PETITION TO THE ETHICS AND ANTI-CORRUPTION COMMISSION ON THE HIGH COURT JUDGMENT IN PETITION NO. E004 OF 2024 FREDRICK MULAA v OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & ANOTHER; WYCLIFFE AMBETSA OPARANYA & 4 OTHERS (INTERESTED PARTIES)

SUBMITTED TO:
The Chairperson,
Ethics and Anti-Corruption Commission
Integrity Centre
Jakaya Kikwete/Valley Road
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Nairobi

SUBMITTED BY:

The National Integrity Alliance (NIA);a citizen-centered integrity and anti-corruption coalition comprising Transparency International Kenya (TI-Kenya), Inuka Kenya Ni Sisi! The Kenya Human Rights Commission (KHRC) and The Institute for Social Accountability (TISA)[1].

SUBJECT: PETITION FOR APPROPRIATE ACTION BY EACC FOLLOWING THE HIGH COURT JUDGMENT IN PETITION NO. E004 OF 2024 FREDRICK MULAA v OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & ANOTHER; WYCLIFFE AMBETSA OPARANYA & 4 OTHERS (INTERESTED PARTIES)

INTRODUCTION

The Constitution of Kenya, 2010 fundamentally transformed Kenya's governance architecture by establishing integrity, accountability, transparency and good

governance as binding constitutional requirements for the exercise of public authority. Articles 10, 73 and 75, read together with Chapter Six, affirm that leadership is a public trust and that State officers must exercise authority in a manner that promotes public confidence in the integrity of public office.

The NIA respectfully submits this petition to the EACC pursuant to its constitutional and statutory mandate under Articles 79 and 252 of the Constitution and Section 11(1) of the EACC Act to investigate corruption and economic crimes, promote integrity and recommend appropriate action in accordance with the law.

The High Court judgment delivered on 2nd October 2026 in Petition No. E004 of 2024, Mulaa v Office of the Director of Public Prosecutions & 6 others [2026] KEHC 14767 (KLR), concerned the ODPP's decision to review its earlier decision to charge Wycliffe Ambetsa Oparanya in connection with allegations of conflict of interest, abuse of office, money laundering and conspiracy to commit an offence of corruption.

The judgement raises important questions regarding the handling of fresh evidence in corruption matters and the respective mandates of the EACC and the ODPP, particularly in relation to the investigation, prosecution and the decision to withdraw corruption-related offences.

The Court's findings that the impugned prosecutorial decision was irregular and unconstitutional, and that fresh evidence had been considered without referral to the EACC for further investigation, warrant appropriate institutional consideration.

NIA respectfully submits that the EACC should establish whether the evidence identified by the Court has been investigated, determine whether any outstanding investigative issues remain and undertake further action where warranted by the evidence and the law.

Such action would reinforce the constitutional principles of integrity, accountability, transparency and the rule of law, while respecting the independence of investigative and prosecutorial institutions and the rights of all persons concerned.

The purpose of this petition is not to dictate the outcome of any investigation or prosecution. It is to ensure that judicial findings concerning the handling of corruption-related matters receive appropriate institutional follow-through and that any necessary action is taken through lawful, independent and evidence-based processes.

CONSTITUTIONAL AND STATUTORY BASIS OF THE PETITION

The petition is grounded in the constitutional principles of accountability, integrity, transparency, the rule of law and public trust under Articles 10, 73 and 249 of the Constitution. Articles 79 and 252 support the EACC's anti-corruption mandate and investigative powers, while Article 157 (10) and (11) preserves the ODPP's independence in prosecutorial decision-making and **requires the DPP to have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid the abuse of legal process.**

Further, Articles 47 and 35 guarantee the right to fair administrative action and access to information, respectively, subject to applicable lawful limitations.

The statutory framework includes the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act, the Office of the Director of Public Prosecutions Act, the Leadership and Integrity Act, and the Proceeds of Crime and Anti-Money Laundering Act.

Accordingly, NIA urges the EACC to review the High Court judgment in Constitutional Petition No. E004 of 2024, establish whether the fresh evidence identified by the Court has been adequately investigated, undertake any further lawful investigative steps necessary, and refer relevant findings to the ODPP where appropriate. The process should respect institutional independence, procedural fairness, the presumption of innocence and the rights of all affected persons.

GROUNDS FOR THE PETITION

This Petition is founded on the following grounds:

i. The High Court judgment in Mulaa v Office of the Director of Public Prosecutions & 6 others [2026] KEHC 14767 (KLR) raises issues concerning the handling of fresh evidence in a corruption-related matter and the respective investigative and prosecutorial mandates of the EACC and the ODPP.

ii. The EACC ought to establish whether the fresh evidence identified in the judgment was referred to it and whether the evidence was subjected to adequate investigation and evaluation.

iii. To the extent that the judgment identifies outstanding investigative issues, the EACC should undertake such further investigations and verification as may be necessary and lawful, and document its findings.

iv. Any action taken pursuant to the judgment must comply with the Constitution and applicable law, and respect the independence of the EACC and the ODPP.

v. In the interests of accountability and transparency, and pursuant to Articles 35 and 47 of the Constitution and Sections 4 and 6(6(a) and (e) of the Access to Information Act, 2016, the EACC is requested to provide the NIA with a written response within fourteen (14) days, outlining the status of the relevant evidence issued by the defense , the steps taken in response to the Court's findings, and whether any further investigative or other action is considered necessary.

LEGAL ANALYSIS

a. Whether the High Court's Findings Warrant Further Investigative Consideration by the EACC

1. The central question arising from the judgment is whether the fresh evidence identified by the High Court has been subjected to the requisite investigative scrutiny and whether any outstanding matters remain that require further action by the EACC.
2. The significance of the judgment lies not merely in the existence of additional material, but in the Court's express finding that the ODPP had considered fresh evidence without referring the same to the EACC for further investigation. This finding raises a material question concerning the completeness of the investigative process and whether the relevant evidence was independently examined by the institution constitutionally mandated to investigate allegations of corruption and economic crimes.
3. Article 79, of the Constitution read together with Section 3 of the EACC Act, establishes the EACC as an independent commission responsible for enforcing the applicable anti-corruption legislation, while Article 252(1)(a) empowers commissions and independent offices to conduct investigations on their own

initiative or upon a complaint made by a member of the public. These constitutional provisions, read together with the Ethics and Anti-Corruption Commission Act and the Anti-Corruption and Economic Crimes Act, establish the legal foundation upon which the EACC may examine allegations of corruption and determine whether further investigative action is warranted.

4. Further, Article 157(6) separately vests the ODPP with prosecutorial authority. The constitutional framework therefore distinguishes the investigative function from the prosecutorial function, notwithstanding the necessary cooperation between the respective institutions.
5. It follows that the consideration of additional evidence by the prosecutorial authority does not, without more, establish that the evidence has undergone the investigative verification necessary to determine its authenticity, reliability, completeness and potential legal significance. Where a court identifies that additional evidence was considered without referral to the relevant investigative institution, it is reasonable to seek clarification as to whether the evidence was independently examined and whether any investigative gaps remain.
6. NIA is careful to emphasise that the Court's finding does not, in itself, establish that the additional evidence proves the commission of an offence, nor does it establish the criminal culpability of Wycliffe Ambetsa Oparanya or any other person. The purpose of this petition is not to invite the EACC to presume guilt or to reopen matters merely because a particular judicial outcome was reached. Rather, it is to request an independent determination of whether the matters identified by the Court have received the investigative attention required by law.
7. In the circumstances, NIA respectfully submits that the EACC should establish the precise nature of the fresh evidence referred to in the judgment, the circumstances in which it came to the attention of the ODPP, whether it was previously available to the investigators, and whether it was subjected to independent verification by the EACC .
8. Particular attention should be directed to the evidentiary foundation of any material presented through correspondence or documents issued by Wycliffe Oparanya's advocates. The fact that a document originates from an advocate does not, without more, establish its truth or falsity, nor does it render the document inherently inadmissible. Its contents and evidentiary value must be assessed on their own merits. Accordingly, where the material consists of assertions requiring independent confirmation, the EACC should consider

obtaining the underlying records, identifying the relevant sources and undertaking such lawful verification as may be necessary.

9. Conversely, should the EACC determine that the available material does not warrant further investigation, that conclusion should rest upon an independent, reasoned assessment of the evidence,and the existing investigative record. The existence of a judicial finding concerning the handling of evidence does not automatically require the institution to undertake a fresh investigation in every circumstance; equally, the absence of an express judicial direction to investigate should not be treated as sufficient reason to disregard material concerns that properly fall within its mandate.
10. NIA therefore submits that the appropriate response is neither an automatic reopening of investigations nor an uncritical acceptance of the previous investigative position. It is a demonstrable, evidence-based determination of whether the additional material has been adequately examined and whether any further action is legally justified.
11. In the circumstances, NIA respectfully requests the EACC to review the relevant portions of the judgment and, where necessary, undertake or facilitate further lawful investigative action. This would ensure that the concerns arising from the judgment are addressed on their merits.

b. The Importance of Public Confidence, Institutional Accountability and the Rule of Law

1. Public confidence in the administration of justice is founded not only on the existence of constitutional institutions but also on the assurance that those institutions discharge their respective mandates independently, diligently and in accordance with the law. In matters involving alleged corruption and the possible misuse of public resources, public confidence is particularly dependent on the perception and reality that relevant evidence is examined impartially and that material concerns identified by the courts are addressed through appropriate institutional processes.
2. Article 10 of the Constitution establishes the national values and principles of governance, including the rule of law, democracy, participation of the people, integrity, transparency and accountability. These values bind State organs, State officers and public officers whenever they apply or interpret the Constitution, enact, apply or interpret any law, or make or implement public

policy decisions. They consequently provide an important constitutional framework for assessing the manner in which allegations of corruption are handled by public institutions.

3. Article 73 further requires the authority assigned to a State officer to be exercised in a manner that is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and promotes public confidence in the integrity of the office. Article 232 similarly identifies accountability for administrative acts and transparency, together with the provision of timely and accurate information to the public, as principles governing public service, subject to the applicable legal limitations.
4. Read together, these provisions emphasise the importance of institutional decisions being capable of justification by reference to the law, the available evidence and the proper exercise of statutory authority. They do not require an investigative agency to reach a particular conclusion, nor do they authorise public pressure to dictate the outcome of an investigation. Rather, they require public institutions to exercise their mandates responsibly and to be able to account, within the law, for the manner in which material concerns are addressed.
5. In the present matter, the High Court's finding that the ODPP considered fresh evidence without referring it to the EACC for further investigation gives rise to a legitimate public-interest question: whether the additional material received the investigative scrutiny necessary to establish its factual and legal significance. The question is particularly important where the underlying allegations concern the conduct of a public official of a high rank and matters involving the management or expenditure of public resources.
6. NIA submits that this question should not be dismissed as a disagreement with the outcome of the judgement or as an attempt to substitute public opinion for the judgment. The request is instead directed at ensuring that the institutional responsibilities identified by the Constitution are discharged and that any outstanding investigative questions are resolved through lawful and impartial processes.
7. Institutional accountability in this context does not require the EACC to disclose confidential investigative information, reveal protected witness identities, prejudice the rights of persons under investigation or comment on the merits of potential criminal proceedings. Such disclosure may be restricted by applicable laws, including the constitutional protections relating to privacy,

fair administrative action as well as the statutory safeguards governing investigative material and personal information.

8. Nevertheless, the need to preserve confidentiality should be distinguished from the obligation to account for the exercise of public authority to the extent permitted by law subject to the limitation of information under Sections 6 of the Access to Information Act,2016. Without compromising the integrity of the case, the EACC may provide a written response indicating whether the concerns identified in the judgment have been considered and whether further action is contemplated or has been taken, insofar as such information may lawfully be disclosed.
9. Such a response would serve a legitimate accountability purpose. It would enable the public to understand that the judicial concerns have been brought to the attention of EACC and have received appropriate consideration, without creating an expectation that the EACC must disclose evidence or reach a predetermined conclusion.
10. Further, the independence of investigative and prosecutorial institutions is best safeguarded by ensuring that each institution exercises its mandate on the basis of evidence and law rather than external pressure, political considerations or assumptions arising from the status of persons implicated in allegations. The EACC should therefore be afforded the institutional independence necessary to assess the material objectively, while remaining accountable for the lawful exercise of its powers.
11. NIA therefore submits that a reasoned response from the EACC, within the limits of lawful disclosure, would advance the constitutional values of transparency, accountability and the rule of law. It would also demonstrate that judicial findings are taken seriously, that institutional mandates are respected and that decisions concerning allegations of corruption are made through objective and verifiable processes.
12. Ultimately, public confidence is not secured by guaranteeing a particular investigative or prosecutorial outcome. It is secured by ensuring that relevant concerns are considered, that decisions are grounded in the evidence and applicable law, and that those decisions can be justified to the extent legally permissible.
13. Accordingly, NIA respectfully urges the EACC to provide an appropriate account of the steps taken or proposed in response to the concerns identified by the High Court, subject to the applicable legal restrictions. Such action would reinforce public confidence in the integrity of the anti-corruption

framework while preserving the independence, confidentiality and fairness essential to effective investigations.

PRAYERS

WHEREFORE, the National Integrity Alliance respectfully petitions the Ethics and Anti-Corruption Commission to:

1. **Coordinate with the ODPP and establish the status of the fresh evidence:** Confirm in writing whether the fresh evidence referred to by the Court was subsequently submitted by the ODPP , and whether the evidence has been subjected to further investigation.
2. **Undertake further investigations where warranted:** Where the available/additional evidence is submitted by ODPP, undertake the necessary lawful investigative steps, including obtaining relevant records, verifying information and addressing evidentiary gaps.
3. **Assess outstanding evidentiary issues:** Independently determine whether the available investigative material sufficiently addresses the relevant allegations.
4. **Make appropriate recommendations upon completion of investigations:** Where the EACC's independent investigations disclose evidence warranting further action, submit its findings and recommendations to the ODPP.
5. **Provide a reasoned response where no further action is considered necessary:** Where the EACC determines that no further investigative action is warranted, provide the basis for that position to the extent lawfully disclosable, including whether the relevant evidence was previously investigated, referred or otherwise addressed.
6. **Provide a written response within fourteen (14) days:** Respond to NIA within fourteen (14) days of receipt of this petition, indicating the steps taken or proposed by the EACC. Where the nature of ongoing investigations prevents a substantive response within that period, acknowledge receipt and provide an appropriate update, including when a substantive response may reasonably be expected.

CONCLUSION

NIA accordingly urges the EACC to give this petition due consideration and provide a written response outlining the steps taken or proposed within its constitutional and statutory mandate.

Submitted by the undersigned members of National Integrity Alliance:

1. Transparency International Kenya
2. Kenya Human Rights Commission
3. Inuka Kenya Ni Sisi!
4. The Institute for Social Accountability