REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 55 OF 2020

BETWEEN

CHARLES APUDO OWELLE.....APPLICANT

VERSUS

ANNABELLA KIRIINYA, AND

BATRAM MUTHOKA (Sued respectively as the Chairman

and Chief Executive Officer of THE AGRICULTURAL

SOCIETY OF KENYA.....1ST RESPONDENT

JAMES R. NJENGA,

HON. STEWARD MADZAYO,

ALICE KYALA,

BENSON KAARIA,

ACHIYA ECHAKARA & HELLEN KOMBO,

MS. RHODA AHONOBADHA AND GEN JEREMIA KIANGA

(Sued as Registered Trustees of

THE AGRICULTURAL SOCIETY OF KENYA.....2ND RESPONDENT

RULING NO 2

Introduction

1. On 31st July 2020, this Court delivered a judgement herein on an Originating Notice of Motion filed by Charles Apudo Owelle, the Applicant herein, in which it made the following orders:

> **I. An order be and is hereby granted quashing the decision and judgment of the Staff and Finance Committee of the Agriculutural Society of Kenya dated 9th December, 2019 reprimanding Mr. Charles Apudo Owelle.**
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> **II. An order be and is hereby granted quashing the decision of the National Executive Committee of the Agricultural Society of Kenya dated 22nd January, 2020, dismissing Mr. Charles Apudo Owelle's appeal against the decision of the said Society's Staff and Finance Committee dated 9th December, 2019.**
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> **III. An order be and is hereby granted quashing the decision of the Electoral Committee of Agricultural Society of Kenya dated 28th January 2020, barring Mr. Charles Apudo Owelle from running for the position of National Chairman of the**

Agricultural Society of Kenya.

IV. An order be and is hereby granted quashing the decision of the Returnimg Officer of the Agricultural Society of Kenya dated 13th February, 2020, dismissing Mr. Charles Apudo Owelle's appeal against his disqualification to vie for the position of National Chairman of the Agricultural Society of Kenya.

V. The 2nd Respondent shall meet the Applicant's costs of the Originating Notice of Motion dated 25th February 2020.

2. The Chairman, Chief Executive Officer and Trustees of the Agricultural Society of Kenya, who are the Respondents herein, subsequently filed a Notice of Motion application dated 24th September, 2020, seeking an interpretation of the court's judgment delivered on 31st July, 2020.

3. The Respondents are seeking the following orders in their application:

a) THAT this Court does interpret and/or clarify its judgment made on the 31st July, 2020 as to:

i. Whether or not the 2nd Respondent has a right to subject the Applicant to fresh disciplinary proceedings

ii. Whether or not the judgment of this Honourable Court delivered on 31st July, 2020 prequalified the Applicant as a candidate to vie for the position of National Chairman in the 2nd Respodent's pending National Officials elections.

b) THAT there be no order as to costs.

4. The application is supported by the affidavit sworn on even dated by Batram M. Muthoka, the Chief Executive Officer of the Agricultural Society of Kenya and is grounded on the fact that in the judgment delivered on 31st July, 2020, the court found that the 2nd Respondent's decision to convict and punish the Applicant under its disciplinary procedures was unfair for want of procedural compliance, and that the Respondent's decision to disqualify the Applicant from vying for the position of National Chairman was also unfair for want of procedural compliance.

5. It was further averred that during the pendency of these proceedings, the court had suspended the holding of elections of the 2nd Respondent which order was vacated by the delivery of the judgment herein. The Respondents stated that despite preferring an appeal against the court's judgment, the 2nd Respondent, would wish to take subsequent steps on matters relating to its internal management but within the confines of this court's judgment. Accordingly, he stated it has become necessary to invite this court to interpret its judgment more so as relates the possible consequential post judgment actions on the part of the 2nd Respondent in reference to the Applicant.

6. The Applicant did not file a substantive response to the application and his Advocate on record, W. Amoko Advocates, opted to file submissions dated 17th November, 2020 in opposition thereto.

7. The 2nd Respondents' advocates on record, Millimo Muthomi & Company Advocates also filed two sets of submissions dated 23rd October, 2020 and 5th December 2020 in support of the application. The Respondents cited the case of **Raila Amolo Odinga & Another v Chairman, Independent Electoral and Boundaries Commission (IEBC) & Another (2017) eKLR** for the proposition that a court has residual and/or inherent jurisdiction to clarify issues arising from its judgment. Also cited were the decisions in **Chacha Mwita Mosenda vs Baya Tsuma Baya & 2 Others (2017) e KLR** and **Telkom Kenya Limited vs John Ochanda (2014) eKLR** for the submission that the doctrine of *functus officio* is not to be understood to bar any engagement by a Court with a case that it has already decided or pronounced itself on, and that what it bars is a merit-based decisional re-engagement with the case once final judgment has been entered thereon.

8. The Respondents submitted that that there was an error in expressing the manifest intention of the Court and there is an ambiguity the instant application wishes the Court to clarify, and that it not is seeking a merit- based decisional re-engagement with the Court but a clarification of its already delivered judgement on the contents of the same. According to the Respondents, the uncertainty arises because this Court in its judgement did not direct the 2nd Respondent on what would be expected of it post judgment on matters which were subject of the proceedings, and was not clear in its judgment on the procedural aspects to be complied with even as the 2nd Respondent embarks on its decision making. Therefore, that it has become necessary that this Court be invited to interpret and clarify its judgement as relates to the possible post judgment actions on the part of the 2nd Respondent in reference to the Applicant, as the said Respondent intends to proceed with its constitutional and statutory mandate, which can only be done if the elections of its chairperson are conducted. Further, that the 2nd Respondent is apprehensive that it may be cited for contempt proceedings if it were to proceed to determine what needs to be done in consonance with the Court's judgement.

9. Reliance was also placed on section 5(2) of the Fair Administrative Action Act which provides for the power of any person to apply for review of a decision made by a Court of competent jurisdiction in exercise of his or her right under the Constitution or any written law. Further, that section 11 of the same Act also provides for the orders that may be in judicial review proceedings, and that this Court by its judgement of 31st July 2020 set aside the 2nd Respondent's impugned decisions and remitted the same back to the 2nd Respondent for reconsideration, but did not give directions or indicate the parameters within which the said Respondent was to act. The Respondents indicated that this ambiguity is the cause of the instant application.

10. The 2nd Respondent submitted that it intends to subject the Applicant to disciplinary process but in compliance with the applicable rules, in an independent and fair consideration in compliance with the tenets of this judgement. Regarding the fresh disciplinary proceedings, the Respondents submitted that this court held that being a judicial review court, it cannot interrogate any of the issues raised as to the merits of

the 2nd Respondent's decisions. Therefore, that it is in the interest of both the Applicant and the 2nd Respondent that a determination is made against those charges made against the Applicant one way or another, and such determination can only be made once the Applicant is subjected to fresh proceedings.

11. In addition, that the decision that the Applicant was ineligible to contest for the position of the National Chairman of the 2nd Respondent was nullified by this court in its judgment of 31st July, 2020. However, the court did not prequalify the Applicant as a candidate neither did it state that the Applicant was now eligible to contest nor that the 2nd Respondent was at liberty to subject the Applicant's application to vie to the 2nd Respondent's prequalification process to fresh vetting. Therefore, that in view of these uncertainties, the court needs to issue clarification of its judgment.

12. The Applicant on his part submitted that this Court has no jurisdiction to grant the relief as sought in the said application having been *functus officio* neither did the Respondents reveal any grounds warranting interpretation of the judgment. Furthermore, there is no suggestion that in making the orders, this Court committed any of the errors that would give rise to a review application under Order 45 of the Civil Procedure Rules or that there are any clerical or arithmetic errors which would warrant against the invocation of the slip rule.

13. It was further argued by the Applicant that what is being sought is pre-clearance from this Court for the same disciplinary sanctions to be imposed and for the disqualification of his application afresh. In other words, that what is being sought by the Respondents is for the court to revisit its judgment. It was further submitted that the enabling provisions cited by the Respondents do not authorize the granting of any of the orders sought. Even assuming they do, the Applicant submitted that under the Civil Procedure Act and Rules, it is only in very limited circumstances that departure from the canonical *funcus officio* rule is allowed, and only in the clearest of cases and in the Applicant's view, the instant application does not come within those circumstances.

14. To that end, the Applicant cited the case of **Chacha Mwita Mosenda v Baya Tsuma & 2 Others (2017) eKLR** where the court held that a judgment once signed shall not afterwards be altered or added to save as provided by Section 99 of the Civil Procedure Act or on review. Accordingly, the law allows for the correction of the judgment but not its merits. Similarly, the case of **Board of Governors Moi High School Kabarak & Another v Malcom Bell Supreme Court Petition Nos. 6 and 7 of 2012** was cited, wherein the court conclusively held that a court's jurisdiction flows from either the constitution or legislation or both and as such, a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. The Applicant therefore submitted that this Court cannot address its mind to the present application as it is fatally defective for want of jurisdiction.

15. The Applicant further submitted that from a clear reading of the instant application, the Respondents seek to re-litigate fully decided matters under the guise of what has been couched as "clarification". In other words, that the application speaks to matters which this court cannot and should not delve into as they go well into the merits of the case, which is not the purview of judicial review proceedings. Furthermore, that once the court pronounced its judgment and the Respondents filed a Notice of Appeal, this Court became *functus officio* which is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision and what it bars is a merit-based decisional re-engagement with the case once final judgment has been entered as was held in **Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 966 former employees of Telkom Kenya Limited) (2014) eKLR.**

16. To further buttress his arguments, the Applicant cited the case of **Peter Ndung'ú, Stephen Gichanga Gituro, N. Ojwang, Peter Kariuki, Joseph M. Kyavi & James Kimani vs Kenya Power & Lighting Company Limited (2018) eKLR** where the Court held that to say that the court is *functus officio* means that the court having exercised its authority its commission had terminated or had been accomplished and it cannot write another judgment for that would amount to the court sitting on appeal on its own decision. He further cited the case of **Banking, Insurance and Finance Union v Barclays Bank of Kenya Ltd & Anor (2017) eKLR** where the court held that the required clarification must be clear where it is apparent that such clarification as requested for is apparent however, interpretation of a court's judgment is a different matter altogether and such cannot be done by this court as it would require the court to sit on its own case in appeal. Accordingly, the Applicant submitted that the application as pleaded cannot stand as not only does it lack judicial provision, but also invites this court to delve into the merits of the impugned administrative action, an invitation this court already rejected at paragraph 76 of its judgment.

17. In conclusion, the Applicant pointed out that in the case of **Raila Amolo Odinga & Anor v Independent Electoral and Boundaries Commission (IEBC) Chairman & Anor (2017) eKLR** cited by the Respondents, the court begrudgingly gave the said clarification and stated that *"it must be discernible that we entertain serious doubts as to whether this court has jurisdiction to clarify its judgments*.

The Determination

18. I ahve considered the pleadings and arguments made by the pplicant and Respondents, and have distilled two issues arising for determination. The first is whether the Respondents' application is properly before this Court for want of jurisdicition. If this Court finds that it is properly seized of the application, it will proceed to consider the second issue as to whether the clarifications sought by the Respondents can be granted.

19. A number of sub-issues arise as regards the first issue on this Court's jurisdicition to entertain the Respondents' application. The first sub-issue is that of the applicable law. It is notable that the instant application was brought pursuant to the provisions of section 5(2) (b), 7 and 11 of the Fair Administrative Action Act, and the Respondents argued in this regrad that the said provisions empower them to apply for review of a decision made by a Court on the grounds stated therein, and are entilted to the remedies stated in the sections.

20. It is apparent that the Respondents have misunderstood the nature of review contemplated under the Fair Adminsitrative Action Act, and conflated it with review by a Court of its own judgment. Section 9(1) of the Fair Adminsitrative Action Act provides for the procedure of review under the Act as follows

"(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply

for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution."

21. It is evident from a plain reading of section 9 of the Fair Adminstrative Act that the decisions contemplated to be reviewed by the High Court under the Fair Adminstrative Action Act, are decisions of other adminstrative actors and not of the High Court itself. If one is aggrieved by a review decision of the High Court, the Act is very clear that the proper procedure is to appeal the decision. Section 9(5) of the Act provides in this regard that a person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

22. The review contemplated by the Fair Adminstrative Act therefore, is the determination of the legality of an adminstrative action undertaken by another adminstrative actor, in the exercise of supervisory jurisdicition granted to the High Court. The Act defines the adminstrative actions that can be reviewed by the High Court, states the grounds on which the High Court can intervene, and the remedies that are available to the Court.gn

23. The review by the High Court of its own decision or judgment on the other hand is provided for by section 80 of the Civil Procedure Act, which provides as follows

"Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

24. The grounds on which this Court review its own decision are elaborated in Order 45 of the Civil Procedure Rules which provides as follows:

" (1) Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(*b*) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay."

25. The Supreme Court also addressed the circumstances when the Court can review its judgment in exercise of its inherent jurisdiction in the case of **Fredrick Otieno Outa vs Jared Odoyo Okello & 3 others (2017) e KLR** as follows:

"92] Taking into account the edicts and values embodied in Chapter 10 of our Constitution, we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

(i) the Judgment, Ruling, or Order, is obtained, by fraud or deceit;

(ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;

(iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;

(iv) the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of , a deliberately concealed statutory provision.

These principles are no doubt informed by various judicial authorities, in other jurisdictions, such as the ones we have cited from Nigeria, United Kingdom, India and South Africa."

26. None of the grounds stated in the above-cited statutory provisions and judicial authority that give jurisdicition to this Court to review its own decision have been cited or demonstrated by the Respondents. This is however not surprising, given that the Respondents have relied on the wrong provisions of the law in their quest for this Court to vary or alter its judgement.

27. The second sub issue is whther this Court is *functus officio*. The Applicant has urged that this Court is *functus officio*, and has no jurisdicition to revisit the judgment it delivered herein. The Respondents on the other hand have urged that what is barred by the rule on *functus officio* is a merit-based decisional re-engagement with the case, once a final judgment and decree has been entered thereon, and what they are seeking is that this Court clarifys certain ambiguities in its judgment.

28. The **Black's Law Dictionary, Ninth Edition** points out at page 743 that *functus officio* is a Latin term meaning "having performed his or her office", and refers to a situation where an officer or official body has no further authority or legal competence because the duties and functions of the original commission have been fully accomplished. A person is therefore said to be *functus officio* when he or she has acted as to exhaust the power that was being exercised, and that person may not further exercise that power. This rule as applied to judicial bodies is in instances where a Judge finally disposes of the matter before him or her, and neither that Judge or any other Judge of equal jurisdiction may vary that order.

29. In the Canadian case of **Chandler v. Alberta Association of Architects, [1989] 2 S.C.R 848** it was explained that the rule of functus officio holds that the court has no jurisdiction to reopen or amend a final decision, except in two cases: namely where there has been a slip in drawing up the judgment, or where there has been error in expressing the manifest intention of the court. This position has also been upheld in various Kenyan cases including **Chacha Mwita Mosenda v Baya Tsuma & 2 Others (2017) eKLR** and **Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 966 former employees of Telkom Kenya Limited) (2014) eKLR,** that were relied upon by both the Applicant and Respondents.

30. The exceptions to the rule are also reflected in our Civil Procedure Act in sections 80 and 99 which provide for review of judgments and corrections of judgments respectively. Therefore, whether in its common law or statutory form, the rule on *functus officio* provides that it is only in strictly limited circumstances that a court can revisit an order or judgment, the main policy concern being that of finality of litigation.

31. The question therefore that needs to be addressed in determining whether the Respondents' application is properly before this Court, is whether the it falls within the exceptions that are provided to the *functus officio* rule. This Court has already found that the Respondents have not demonstrated any grounds that would make their application fall within first exception provided by section 80 of the Civil Procedure Act and Article 45 of the Civil Procedure Rules.

32. The second exception, which is provided for under section 99 of the Civil Procedure Act, is that clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties. This section was discussed in **Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others, [2010] eKLR** as follows:-

> **"27. It is a codification of the common law doctrine dubbed 'the Slip Rule', the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become *functus officio* upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.**
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> **28. Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.**
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> **The Australian Civil Procedure has provisions *in pari materia* with section 99. As was stated in the case of Newmont Yandal Operations Pty Ltd v The J. Aron Corp & The Goldman Sachs Group Inc [2007] 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.**
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> **29. Nearer home the predecessor of this Court in Lakhamshi Brothers Ltd v R. Raja & Sons [1966] EA 313 endorsed that application of the rule, that is, to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted. Spry JA in Raniga Case (supra) also stated as follows: -**
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> **A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.**
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> **30. What is certainly not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order".**

33. In the case of **Fredrick Otieno Outa v Jared Odoyo Okello & 3 others (supra),** the Supreme Court determined the nature, scope and extent of a similiar provision, namely Section 21(4) of the Supreme Court Act, and held as follows;

> **"[85] This Section as quoted, embodies what is ordinarily referred to as the *"Slip Rule"*. By its nature, the *Slip Rule* permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the *Slip Rule* does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the *Slip Rule.***
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> **[86] We therefore hold that, Section 21(4) of the Supreme Court Act, does not confer upon this Court, jurisdiction, or powers, to sit on appeal over its own Judgments. Neither, does it confer upon the Court, powers to review any of its**

Judgments once delivered, save to correct any clerical error, or some other error, arising from any accidental slip or omission, or to vary the Judgment or Order so as to give effect to its meaning or intention. Indeed, any corrections made pursuant to this section become part of the Judgment or Order as initially rendered. The main purpose therefore, of Section 21(4) of the Supreme Court Act, is to steer a Judgment, decision, or Order of this Court, towards logical, or clerical, perfection…"

34. The Respondents have argued that there was an error in expressing the manifest intention of this Court in its judgement, as the Court did not direct the 2nd Respondent on what would be expected of it post judgment on the matters which were subject of the proceedings, and the procedural aspects to be complied when the 2nd Respondent embarks on fresh disciplinary proceedings against the Applicant were also not clear in the judgment.

35. The Respondents have in this regard not identified any mistake or clerical error in the judgement delivered on 31st July 2020 on the directions or actions required to be undertaken after the judgment. In addition, contrary to the submissions made by the Respondents, this Court did not make any orders remitting the impugned decisions back to the 2nd Respondent for reconsideration in the said judgment. Indeed, there is no section of the judgment that dealt with, or determined the actions required to be undertaken by the parties after the judgment, as this was not an issue that was pleaded or argued before the Court during the hearing. By the same dint, there was no possibility of an error in expressing the manifest intention of the court on an issue that was neither pleaded or determined by the Court.

36. What the Respondents are essentially asking this Court to do in the application for the purported clarification and interpretation of its judgment, is to advice the parties herein on the actions they should undertake as a result of the said judgment, and explain the law and procedure to be followed in this regard. This Court as a judicial review court, or any Court for that matter, has no mandate or jurisdiction to give such advice, which will essentially amount to the Court engaging the parties on the merits of the dispute outside the confines and procedures of a formal hearing. A court only has jurisdiction to lay done the law on the issues before it, and the legal action that ought to have been undertaken by a party with regard to a particular issue, only after hearing the parties on the issue.

37. A Court however has no jurisdiction to intervene or participate in the administration or implementation processes of its judgment on matters not pleaded by the parties in the case, as it is being requested to do in the present application. This will amount to a merit-based decisional re-engagement with the case, which is expressly prohibited by the *functus officio* rule. In addition, if this Court embarks on the journey it is being asked to undertake by the Respondents, it will be crossing the boundary between judicial acts and executive acts, and will be acting unethically and illegitimately. Such a crossing of this boundary cannot be clothed or justified in any manner as clarification or interpretation of a judgment.

38. The Supreme Court of Kenya did explain why such a clarification or interpretation of a judgment is undesirable in the case of **Raila Amolo Odinga & Another v Chairman, Independent Electoral and Boundaries Commission (IEBC) & Another (2017) e KLR** as follows

"56] We have considered all submissions as to whether this Court has jurisdiction to entertain the application or not. From our sentiments expressed in the foregoing paragraphs, it must be clearly discernible that we entertain serious doubts as to whether this Court has jurisdiction to clarify its Judgments. Having pronounced ourselves authoritatively on the issues that were placed before us in Petition No. 1 of 2017, it was this Court's expectation, that all parties thereto, would act in accordance with what they understood the Court to have meant. This application does not also fall within the purview of Section 21(4) of the Supreme Court Act. This Court has no jurisdiction to interpret its decisions or those of other courts. On the face of it therefore, in ordinary circumstances, an application, which is based on tenuous jurisdictional foundations, such as the one before us ought therefore to be dismissed.

[57] However, we are keenly aware that, the questions whose clarification the applicant seeks, arise from the recently decided presidential election petition, a determination that continues, to elicit considerable public interest. It is also our view that this application is not similar to the one by the 1st interested party that was recently dismissed by this Court. In that application, the applicant had sought an interpretation of a constitutional provision, a matter that was not an issue in Petition No. 1 of 2017. Had this Court entertained the application, it would have usurped the jurisdiction of the High Court contrary to its established traditions and tenets.

[58] We have in the above context, critically considered the submissions made by Messrs. Muite and Kiragu, urging us not to turn the applicant away, given the enduring public interest in the Judgment that has triggered the application. To that limited extent of great public interest, we think that the submissions by the two counsel are not without merit. In exercise of the inherent powers of this Court, we shall therefore proceed to determine whether there is any matter to be clarified, and if so, to what extent. This assumption of jurisdiction, is all the more necessary, so as to avert the danger of an impression being created in the mind of the public, that there exists an ambiguity, in the Court's Judgment, even where there might be none. If indeed there is an ambiguity, the assumption of jurisdiction will help eliminate the same. Having so decided, we now turn to the two questions as framed in the Notice of Motion…"

39. It is evident that the Supreme Court reluctantly proceeded to do provide a clarification of its judgment due to the immense political ramifications and public interest involved, as it was on the presidential election. No such public interest arises in the present application as regards the intended disciplinary actions against the Applicant or election of the 2nd Respondent's National Chairman, to warrant the exceptional and irregular clarification and interpretation sought from this Court.

40. The third and last sub-issue is whether this Court has residual jurisdiction to reopen it judgment as urged by the Respondents. The circumstances in which a judgement can be revisited on this basis were explained by the Court of Appeal in the case of **Benjoh Amalgamated Limited & Another vs Kenya Commercial Bank Limited [2014] eKLR,** as follows:

"57. The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection and only in cases whose decisions are not appealable (to the Supreme Court)……

61. It is our finding that this Court not being the final court has residual jurisdiction to review its decisions to which there is no appeal to correct errors of law that have occasioned real injustice or failure or miscarriage of justice thus eroding public confidence in the administration of justice. This is jurisdiction that has to be exercised cautiously and only where it will serve to promote public interest and enhance public confidence in the rule of law and our system of justice.

62. This Court will be reluctant to invoke its residual jurisdiction of review where, as here, there is laches or where legal rights of innocent third parties have vested during the intervening period which cannot be interfered with without causing further injustice. It will not entertain review of decisions made before the 2010 Constitution came into being."

41. The Respondents have not pointed out any errors of law, fraud or bias in the judgment of this Court. In any event as this Court is not a Court of final resort, any such errors are appealable, and indeed the Respondents have filed a Notice of Appeal which is on record. Therefore, the argument that this Court has residual jurisdiction to revisit its judgment is not applicable in the present case.

42. In the premises, I find that the instant application is not properly before this Court, for reasons that the Court is not vested with jurisdicition to hear and determine the Respondents' Notice of Motion application dated 24th September, 2020. I accordingly strike out the said application with costs to the Applicant.

43. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 9th DAY OF APRIL 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this Ruling will be delivered electronically by transmission to the email addresses of the Applicant's and Respondents' Advocates on record.

P. NYAMWEYA

JUDGE