Grounds of Objection to Using Judicial Review as a Procurement Criminal Trial

Educational sample 138 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION OR APPLICATION NO [reference]

[APPELLANT OR APPLICANT] v [RESPONDENT]

GROUNDS OF OBJECTION

1. The Respondents oppose restoration of the review orders insofar as the application asks a reviewing court to decide disputed evidence and criminal defences before trial.

2. The investigation recommendation and prosecutorial decision should be examined against their legal mandates and the material available when made. A reviewing court may address unlawful exercise of power without adjudicating guilt.

3. The Appellants' different roles and counts must be addressed individually. Allegations about valuation, committee responsibility and the elements of an offence ordinarily require evidential testing in the criminal proceedings.

4. An abuse allegation needs specific facts showing an improper decision or purpose. The existence of an arguable defence does not, without more, demonstrate abuse of prosecution.

5. The Respondents seek dismissal of the appeals and prompt continuation of the trial, subject to lawful trial rights. The source directed priority hearing without determining whether any accused was guilty.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Under the official Supreme Court Rules 2020, rule 42 permits grounds of objection, an affidavit, or both, ordinarily within fourteen days of service unless directed otherwise. Check current directions and actual service. Keep objections within the appealed issues; facts need admissible evidence. Different relief or a different ground for affirmance may need the applicable cross-appeal or notice procedure. A response is not an automatic permission to introduce new issues.

Authorities and record references: [authority and proposition]; [relevant admitted document and page]; [court direction governing this filing].

Source and procedural limits

Tender committee members and an officer of a state corporation challenged investigation and prosecution over rig moving services. The High Court granted judicial review relief, which was reversed on appeal. The Supreme Court considered the lawful scope of review and whether the criminal trial should proceed.

The Supreme Court dismissed the consolidated appeals and directed the Milimani anti corruption case to proceed on priority. Each party bore its own costs. Judicial review can examine legality and rationality, but it is not a replacement trial deciding the strength of the criminal defence.

Constitution Articles 47, 157 and 163(4)(a); Fair Administrative Action Act and judicial review limits. Distinguish abuse of prosecutorial power from disputed evidence, procurement valuation and trial defences. Allegations of innocence do not by themselves prove an unlawful decision to prosecute.

[2023] KESC 6 (KLR) — 27 January 2023. Original judgment: https://supremecourt.judiciary.go.ke/wp-content/uploads/2025/01/Supreme-Court-Law-Reports-2023-Vol-1.pdf#page=627

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.