may deem just and expedient.***

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(CONSTITUTION & HUMAN RIGHTS DIVISION)**  
**PETITION NO. E216 OF 2025**

- IN THE MATTER OF:** THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA
- IN THE MATTER OF:** THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.
- IN THE MATTER OF:** THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.
- IN THE MATTER OF:** THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.
- IN THE MATTER OF:** THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.



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

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

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

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

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

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

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

**BETWEEN**

<b>OKIYA OMTATAH OKOITI .....</b>	<b>1<sup>ST</sup> PETITIONER</b>
<b>NYAKINA WYCLIFE GISEBE .....</b>	<b>2<sup>ND</sup> PETITIONER</b>
<b>ELIUD KARANJA MATINDI .....</b>	<b>3<sup>RD</sup> PETITIONER</b>
<b>BERNARD MUCHIRI MUCHERE .....</b>	<b>4<sup>TH</sup> PETITIONER</b>
<b>DR. MAGARE-GIKENYI BENJAMIN .....</b>	<b>5<sup>TH</sup> PETITIONER</b>
<b>KELVIN SAITOTI NAIKUNI .....</b>	<b>6<sup>TH</sup> PETITIONER</b>
<b>OLIVE NAISINKEI AMBROSE .....</b>	<b>7<sup>TH</sup> PETITIONER</b>
<b>DR. DANCAN OTIENO ONYANGO .....</b>	<b>8<sup>TH</sup> PETITIONER</b>
<b>NAOMI NYAKERARIO MISATI .....</b>	<b>9<sup>TH</sup> PETITIONER</b>

**VERSUS**

<b>H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE NATIONAL EXECUTIVE .....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>THE CABINET SECRETARY FOR THE NATIONAL TREASURY .....</b>	<b>3<sup>RD</sup> RESPONDENT</b>

THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY .....	4 <sup>TH</sup> RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 <sup>TH</sup> RESPONDENT
THE HON. ATTORNEY GENERAL .....	6 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET .....	7 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL .....	8 <sup>TH</sup> RESPONDENT
THE NATIONAL ASSEMBLY .....	9 <sup>TH</sup> RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO .....	10 <sup>TH</sup> RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO .....	11 <sup>TH</sup> RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI .....	12 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH .....	13 <sup>TH</sup> RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE .....	14 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI .....	15 <sup>TH</sup> RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU .....	16 <sup>TH</sup> RESPONDENT
THE CONTROLLER OF BUDGET MARGARET NYAKANG'O .....	17 <sup>TH</sup> RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU .....	18 <sup>TH</sup> RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA .....	19 <sup>TH</sup> RESPONDENT
THE ETHICS AND ANTI-CORRUPTION .....	20 <sup>TH</sup> RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO .....	21 <sup>ST</sup> RESPONDENT
INTERNATIONAL MONETARY FUND (IMF) .....	22 <sup>ND</sup> RESPONDENT

**AND**

THE SENATE OF KENYA .....	1 <sup>ST</sup> INTERESTED PARTY
LAW SOCIETY OF KENYA .....	2 <sup>ND</sup> INTERESTED PARTY
KATIBA INSTITUTE .....	3 <sup>RD</sup> INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION .....	4 <sup>TH</sup> INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS .....	5 <sup>TH</sup> INTERESTED PARTY
TRANSPARENCY INTERNATIONAL .....	6 <sup>TH</sup> INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA) .....	7 <sup>TH</sup> INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) .....	8 <sup>TH</sup> INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN) .....	9 <sup>TH</sup> INTERESTED PARTY
NATIONAL TAXPAYERS ASSOCIATION (NTA) .....	10 <sup>TH</sup> INTERESTED PARTY
COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM) .....	11 <sup>TH</sup> INTERESTED PARTY

## **AFFIDAVIT SUPPORTING THE APPLICATION**

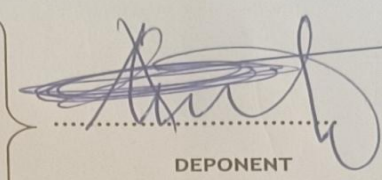
I, **OKIYA OMTATAH OKOITI**, a citizen of Kenya resident in Nairobi City County, and of care of **5<sup>th</sup> Floor, Wing B, Taj Tower, Upper Hill Road, Upper Hill, P. O. Box 60286-00200, NAIROBI**, do hereby solemnly make oath and state as follows:

1. **THAT** I am competent to swear this affidavit on my own behalf as the applicant/petitioner herein, aware of the matters in issue.
  
2. **THAT** I also swear the affidavit on behalf of the other applicants/petitioners, who have authorised me to do so.

3. **THAT** I swear this affidavit in good faith and in support of the Notice of Motion application herein seeking interlocutory orders.
4. **THAT** I have perused the application herein and confirm that the facts stated therein are true and correct.
5. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the Application, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief.
6. **THAT** allowing the orders sought in the application will expedite the hearing of the petition by making sure there is no delay in serving the 1<sup>st</sup>, 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents.
7. **THAT** we have since established that the 1<sup>st</sup>, 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents' addresses of service which my co-petitioners and I gave are not functioning.
8. **THAT** what is deposed to herein is true to the best of my knowledge save what has been deposed to on information and belief the sources and grounds whereof have been respectively specified.

SWORN by the said OKIYA OMTATAH OKOITI  
at Nairobi this 24<sup>th</sup> day of April, 2025  
BEFORE ME

**P.K. KAMAU**  
Advocates & Commissioners For Oaths  
Lower Hill Duplex Apartments  
P. O. Box 756 - 00100, Nairobi

  
DEPONENT

**COMMISSIONER OF OATHS / MAGISTRATE**

**DRAWN & FILED BY:**  
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