

**REPUBLIC OF KENYA**

**IN THE CHIEF MAGISTRATE'S ANTI - CORRUPTION COURT**

**MILIMANI ANTI-CORRUPTION CASE NO. 3 OF 2019**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

- 1. MOSES KASAINI LENOLKULAL ..... ACCUSED**
- 2. STEPHEN SIRINGA LETININA ..... ACCUSED**
- 3. DANIEL NAKUO LENOLKIRINA ..... ACCUSED**
- 4. JOSEPHINE NAAMO LENASALIA ..... ACCUSED**
- 5. REUBEN MARUMBEN LEMUNYETE ..... ACCUSED**
- 6. LINUS MILTON LENOLNGENJE ..... ACCUSED**
- 7. PAUL LOLMINGANI ..... ACCUSED**
- 8. BENARD L TARASI LESURMAT ..... ACCUSED**
- 9. LILIAN BALANGA ..... ACCUSED**
- 10. GEOFFREY BARUN KITEWAN..... ACCUSED**
- 11. HESBON JACK WACHIRA NDATHI ..... ACCUSED**

## **JUDGMENT**

### **Introduction**

The 1<sup>st</sup> accused person, Moses Kasaine Lenolkulal was the first Governor of the County Government of Samburu. He was elected and inaugurated as a Governor following the year 2013 general elections and successfully served his first term. The position of the Governor is admitted in the defence and established by the ***Kenya Gazette Notice No. 3155*** dated 13<sup>th</sup> March 2013, **exhibit 380 (a)** and the ***Kenya Gazette Notice No. 7845*** dated 18<sup>th</sup> August 2017, **exhibit 380 (b)**. This case arose when the Governor was serving his second term.

The 2<sup>nd</sup> accused person, Stephen Siringa Letinina was the County Secretary County Government of Samburu and the Head of the Public Service. He also served as the designated Accounting Officer and AIE holder for the County Executive. The position of the County Secretary is established under section 44 of the ***County Governments Act No. 17 of 2012***.

The 3<sup>rd</sup> ,4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons were County Chief Officers and Heads of Departments at the County Government of Samburu. The Chief Officers were the designated Accounting Officers and A.I.E holders for their respective departments. The position of Chief Officers is established under section 45 of the **County Governments Act No. 17 of 2012**.

The County Secretary and the Chief Officers bore the responsibility in law to administer the public funds allocated to their respective departments. The employment records for the County Secretary and the Chief Officers were produced in evidence as **exhibits, 350 (i)-(viii)** except for the record in respect of the 7<sup>th</sup> accused person, Paul Lolmingani.

The 11<sup>th</sup> accused, Hesbon Jack Ndathi Wachira a former teacher is a business man based at Mararal Town in Samburu County.

The subject matter of this case are payments made to the business name, Oryx Service Station for the supply of fuel to the County Government of Samburu between 27<sup>th</sup> March 2013 to 25<sup>th</sup> March

2019. The registration and ownership of Oryx Service Station is no longer in contention. Moses Kasaine Lenolkulal, the 1<sup>st</sup> accused herein in defence and the final submissions conceded that he was the registered sole proprietor of Oryx Service Station. The registration particulars of the business name are evidenced by **exhibits 243 (a) – (m)** and **Exhibit 301C**. From the certificate of registration, the business was registered on 1<sup>st</sup> February ,2010.

According to the substituted charge sheet admitted on 5<sup>th</sup> April, 2019 the accused persons were charged with twelve counts of corruption offences under the ***Anti-Corruption and Economic Crimes Act No. 3 of 2003*** (herein after referred to as **ACECA**). In view of this court ruling delivered on 13<sup>th</sup> July, 2023 the accused persons were found not guilty of the charge of conspiracy in **Count 1**. Therefore, this judgement is in respect of the remaining eleven (11) counts as reproduced below: -

## **COUNT II**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act***

**No.3 of 2003.**

Particulars of offence

**MOSES KASAINI LENOLKULAL:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Governor of Samburu county Government, you used your office to improperly confer upon yourself a benefit of Kshs. 84,695,996.55/= through Oryx Service Station, a business entity owned by yourself, through the supply of fuel to Samburu County Government.

**COUNT III**

Conflict of interest contrary to section 42(3) as read with section 48 (1) of the ***Anti-Corruption and Economic Crime Act No. 3 of 2003.***

Particulars of offence

**MOSES KASAINI LENOLKULAL:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County Government offices within Samburu County in the Republic of Kenya, being an agent of the Samburu County

Government as the Governor and being the sole proprietor of Oryx service Station, you knowingly acquired a direct private interest in contracts between Oryx Service Station and Samburu County Government for the supply of fuel.

#### **COUNT IV**

Unlawful acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No. 3 of 2003***.

#### **Particulars of offence**

#### **1. MOSES KASAINI LENALKULAL 11. HESBON JACK**

**WACHIRA NDATHI:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019 within Samburu County in the republic of Kenya being the Governor of Samburu County and a private person, you unlawfully acquired public property to wit, Kshs 84,695,996.55/= for the supply of fuel to Samburu County Government through Oryx Service Station.

## **COUNT V**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No. 3 of 2003.***

### **Particulars of offence**

**STEPHEN SIRINGA LETININA:** Between 27<sup>th</sup> March, 2013 and 25<sup>th</sup> March, 2019, at Samburu County, within the Republic of Kenya, being the County Secretary of Samburu County Government, you used your office to improperly confer a benefit of Kshs10,480,840/= to Moses Kasaine Lenalkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

## **COUNT VI**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

Particulars of offence

**DANIEL NAKUO LENOLKIRINA:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Finance of Samburu County Government, you used your office to improperly confer a benefit of Kshs 19,826,956.35/= to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

**COUNT VII**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No. 3 of 2003.***

Particulars of offence

**JOSEPHINE NAAMO LENASALIA:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Environment & Natural Resources, Health Services and Sanitation and Tourism Trade and cooperatives of Samburu County Government, you used your office to



improperly confer a benefit of Kshs 3,940,925/= to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

### **COUNT VIII**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

#### **Particulars of offence**

**REUBEN MARUMBEN LEMUNYETE:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Agriculture, Livestock and Fisheries of Samburu County Government, you used your office to improperly confer a benefit of Kshs 9,261,550/= to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

### **COUNT IX**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

#### **Particulars of offence**

**LINUS MILTON LENOLNGENJE:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Deputy Director of Education of Samburu County Government, you used your office to improperly confer a benefit of Kshs. 3,448,400/= to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

### **COUNT X**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

Particulars of offence

**PAUL LOLMINGANI:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Transport and Public Works of Samburu County Government, you used your office to improperly confer a benefit of Kshs 7,600,180/= to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

**COUNT XI**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No. 3 of 2003.***

Particulars of offence

**BENARD LTARASI LESURMAT:** Between 27<sup>th</sup> March 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Lands, Housing and urban Development of Samburu County Government, you used your office to improperly confer a benefit of Kshs 9,030,640/= to Moses Kasaine Lenolkulal

trading as Oryx Service Station for supply of fuel to Samburu County Government.

## **COUNT XII**

Abuse of office contrary to section 46 as read with section 48 (1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

### **Particulars of offence**

**LILIAN BALANGA:** Between 27<sup>th</sup> March, 2013 and 25<sup>th</sup> March 2019, at Samburu County, within the Republic of Kenya, being the Chief Officer – Gender, Culture and Social services of Samburu County Government, you used your office to improperly confer a benefit of Ksh. 548,870 to Moses Kasaine Lenolkulal trading as Oryx Service Station for supply of fuel to Samburu County Government.

## **The Prosecution Case**

The prosecution case is grounded on the evidence of 11 witnesses and supported by documentary evidence comprised of the 388 exhibits successfully admitted in the record.

This case revolves around the transactions and payments for the supply of fuel and lubricants by Oryx Service Station to the Departments of Samburu County Government.

Joseph Maiyani Lenalkuli (Pw-1) testified that he was the Head of Treasury Accounting Unit at Samburu County Government. He was the custodian of payment vouchers. Pw-1 in evidence identified and produced in evidence a total of 231 Payment Vouchers with attachments processed by the various departments of Samburu County Government as proof of payments made to Oryx Service Station. These Payment Vouchers and their respective attachments are produced as Exhibits No. 1 (a)-(c) to No. 231 (a) -(b)(y). He also produced a schedule of the Payment Vouchers dated 11<sup>th</sup> March 2019 as **Exhibit No. 232**. Notably, the attachments to the payment vouchers include; invoices raised by Oryx Service Station, Local Purchase Orders (LPOs) awarded to Oryx Service Station, award decisions in favour of Oryx Service Station, fuel registers by the County Government Departments and the detail orders bearing the requisition. The witness on cross-examination maintained that the

Payment Vouchers were for fuel drawn by the County Government motor vehicles and that there was no loss of the public funds.

Jacob Oduor (Pw-6), a Forensic Document Examiner working for EACC gave evidence that he received from the investigating officer the Exhibit Memo Form dated 11<sup>th</sup> April 2019, **Exhibit 274** with a request to examine the Payment Vouchers and Local Purchase Orders the subject of this case and the known and specimen signatures of the 2<sup>nd</sup> - 10<sup>th</sup> accused persons. The following are the excel tabulation of the 232 Payment Vouchers and Local Purchase Orders showing the particulars of the Departments and the individual signatory Accounting Officer responsible for authorizing the payment as established by the unchallenged evidence of the Forensic Document Examiner.

No	Name and Designation of Accounting Officer	Exhibit No.	Payment voucher No.	Amount KSH.	Date	Payee		
1	2 <sup>nd</sup> Accused , Stephen Siringa Letinina -County Secretary Appointed on 21 <sup>st</sup> March 2018	1	2020	429,200.00	07/03/2018	Oryx		
		2	2027	309,000.00	07/03/2018	Oryx		
		3	2412	212,240.00	02/05/2018	Oryx		
		4	2721	363,000.00	18/01/2017	Oryx		
		6	2446	759,000.00	04/01/2017	Oryx		
		7	652	262,500.00	14/09/2016	Oryx		
		8	2950	749,000.00	14/02/2017	Oryx		
		9	1650	787,500.00	06/10/2016	Oryx		
		10	2014	157,500.00	19/12/2016	Oryx		
		11	167	93,000.00	04/08/2016	Oryx		
		12	3426	565,000.00	03/04/2017	Oryx		
		13	155	180,000.00	04/08/2016	Oryx		
		14	916	62,500.00	09/01/2014	Oryx		
		82	1659	52,500.00	26/09/2016	Oryx		
		83	153	95,000.00	22/03/2016	Oryx		
		Total				5,076,940.00		
			Name and Designation	Exh No	Payment voucher No.	Amount	Date	Payee
2	3 <sup>rd</sup> accused , Daniel Nakuo Lenolkirina	16	4642	125,000.00	19/05/2014	Oryx		

Appointed on 1 <sup>st</sup> April 2018	17	383	250,000.00	30/06/2014	Oryx
	20	134	12,500.00	17/10/2013	Oryx
	21	289	62,500.00	18/11/2013	Oryx
	22	155	62,500.00	17/09/2013	Oryx
	23	2698	43,750.00	07/10/2014	Oryx
	24	829	40,000.00	12/09/2014	Oryx
	25	4645	125,000.00	04/12/2014	Oryx
	26	3125	125,000.00	06/10/2014	Oryx
	27	147	62,500.00	17/09/2013	Oryx
	29	319	250,000.00	18/11/2013	Oryx
	30	3560	250,000.00	07/11/2014	Oryx
	31	3169	250,000.00	22/10/2014	Oryx
	32	835	250,000.00	12/09/2014	Oryx
	33	292	250,000.00	26/08/2014	Oryx
	34	773	187,500.00	23/12/2013	Oryx
	35	3832	182,250.00	28/11/2014	Oryx
	36	4489	173,500.00	14/05/2014	Oryx
	37	239	153,000.00	26/08/2015	Oryx
	38	4955	250,000.00	18/02/2015	Oryx
	39	4063	125,000.00	Not dated	Oryx
40	4056	125,000.00	12/05/2014	Oryx	
41	2446	125,000.00	13/03/2014	Oryx	



		42	2335	125,000.00	10/03/2014	Oryx
		43	1465	125,000.00	11/02/2014	Oryx
		44	964	125,000.00	10/01/2014	Oryx
		45	963	125,000.00	10/01/2014	Oryx
		46	915	125,000.00	06/01/2014	Oryx
		47	500	125,000.00	28/11/2013	Oryx
		48	275	125,000.00	16/10/2013	Oryx
		49	5472	252,000.00	09/03/2015	Oryx
		50	2336	250,000.00	10/03/2014	Oryx
		51	1966	250,000.00	01/10/2014	Oryx
		52	1967	125,000.00	01/10/2014	Oryx
		53	6192	361,328.00	11/05/2016	Oryx
		54	736	312,500.00	17/12/2013	Oryx
		55	1944	306,000.00	02/11/2015	Oryx
		56	5489	120,000.00	09/03/2015	Oryx
		57	4845	420,000.00	16/02/2015	Oryx
		58	326	196,000.00	27/06/2015	Oryx
		59	238	52,500.00	26/08/2015	Oryx
		60	176	622,728.00	05/08/2016	Oryx
		61	439	206,000.00	16/08/2016	Oryx
		62	1304	367,500.00	18/10/2016	Oryx
		63	4083	500,000.00	19/12/2014	Oryx

		64	9006	425,000.00	02/07/2015	Oryx	
		65	4846	312,500.00	16/02/2015	Oryx	
		70	4956	125,000.00	26/05/2014	Oryx	
		73	3903	437,500.00	04/12/2014	Oryx	
		74	733	125,000.00	Not dated	Oryx	
		75	7528	100,000.00	29/04/2015	Oryx	
		76	5862	50,000.00	24/03/2015	Oryx	
		77	8741	245,000.00	23/06/2015	Oryx	
		78	2399	315,000.00	21/12/2016	Oryx	
		79	2669	530,600.00	12/06/2018	Oryx	
		84	745	204,000.00	01/09/2015	Oryx	
		85	4217	380,000.00	08/03/2016	Oryx	
		86	4243	360,000.00	28/01/2015	Oryx	
		177	3981	125,000.00	12/02/2015	Oryx	
		Total		12,431,156.00			
		<b>Name and Designation</b>	<b>Exh No</b>	<b>Payment voucher no</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
3.		4 <sup>th</sup> accused, Josephine Naamo Lenasalia Appointed on 15 <sup>th</sup> June 2014	88	4541	125,000.00	09/01/2015	Oryx
	89		1540	525,000.00	Not dated	Oryx	
	90		3947	448,000.00	08/05/2017	Oryx	
	91		6872	300,000.00	10/05/2015	Oryx	

		92	2767	125,000.00	10/10/2014	Oryx
		94	3243	599,925.00	Not dated	Oryx
		95	6211	528,000.00	Not dated	Oryx
		Total		2,650,925.00		
	<b>Name and Designation</b>	<b>Exh No</b>	<b>Payment voucher no</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
4.	5 <sup>th</sup> accused, Reuben Maruben Lemunyete Appointed on 21 <sup>st</sup> March 2018	96	1790	204,000.00	16/10/2015	Oryx
		97	2521	206,000.00	14/12/2015	Oryx
		98	0793	190,000.00	02/06/2015	Oryx
		99	574	315,000.00	08/09/2016	Oryx
		100	222	352,000.00	20/04/2016	Oryx
		101	2650	220,000.00	16/01/2017	Oryx
		102	1262	210,000.00	19/10/2016	Oryx
		103	1827	420,000.00	30/11/2016	Oryx
		104	1794	408,000.00	16/10/2015	Oryx
		105	2528	190,550.00	14/12/2015	Oryx
		106	0794	204,000.00	29/06/2015	Oryx
		107	3109	330,000.00	06/03/2017	Oryx
		108	3345	224,000.00	15/03/2017	Oryx
		109	3001	565,000.00	25/04/2017	Oryx
	110	3053	412,000.00	05/02/2016	Oryx	
	111	1969	206,000.00	29/10/2015	Oryx	

		112	1793	510,000.00	16/10/2015	Oryx
		113	0795	408,000.00	01/07/2015	Oryx
		114	7049	180,000.00	14/04/2015	Oryx
		115	0798	190,000.00	04/05/2015	Oryx
		116	5979	170,000.00	24/03/2015	Oryx
		117	575	103,000.00	08/09/2016	Oryx
		118	6575	880,000.00	17/06/2016	Oryx
		119	5043	264,000.00	04/04/2016	Oryx
		120	3543	285,000.00	17/03/2016	Oryx
		121	1512	315,000.00	19/10/2016	Oryx
		122	4099	880,000.00	20/04/2016	Oryx
		123	1792	420,000.00	14/09/2015	Oryx
		Total		9,261,550.00		
	<b>Name and Designation</b>	<b>Exh No</b>	<b>Payment voucher no</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
5.	6 <sup>th</sup> accused, Linus Milton Lenolngenje Appointed on 15 <sup>th</sup> June 2014	124	203	372,000.00	23/06/2016	Oryx
		125	1610	204,000.00	Not dated	Oryx
		126	2635	206,000.00	07/01/2016	Oryx
		127	5072	200,000.00	Not dated	Oryx
		130	211	112,000.00	27/03/2018	Oryx

		131	4595	120,000.00	28/01/2015	Oryx
		132	2721	250,000.00	06/10/2014	Oryx
		133	732	250,000.00	24/06/2014	Oryx
		134	1714	315,000.00	25/10/2016	Oryx
		135	929	125,000.00	13/01/2014	Oryx
		128	1908	204,000.00	28/10/2015	Oryx
		136	5590	375,000.00	Not dated	Oryx
		Total		2,733,000.00		
	<b>Name and Designation</b>	<b>Exh No</b>	<b>Payment voucher no</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
6.	7 <sup>th</sup> accused, Paul Lolmingani Appointed on 15 <sup>th</sup> June 2014	138	1869	331,180.00	22/01/2018	Oryx
		139	1360	315,000.00	Not dated	Oryx
		140	2481	250,000.00	13/03/2014	Oryx
		141	920	250,000.00	10/01/2014	Oryx
		142	1730	250,000.00	11/02/2014	Oryx
		143	2062	250,000.00	26/02/2014	Oryx
		144	4246	250,000.00	02/05/2014	Oryx
		145	4247	250,000.00	05/05/2014	Oryx
		146	3583	420,879.00	05/04/2017	Oryx
		147	139	875,000.00	20/08/2014	Oryx
		148	136	1,000,000.00	20/08/2014	Oryx
		149	7889	720,000.00	14/05/2015	Oryx

		150	6303	440,000.00	18/05/2016	Oryx
		151	4837	575,000.00	15/01/2015	Oryx
		152	5941	500,000.00	23/06/2014	Oryx
		153	542	465,000.00	29/06/2016	Oryx
		154	1917	311,190.00	22/02/2018	Oryx
		208	3191	608,730.00	19/02/2016	Oryx
		Total		8,061,979.00		-
	<b>Name and Designation</b>	<b>Exh No</b>	<b>Payment voucher no</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
7.	8 <sup>th</sup> accused, Bernard Ltarasi Lesurmat Appointed on 1 <sup>st</sup> April 2018	155	0801	500,004.00	15/05/2015	Oryx
		156	1943	750,006.00	29/10/2015	Oryx
		157	3126	200,100.00	03/02/2016	Oryx
		158	3984	360,000.00	24/03/2016	Oryx
		159	3985	440,000.00	31/03/2016	Oryx
		160	129	309,000.00	09/06/2016	Oryx
		161	123	572,000.00	09/06/2016	Oryx
		162	125	450,000.00	09/06/2016	Oryx
		163	626	456,000.00	14/09/2016	Oryx
		164	627	525,000.00	14/09/2016	Oryx
		165	1599	525,000.00	22/09/2016	Oryx
		166	2493	468,000.00	06/12/2016	Oryx

			167	1866	525,000.00	06/12/2016	Oryx
			168	4083	481,000.00	20/04/2017	Oryx
			169	8895	800,009.00	Missing	Oryx
			170	2539	424,480.00	Missing	Oryx
			171	3127	300,039.00	03/02/2016	Oryx
			172	7511	450,000.00	Missing	Oryx
			173	7510	345,000.00	Missing	Oryx
			174	8881	1,200,002.00	Missing	Oryx
			Total		10,080,640.00		
			<b>Exhibit No.</b>	<b>Payment voucher No.</b>	<b>Amount</b>	<b>Date</b>	<b>Payee</b>
8.	9 <sup>th</sup> accused , Lilian Balanga Appointed on 15 <sup>th</sup> June 2014		175	4455	250,000.00	06/02/2015	Oryx
			176	4456	250,000.00	06/02/2015	Oryx
			Total		500,000.00		
9.	Geoffrey Barun Kitewan	Head of Supply chain	229	737	1,412,500.00	14/09/2017	Oryx
10.	Alternate AIE Holder	County Transport & Public works	209	5040	270,000.00	18/04/2016	Oryx
	Alternate AIE Holder	County Transport & Public works	210	3205	309,000.00	24/02/2016	Oryx

11.	Alternate AIE Holder	County Transport & Public works	182	4114	169,500.00	The director has signed as AIE holder	Oryx
12.	Director	Director - Environment & Natural resources	184	201	169,500.00	The director has signed as AIE holder	Oryx
13.	Director	Director - Environment & Natural resources	185	729	228,000.00	The director has signed as AIE holder	Oryx
14.	Director	Director - Environment & Natural resources	186	1807	228,000.00	The director has signed as AIE holder	Oryx
15.	Director	The director has signed as AIE holder	187	2172	162,750.00	The director has signed as AIE holder	Oryx
16.	Director	The director has signed as AIE holder	219	5294	125,000.00	Not dated	Oryx
17.	Director	Agriculture	220	7334	40,000.00	Not dated	Oryx
18.	Alternate AIE Holder	Alternate AIE Holder	211	2041	525,000.00	16/12/2016	Oryx
19.	Alternate AIE Holder	Alternate AIE Holder	212	4282	139,120.00	Not dated	Oryx
20.	Alternate AIE Holder	Alternate AIE Holder	213	4529	339,000.00	Not dated	Oryx
21.	Director	Agriculture	178	3309	125,000.00	29/10/2014	Oryx
22.	Unknown Signature		66	4418	60,000.00	09/02/2015	Oryx
23.	No Stamp signed for CFO	No Stamp	67	4401	250,000.00	09/02/2015	Oryx



24.	No Stamp signed for CFO	No Stamp	68	4400	250,000.00	09/02/2015	Oryx
25.	No Stamp signed for CFO	No Stamp	69	4424	62,500.00	09/02/2015	Oryx
26.	No Stamp signed for CFO	No Stamp	71	4433	187,500.00	09/02/2015	Oryx
27.	No Stamp signed for CFO	No Stamp	72	4423	250,000.00	09/02/2015	Oryx
28.	No Stamp signed for CFO	No Stamp	81	7064	150,000.00	15/04/2015	Oryx
29.	No Stamp signed for CFO	No Stamp	87	3922	103,000.00	04/04/2016	Oryx
30.	No Stamp signed for CFO	No Stamp	194	7063	350,000.00	15/04/2015	Oryx
31.	No Stamp signed for CFO	No Stamp	195	3367	125,000.00	06/11/2014	Oryx
32.	No Stamp signed for CFO	No Stamp	202	7041	450,000.00	15/04/2015	Oryx
33.	No Stamp signed for CFO	No Stamp	18	174	250,000.00	Not dated	Oryx
34.	Not signed	No Stamp	19	645	255,800.00	Not dated	Oryx
35.	Not signed	No Stamp	28	138	125,000.00	17/10/2013	Oryx

36.	Not signed	No Stamp	80	0721	262,500.00	Not dated	Oryx
37.	Not signed	No Stamp	93	081	408,000.00	Not dated	Oryx
38.	Not signed	No Stamp	5	3850	565,000.00	04/05/2017- no stamp affixed	Oryx
39.	Unknown Signature	County Secretary	15	4567	418,100.00	20/08/2017	Oryx
40.	Unknown Signature	County Secretary	129	1908	309,000.00	12/01/2016	Oryx
41.	Unknown Signature	CO	137	0813	142,500.00	Not dated	Oryx
42.	Unknown Signature	CO	179	1267	315,000.00	18/10/2016	Oryx
43.	Unknown Signature		180	2926	160,500.00	Missing department stamp	Oryx
44.	Unknown Signature		181	3238	224,000.00	27/03/2017	Oryx
45.	Unknown Signature	CO	183	4613	115,000.00	11/02/2015	Oryx
46.	Unknown Signature		188	2883	273,750.00	30/05/2018	Oryx
47.	Unknown Signature		189	3375	625,000.00	23/04/2014	Oryx
48.	Unknown Signature		190	5479	375,000.00	12/06/2014	Oryx
49.	Unknown Signature		191	5480	125,000.00	12/06/2014	Oryx
50.	Unknown Signature		192	162	180,250.00	28/06/2014	Oryx
51.	Unknown Signature		193	5695	748,000.00	19/06/2014	Oryx
52.	Unknown Signature		196	1110	500,000.00	Not dated	Oryx
53.	Unknown Signature		197	5507	400,000.00	Not dated	Oryx
54.	Unknown Signature		198	808	816,000.00	26/06/2015	Oryx

55.	Unknown Signature		199	2748	618,000.00	19/01/2016	Oryx
56.	Unknown Signature		200	3973	412,000.00	05/04/2016	Oryx
57.	Unknown Signature		201	612	500,000.00	02/09/2014	Oryx
58.	Unknown Signature		203	7996	475,000.00	15/05/2015	Oryx
59.	Unknown Signature		204	65	586,920.00	06/06/2018	Oryx
60.	Unknown Signature		205	3435	672,000.00	04/03/2017	Oryx
61.	Unknown Signature		206	823	565,000.00	07/06/2017	Oryx
62.	Unknown Signature		207	1644	580,000.00	20/12/2017	Oryx
63.	Unknown Signature		214	928	62,500.00	15/01/2014	Oryx
64.	Unknown Signature		215	2285	210,000.00	18/09/2015	Oryx
65.	Unknown Signature		216	8851	700,600.00	04/05/2017	Oryx
66.	Unknown Signature		217	4537	1,130,000.00	28/06/2017	Oryx
67.	Unknown Signature		218	2710	309,000.00	19/01/2016	Oryx
68.	Unknown Signature		221	4537	187,500.00	15/05/2014	Oryx
69.	Unknown Signature		222	7863	375,000.00	25/06/2014	Oryx
70.	Unknown Signature		223	453	500,000.00	27/08/2014	Oryx
71.	Unknown Signature		224	7486	350,000.00	Not dated	Oryx
72.	Unknown Signature		225	7487	270,000.00	Not dated	Oryx
73.	Unknown Signature		226	4086	324,000.00	30/04/2014	Oryx
74.	Unknown Signature		227	4085	350,000.00	30/04/2014	Oryx

75.	Unknown Signature		228	2684	125,000.00	16/09/2014	Oryx
76.	Unknown Signature		230	625	985,500.00	21/09/2018	Oryx
77.	Unknown Signature	County Water Environment, Natural resources and Energy	231	538	427,500.00	13/09/2018	Oryx
		<b>TOTAL</b>			<b>75,585,480/-</b>		

<b>LOCAL PURCHASE ORDER SIGNED BY 3<sup>RD</sup> ACCUSED DANIEL NAKUO</b>		
<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
A1	EXH 375	LPO No. 2378819
A2		LPO No. 2325569
A3		LPO No. 2204205
A4		LPO No. 2378775
A5		LPO No. 23759714
A6		LPO No. 23759714
A7		LPO No. 2186066
A8		LPO No. 2186204
A9		LPO No. 2186061
A10		LPO No. 2184108
A11		LPO No. 2143856
A12		LPO No. 2143676

A13		LPO No. 2324813
A14		LPO No. 2204094
A15		LPO No. 2359745
A16		LPO No. 2324733
A17		LPO No. 2325613
A18		LPO No. 2378822
A19		LPO No. 2356435
A20		LPO No. 2356259
A21		LPO No. 2186087
A22		LPO No. 2325741
A23		LPO No. 2325555
A24		LPO No. 2324508
A25		LPO No. 2325709
A26		LPO No. 2324715
A27		LPO No. 2324530
A28		LPO No. 2359749
A29		LPO No. 2324510
A30		LPO No. 2184148
A31		LPO No. 2204084
A32		LPO No. 2001749
A33		LPO No. 2324736
A34		LPO No. 2143859
A35		LPO No. 2324534
A36		LPO No. 2204211
A37		LPO No. 2325587
A38		LPO No. 2184325

A39		LPO No. 2324507
A40		LPO No. 2324519
A41		LPO No. 2325600
A42		LPO No. 2680115
A43		LPO No. 2680113
A45		LPO No. 2680103
A46		LPO No. 2680134
A47		LPO No. 2688138
A48		LPO No. 2680137
<b>LOCAL PURCHASE ORDER SIGNED BY 4<sup>TH</sup> ACCUSED , JOSEPHINE NAAMO LENASALIA</b>		
<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
C1	EXH 375	LPO NO. 2378597
C2		LPO NO. 2186222
C3		LPO NO. 2186241
C4		LPO NO. 2325802
C5		LPO NO. 2378571
C6		LPO NO. 2378925
C7		LPO NO. 2378948
C8		LPO NO. 2378592
C10		LPO NO. 1540
C11		LPO NO. 6872
C12		LPO NO. 2767
C13(not signed)		LPO NO. 811

C14		LPO NO. 4541
C15		LPO NO. 3243
<b>LOCAL PURCHASE ORDER SIGNED BY 5<sup>TH</sup> ACCUSED , REUBEN MARUMBEN LEMUNYETE</b>		
<b>MARKINGS FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
D1	EXH 375	LPO NO. 2689506
D2		LPO NO. 2689517
D3		LPO NO. 2689521
D4		LPO NO. 2689510
D5		LPO NO. 2208910
D6		LPO NO. 2359916
D7		LPO NO. 2359949
D8		LPO NO. 2356130
D9		LPO NO. 2324586
D10		LPO NO. 2356143
D11		LPO NO. 2356142
D12		LPO NO. 2359919
D13		LPO NO. 2324583
D14		LPO NO. 2324578
D15		LPO NO. 2356118
D16		LPO NO. 2356138
D17		LPO NO. 2356125
D18		LPO NO. 2356123

D19		LPO NO. 2324599
D20		LPO NO. 2356132
<b>LOCAL PURCHASE ORDER SIGNED BY 6<sup>TH</sup> ACCUSED , LINUS MILTON LENOLNGENJE</b>		
<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
E1	EXH 375	LPO NO. 2325976
E2		LPO NO. 2324916
E3		LPO NO. 2184263
E4		LPO NO. 2680361
E5		LPO NO. 2680013
E6		LPO NO. 2680351
E7		LPO NO. 2204115
E8		LPO NO. 2324946
E9		LPO NO. 2204107
E10		LPO NO. 2155480
E11		LPO NO. 2155471
E12		LPO NO. 2155459
E13		LPO NO. 2204141



**LOCAL PURCHASE ORDER SIGNED BY 7<sup>TH</sup> ACCUSED, PAUL LOLMINGANI**

<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
F1		LPO NO. 2204170
F2		LPO NO. 2204152
F3		LPO NO. 2378900
F4		LPO NO. 2001529
F5		LPO NO. 2186356
F6		LPO NO. 2204152
F7		LPO NO. 2378891
F8		LPO NO. 2204181
F9		LPO NO. 2186375
F10		LPO NO. 2001503
F11		LPO NO. 2680265
F12		LPO NO. 2680290

**LOCAL PURCHASE ORDER SIGNED BY 8<sup>TH</sup> accused , BERNARD LESURMAT**

<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
G1	EXH 375	LPO NO. 2359545
G2		LPO NO. 2324861
G3		LPO NO. 2324869
G4		LPO NO. 2359521
G5		LPO NO. 2359546

G6		LPO NO. 2378837
G7		LPO NO. 2359520
G8		LPO NO. 2378830
G9		LPO NO. 2378829
G10		LPO NO. 2359549
<b>LOCAL PURCHASE ORDER SIGNED BY 9<sup>TH</sup> ACCUSED , LILIAN BALANGA</b>		
<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
H1	EXH 375	LPO NO 2324751
H2		LPO NO 2324768
<b>LOCAL PURCHASE ORDER SIGNED BY STEPHEN SIRINGA LETININA</b>		
<b>MARKING FOR EXAMINATION</b>	<b>EXHIBIT</b>	<b>LOCAL PURCHASE ORDER</b>
J2		LPO no. 2359957
J3		LPO no. 2359999
J4	EXH 9(h)	LPO no. 2378781 dated 29/9/16 of Ksh. 105,000/=
J5	EXH 9(i)	LPO no. 2378782 dated 29/6/16 of Ksh. 105,000/=
J6	EXH 9(f)	LPO no. 23787883 dated 29/9/16 of Ksh.52,500/=
J7	EXH 9 (b)	LPO no. 237874 dated 29/6/16 of Ksh. 315,000/=

J8	EXH9 (d)	LPO no. 2378785 dated 29/9/16 of Ksh. 210,000/=
J9		LPO no. 23789974
J10		LPO no. 2378975
J11	EXH 10 (b)	LPO no. 2680183 dated 10/12/16 Ksh.157,500/=
J12		LPO no. 2680188
J13	EXH 6 (b)	LPO no. 2680190 Ksh. 220,000/=
J14	EXH 6 (k)	LPO no. 2680193 dated 22/12/16 of Ksh. 165,000/=
J15	EXH 6 (h)	LPO no. 2680193 dated 22/12/16 of Ksh 55,000/=
J16	EXH 6 (e)	LPO no. 2680196 of Ksh. 55,000/=
J17	EXH 6 (i)	LPO no.2680197 dated 22/12/16 of Ksh. 55,000/=
J18	EXH 6(f)	LPO no. 2680198 o Ksh. 29,000/=
J19	EXH 6(d)	LPO no. 2680200 of Ksh. 110,000/=
J20	EXH 4(d)	LPO no. 2680401 of Ksh. 330,000/=
J21	EXH 4 (b)	LPO no. 2680412
J22	EXH 8(a)	LPO no. 2680414 dated 27/1/2017 of Ksh. 535,007/=
J23	EXH 8(c)	LPO no. 2680420 dated 2/2/17 of Ksh 53,500/=
J24	EXH 8(b)	LPO no. 2680421 dated 2/2/17 of Ksh 32,100/=

J25	EXH 12(b)	LPO no. 2680432 dated 4/4/17 of Ksh 565,000/=
J26	EXH 216(e)	
J27	EXH 216 (f)	
J28	EXH 216(g)	
J29	EXH 3(c)	LPO no. 2688355 of Ksh 212,240/=
J30		LPO no. 2689710
J31	EXH 15(a)	LPO no. 2689712 of Ksh. 418,100/=
J32	EXH 1(c)	LPO no. 2689744
B10(i-iv)	EXH 286	specimen signatures of Stephen Siringa Letinina

Joram Rimiti Lentoijoni (Pw-2) told the court that he was the Acting Head of Supply Chain Management at Samburu County Government. He is the custodian of all procurement documents. He produced in evidence the lists for the pre-qualified suppliers for Samburu County Government for the FY 2014-2015 and FY 2015-2016 as **Exhibits 233** and **234**. A reading of the two prequalified suppliers' list confirms that Oryx Service Station was a pre-qualified supplier of oil, petroleum products and lubricants to Samburu County Government. Additionally, Pw-2 tendered in evidence the following documents in support of the procurement of fuel and oil lubricants to Samburu County Government during the period 2013 – 2019: -

- i. The quotation registers for; FY 2012-2013, FY 2015-2016, FY 2016-2017 and FY 2018-2019 **exhibits, 235 (a) (b) (c) (d).**
- ii. Approved budgets for; FY 2013-2014, FY 2014-2015, FY 2016 (supplementary budget), FY 2016-2017 (supplementary budget), FY 2017-2018, FY 2018-2019 **exhibits 236 (a)-(f).**
- iii. Procurement plans for the Samburu County Departments;
  - a) Procurement Plan for Department of Agriculture & Livestock FY 2018-2019, **exhibit 237(a).**
  - b) Procurement Plan for Department of Health Services FY 2018-2019, **exhibit 237(b).**
  - c) Procurement Plan for Department of County Transport & Public Works FY 2017-2018, **exhibit 237(C).**
  - d) Procurement Plan for Department of Education and Vocational Training FY 2018-2019, **exhibit 237(d).**
  - e) Procurement Plan for Department of Health Services FY 2017-2018, **exhibit 237(e).**
  - f) Procurement Plan for Department of Gender Culture and Social Services FY 2017-2018, **exhibit 237(f).**

- g) Procurement Plan for Department of County Executive FY 2017-2018, **exhibit 237(g)**.
- h) Procurement Plan for County Executive FY 2017-2018, **exhibit 237(g)**.
- i) Procurement Plan for Department of Finance & Economic Planning FY 2017-2018, **exhibit 237(h)**.
- j) Procurement Plan for Department of Water & Environment & Natural Resources & Energy FY 2017-2018, **exhibit 237(i)**.
- k) Procurement Plan for Department of Health Services FY 2017-2018, **exhibit 237(j)**.
- l) Procurement Plan for Department of Gender Culture and Social Services FY 2016-2017, **exhibit 237(k)**.
- m) Procurement Plan for Department of Land Housing & Urban Development FY 2016-2017, **exhibit 237(l)**.
- n) Procurement Plan for Department of Land Tourism, Trade & Cooperative Development FY 2016-2017, **exhibit 237(m)**.
- o) Procurement Plan for Department of Agriculture Livestock & Fisheries FY 2016-2017, **exhibit 237(n)**.

- p) Procurement Plan for Department of Finance and Economic Planning FY 2016-2017, **exhibit 237(o)**.
- q) Procurement Plan for Department of Education, Youth & Sports Finance FY 2016-2017, **exhibit 237(p)**.
- r) Procurement Plan for Department of Environment & natural Resources FY 2016-2017, **exhibit 237(q)**.
- s) Procurement Plan for Department of Transport & Public works FY 2016-2017, **exhibit 237(r)**.

In cross- examination, Pw-2 testified that there was no irregularity in the procurement process for oil, petroleum products and lubricants supplied by Orxy Service Station. He also added that the payments made to Orxy Service Station were lawful.

Evans Juma Osetero (Pw-3) is an Assistant Manager Investigations at Postal Corporation of Kenya based at the Head Quarters at Delta House along Kenyatta Avenue. He acted on EACC letter dated 27<sup>th</sup> February, 2019 (**exhibit 239**) inquiring about the ownership of the Rental Box No. 113 - 20600 Mararal. The investigations by Pw-3

revealed that the Rental Box was found to belong to David Lenolkulal the father to the 1<sup>st</sup> accused person. This finding is also supported by a reply letter dated 1<sup>st</sup> April 2017, **exhibit 240** and the Control Card produced as **exhibit 241**. The relationship of the Governor and David Lenolkulal is well established by the Registrar of Persons report dated 1<sup>st</sup> March 2019 produced as **exhibits 378(i)(ii) &(iii)**. The Governor was identified as the registered holder of ID No. 13044739 and the son of David Lenolkulal the registered owner of the Rental Box P.O Box 113-20600 Mararal. These documents tally with the documents and particulars used to register Oryx Service Station.

Peterson Wachira (Pw-4), a clerical officer at the Registrar of Companies Department while acting on the EACC Inquiry letter dated 22<sup>nd</sup> February 2019, exhibit No. 242 conducted a search on the registration particulars and status of Orxy Service Station. The outcome of the search confirmed that Orxy Service Station was a registered business name whose proprietor was Moses Lenolkulal the 1<sup>st</sup> accused person herein. The business name address is P.o Box 113-20600 Mararal, this is the same address registered in the name of David Lenalkulal according to Evans Juma Osetero (Pw-3). From



the registration records, Orxy Service Station located at Plot No. 35 Mararal Road was registered on 1<sup>st</sup> February ,2010 and its nature of business was to supply stationery. The evidence of Pw-4 is supported by the Report dated 27<sup>th</sup> February, 2019 by Jemima Mungai and the annexures thereto produced in evidence as **Exhibit No. 243 (g) (h)(i)**. In the end, Pw-4 testified that Orxy Service Station ceased to exist pending conversion into a company but he could not provide the date when the business name ceased to exist.

Pw-5 was Stephen Yego, a Forensic Document Examiner working at EACC. He examined documents presented by the investigating officer and more particularly stated in the Exhibit Memo Form dated 13<sup>th</sup> March, 2019, **Exhibit 244(a)**. He then prepared the report dated 14<sup>th</sup> March 2019, **Exhibit No. 244(b)**. The report findings relevant to this case are summarized as follows: -

- i. The 1<sup>st</sup> accused person was the author of the signatures on his specimen signature Marked **B1 & B2, exhibits 269 (a)&(b)** and the known signatures on the documents marked as **B3 – Exhibit 270(a)**, a cheque leave No. 002576 and **B5 –**

**Exhibit 270 (b)**, A certificate of inauguration of the Governor Samburu County dated 27<sup>th</sup> March 2013 and the following questioned documents: -

- a) **A7 – Exhibit 251**, KCB cash withdrawal advice slip dated 26<sup>th</sup> May 2014 from Oryx Service Station A/C 1124724591 for kshs. 900,000/-.
- b) **A9 – Exhibit 253**, KCB application for funds transfer from Oryx Service Station A/C NO. 1124724591 for kshs. 2,300,000/- to Modern Precast Kenya Limited A/C NO. 0404901101 in Equatorial Commercial Bank dated 28<sup>th</sup> July 2015.
- c) **A12 – Exhibit 256**, Oryx Service Station copy of cheque No. 000300 KCB A/C NO. 1124724591 dated 29<sup>th</sup> August, 2013 for kshs. 666,000/-.
- d) **A14 – Exhibit 258**, a copy of KCB transaction voucher dated 20<sup>th</sup> September,2013 of kshs. 180,000/- drawn on Oryx Service Station A/C NO. 1124724591.
- e) **A15 – Exhibit 259**, a copy of KCB transaction voucher dated 2<sup>nd</sup> December, 2013 of kshs. 2,316,000/- drawn on Oryx Service Station A/C NO. 1124724591.

ii. The 1<sup>st</sup> accused person was the author of signature pointed by black ink on the questioned documents marked and produced as: -

a) **A1 – Exhibit 245**, Lease agreement of Oryx Service Station on Plot No. 5 between the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons dated 1<sup>st</sup> May, 2013.

b) **A2 – Exhibit 246**, Lease agreement of Oryx Service Station on Plot No. 5 between the 1<sup>st</sup> and the 11 accused persons dated 1<sup>st</sup> May, 2013.

The questioned documents were examined against the 1<sup>st</sup> accused known signature on the Samburu County Government transfer of Land to Lilipilise Lekupe by Moses Kasaine Lenolkulal dated 10<sup>th</sup> November 2015 marked **B6 – Exhibit 271(a)**.

iii. The 11<sup>th</sup> accused was the author of the signatures pointed by red ink on the documents marked and produced as follows:

a) **A1- Exhibit 245**, Lease agreement of Oryx Service Station on Plot No. 5 between the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons dated 1<sup>st</sup> May, 2013

- b) **A2 – Exhibit 246**, Lease agreement of Oryx Service Station on Plot No. 5 between the 1<sup>st</sup> and the 11<sup>th</sup> accused persons dated 1<sup>st</sup> May, 2013
- c) **A11 – Exhibit 255**, KRA minutes of negotiations over ground floor state for Mararal Office at Samburu County Government Chambers dated 28<sup>th</sup> January, 2018.
- d) **A17 – Exhibit 261**, a copy of KCB transfers of funds transactions voucher dated 16<sup>th</sup> May, 2013 for A/C NO. 1103629506 in the name of Esbon W. Ndathi of Kshs. 1,600,000/-.
- e) **A18 – Exhibit 262**, KCB transactions of funds voucher dated 9<sup>TH</sup> December,2013 for A/C No. 1124724591 in the name of Oryx Service Station of Kshs. 200,000/-.
- f) **A19 – Exhibit 263**, a copy of Oryx Service Station cheque no. 00423 KCB A/C 1124724591 dated 29<sup>th</sup> January, 2014 of Kshs. 1,004, 500/-.
- g) **A20 – Exhibit 264**, Samburu Furniture copy of cheque no. 000015 KCB A/C No. 1148627103 dated 26<sup>th</sup> May, 2014.

- h) A22 – Exhibit 266, a copy of Oryx Service Station cheque no. 00652 KCB A/C 1124724591 dated 17<sup>th</sup> April, 2015 of Kshs. 600,000/-.
- i) A23 – Exhibit 267, a copy of Oryx Service Station cheque no. 00651 KCB A/C 1124724591 dated 17<sup>th</sup> April, 2015 of Kshs. 2,000,000/-.
- j) A24 – Exhibit 268, a copy of Oryx Service Station cheque no. 00819 KCB A/C 1124724591 dated 29<sup>th</sup> January, 2016 of Kshs. 1,000,000/-.

The questioned documents were examined against the 11<sup>th</sup> accused's specimen signatures marked **B7, B8 & B9 – exhibits 272 (a)(b) &(c)** and his known signatures on the documents marked and produced as: -

- a) **B10 – Exhibit 273 (a)**, Letter from Samburu County Government to Oryx Service Station dated 17<sup>th</sup> November, 2014 bearing the known signature of Hesbon Ndathi.
- b) **B11 – Exhibit 273 (b)**, Form CR8 a Notice of Residential

Address / change of address of directors of a company bearing the known signature of Hesbon Ndathi.

- c) **B12 – Exhibit 273 (c)**, Statement of nominal capital of Oryx Petro Station Limited bearing the known signature of Hesbon Ndathi.

The Forensic Document Examiner opinion is supported by concise illustrations on the methodology used and the detailed examination of the design and construction of letters, line quality, seize, slope, letter spacing character connection, pen lift, pen pressure, base line, alignment, initial /end terminal strokes and pen movement. In my opinion, the Forensic Examiner was thorough in executing the documents examination and I have no reason to doubt the findings on the report produced as **Exhibit 244 (b)**. The import of the above findings demonstrates the close relationship of the Governor and Hesbon Ndathi who had access to Oryx Service Station KCB A/C 1124724591 and transacted cash withdrawals. The questioned documents were recovered from the residences of the Governor and Hesbon Ndathi and at Oryx Service Station. The search and recovery of the questioned documents is well documented and supported by

the inventories and court orders adduced in evidence by the lead investigating officer Joel Khisa, Pw-11.

Johnstone Kirui (Pw-7) the Bank Manager KCB Mararal Branch testimony is in respect of the Orxy Service Station A/C No. 1124724591. He confirmed from the account opening documents produced as **exhibit 301** that the bank account was opened by the 1<sup>st</sup> accused person as a sole proprietor account and bears a similar address P.O Box 113 - 20600 Mararal as the registration particulars for Orxy Service Station given by the Registrar of Companies. The other documents included in the account opening documents were a copy of the identity card of the 1<sup>st</sup> accused, **exhibit 301(d)** and a letter for change of a signatory dated 1<sup>st</sup> May 2013, **exhibit 302**. The Bank Manager tendered in evidence the bank statement of A/C No. 1124724591 for the period 9<sup>th</sup> December 2012 to 28<sup>th</sup> February 2019 as **exhibit 303**. Additionally, he prepared an excel summary of the bank statement sorting out all the payments made by Samburu County Government and received in the A/C No. 1124724591 as **exhibit 304**. He also produced in evidence an electronic certificate under section 65(8) of the Evidence Act as **exhibits 306** to

authenticate the print outs of the above electronic documents.

From the cross examination of the Bank Manager it was confirmed that the Governor ceased being a signatory of the Oryx Service Station A/C No. 1124724591 w.e.f 22<sup>nd</sup> October 2015 after the bank received the letter dated 1<sup>st</sup> May 2013, **exhibit 303**. Thus, from 22<sup>nd</sup> October 2015 the account signatory became the 11<sup>th</sup> accused person.

Vincent Cheruiyot Siele (Pw-8) served as the Service Quality & Compliance Manager at KCB Mararal during the period April 2016 to April 2019. His testimony concerns the 1<sup>st</sup> accused bank accounts domiciled at KCB – Mararal being A/C No. 1103831208 and A/C No. 1108168841. He also testified on Orxy Service Station A/C No. 1124724591 and 1177182416. Pw-8 produced in evidence the account opening documents for the above accounts as follows: -

- i. Account opening documents for A/C No. 1103831208 opened on 7<sup>th</sup> July 1994 with the 1<sup>st</sup> accused as the sole account signatory, **Exhibit 308 (a) &(b)**.



- ii. Account opening documents for A/C No. 1108168841 previously A/C No.066199000060 opened on 7<sup>th</sup> March 2006 with the 1<sup>st</sup> accused as the sole account signatory, **Exhibit 309 (a) &(b)**.
- iii. Account opening documents for A/C No. 1234708647 opened on 25<sup>th</sup> October 2018 with the 1<sup>st</sup> accused person as the sole account signatory, **Exhibit 310 (a) &(b)**.
- iv. Account opening documents for A/C No. 1124724591, Account name Oryx Service Station opened on 24<sup>th</sup> February 2011 with the 1<sup>st</sup> accused as the sole account signatory, **Exhibit 301 (a) & (d)**.

Priscila Lanyasunya (PW-9), the Director of Human Resource at the Samburu County Government produced in evidence the employment records for the following accused persons: -

- i. 2<sup>nd</sup> accused, Stephen S. Letinina appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the County Secretary and Head of Public Service. The appointment letter is dated 21<sup>st</sup> March 2018. The record is **Exhibit no. 305(i)**.

- ii. 3<sup>rd</sup> accused, Daniel Nakuo Lonolkirina appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Finance. The appointment letter is dated 21<sup>st</sup> March 2018. The record is **Exhibit no. 305(ii)**.
- iii. 4<sup>th</sup> accused, Josephine Lenosalia appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Environment and Water Resources. The appointment letter is dated 15<sup>th</sup> June 2014. The record is **Exhibit no. 305(viii)**.
- iv. 5<sup>th</sup> accused, Reuben Maruben Lemunyete appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Agriculture Live Stock Development Veterinary Services and Fisheries. The appointment letter is dated 21<sup>st</sup> March 2018. The record is **Exhibit no. 305(iii)**.
- v. 6<sup>th</sup> accused, Milton Lenolngenje appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Education. The appointment letter is dated 15<sup>th</sup> June 2014. The record is **Exhibit no. 305(vii)**.
- vi. 8<sup>th</sup> accused, Benard Lesurmat appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Lands Housing Physical Planning and Urban Development. The appointment

letter is dated 21<sup>st</sup> March 2018. The record is **Exhibit no. 305(v)**.

- vii. 9<sup>th</sup> accused, Lilian Balanga appointed by the 1<sup>st</sup> accused, Moses Kasaine Lenolkulal as the Chief Officer Culture Social Services and Gender. The appointment letter is dated 15<sup>th</sup> June 2014. The record is **Exhibit no. 305(vi)**.

Alex Kinyanjui (Pw-10) a Digital Forensic Analyst at EACC Forensic Laboratory acted on the five Exhibit Memo Forms received from the investigating officer bearing requests to extract all data pertaining to ‘financials’ and ‘assets’ from the electronic gadgets recovered from the 1<sup>st</sup> and 11<sup>th</sup> accused persons. The exhibit Memo forms were produced as **exhibits Nos. 351 ,352, 353, 354** and **355**. He thereafter prepared the report dated 7<sup>th</sup> March 2019 produced as **exhibit 356**. The significant finding from the digital forensic examination was the close relationship between the Governor and Hesbon Ndathi. The examination established communication between the two men as well as mpesa transactions where the Governor received money from Hesbon Ndathi.

A case in point is the findings of the Digital Forensic Examiner in respect of the Exhibit Memo Form dated 20<sup>th</sup> February 2019, **exhibit 353**. The investigating officer recovered from the Governor residence in Karen Nairobi an Apple iPhone Serial No. G00V11X17JCL6 (G0GVVXI7JCL6), the phone was found to bear 14 mpesa messages sent by the 11<sup>th</sup> accused ranging from 10<sup>th</sup> February 2017 to 8<sup>th</sup> February 2019. The phone also had the phone No. 0726-375557 of the 11<sup>th</sup> accused saved in the name Hotel Wachira Spear.

A second example is in respect of the Exhibit Memo Form dated 1<sup>st</sup> March 2019, **exhibit 354**. The investigators recovered from the residence of the 11<sup>th</sup> accused person in Mararal, a Tecno Phantom Cell Phone IMEI No. 353587080034209 where the contact of the 1<sup>st</sup> accused was saved as “Governor Moses” under line no. 254726375557. The phone had several SMS ranging from 28<sup>th</sup> February 2017 to 14<sup>th</sup> February 2019.

The Digital Forensic Analyst testified that he also had “READ Only Access Rights” and was authorized by the Cabinet Secretary of the National Treasury to access the IFMIS SYSTEM. In that regard, he

extracted data from the IFMIS system for the payments made by Samburu County in favour of Oryx Service Station for the period 2013 to 2019. The IFMIS System confirmed that Oryx Service Station was a registered supplier No. 152227. The electronic certificate (**exhibit 357**), the Letter authorizing access to the IFMIS System (**exhibit 357(a)**) and appendixes 2,3 and 4 (exhibits **357(b), (c) & (d)**) were tendered as proof that Oryx Service Station received a sum of Kshs. 73,109,615.35/- and that between 22<sup>nd</sup> August 2014 and 15<sup>th</sup> January 2019 the Samburu County captured invoices raised by Oryx Service Station amounting to **kshs. 76,435,095.35/-**.

The last prosecution witness was **Joel Khisa Nyongesa (Pw-11)**, an Investigating Officer and Procurement Specialist working at EACC. He was the team leader of the other EACC Investigators involved in this case. The investigators conducted searches on the accused persons' residences which are supported by inventories for the documents and items recovered and produced in evidence. The inventories were produced in evidence as **exhibits 359 -369; 371-374; 375(a)-(c)** and **376**. The investigators contacted the County Government of Samburu and obtain documents on the accused

persons' employment, payment and procurement documents between the County Government and Oryx Service Station. In the course of the investigations, the investigators wrote to the Registrar of Companies, the Registrar of persons and the Postal Corporation to obtain information on the 1<sup>st</sup> accused, Oryx Service Station and other businesses connected to the 1<sup>st</sup> and the 11<sup>th</sup> accused persons. The investigators also obtained Court Orders to investigate the bank accounts of Oryx Service Station, the Governor and the 11<sup>th</sup> accused person. The recovered documents were subjected to forensic examination. At the conclusion of the investigations, Pw-11 was able to establish the following key aspects of this case.

First, the 1<sup>st</sup> accused was the Governor Samburu County Government as confirmed by the certified copies of the following official documents: -

- i. **Gazette Notice No. 3155** published on 13<sup>th</sup> March 2013, **Exhibit 380(a).**
- ii. **Gazette Notice No. 7845** published on 18<sup>th</sup> August, 2017, **Exhibit 380(a).**

- iii. A certificate of Inauguration of the Governor of Samburu County issued on 27<sup>th</sup> March 2013, **exhibit 270(b) (Marked B4)**. The certificate was recovered at the 1<sup>st</sup> accused residence at Milimani-Mararal.

Second, the 1<sup>st</sup> accused was the sole proprietor of the business name Oryx Service Station and the holder of KCB Mararal A/C No. 1124724591. The 1<sup>st</sup> accused was actively operating the bank account as supported by the following documents: -

- i. **Exhibit No. 256(a)**, a cheque No. 000300 dated 29<sup>th</sup> August 2013 for Kshs. 666,000/- drawn from Oryx Service Station Account No. 1124724591 with the 1<sup>st</sup> accused as the beneficiary;
- ii. **Exhibit 345**, a withdrawal slip dated 2<sup>nd</sup> September 2013 for kshs. 260,000/-from Oryx Service Station Account No. 1124724591;
- iii. **Exhibit, 259(a)**, a customer transaction voucher dated 2<sup>nd</sup> December 2013 for a transfer of Kshs. 2,316,000/- from Oryx Service Station Account No. 1124724591 to Account No.

- 066199000060 held by the 1<sup>st</sup> accused;
- iv. **Exhibit no.251**, a deposit slip Marked A7 recovered from the Milimani –Mararal residence of the 1<sup>st</sup> accused person for kshs. 900,000/- dated 26<sup>th</sup> May 2014;
  - v. **Exhibit 252 (marked A1)**, a KCB application for funds transfer dated 28<sup>th</sup> July 2015 for kshs. 2.3 Million Oryx Service Station Account No. 1124724591 to Modern Precast Kenya Limited recovered at the 1<sup>st</sup> accused Karen –Nairobi residence;
  - vi. Exhibit No. 248 (marked A4), the Equity Bank application for funds transfer dated 9<sup>th</sup> November ,2013 made by Oryx Service Station to the 1<sup>st</sup> accused A/C No. 1100294742606 at Equity Bank. The transaction manifests that the 1<sup>st</sup> accused person was actively operating the Oryx Service Station KCB A/C No. 1124724591 and Equity A/C No. 1100297993314 while serving as the Governor Samburu County.

At this moment, I find it crucial to make the observation that, although the Governor by a letter dated 1<sup>st</sup> May 2013 (**exhibit 302**)



addressed to KCB Mararal and received at the bank after 2 years and 5 months on 22<sup>nd</sup> October 2015, had introduced the 11<sup>th</sup> accused person as an agent to the KCB Oryx Service Station bank A/C 1124724591, there was no change of the account name and he continued to actively operate the account between August 2013 to October 2015. The 11<sup>th</sup> accused person began to operate the KCB Oryx Service Station bank A/C 1124724591 on 9<sup>th</sup> December 2013 as established by the following documents: -

- i. Exhibit No. 262(a) a customer transaction voucher dated 9/12/2013.
- ii. Exhibit 363(a) a cheque number 423 dated 29/1/2014.
- iii. Exhibit number 264 a cheque dated 26/5/2014.
- iv. Exhibit number 265(a) a cheque dated 14/8/2014.
- v. Exhibit number 266(a) a cheque dated 17/4/2015.
- vi. Exhibit number 267 a cheque dated 17/4/2015.
- vii. Exhibit 268(a) a cheque dated 29/4/2016.
- viii. Exhibit number 315(a) a cheque no.867.
- ix. Exhibit number 217(a)LPO dated 23/5/17
- x. Exhibit 318(a) a cheque no.722 dated 21<sup>st</sup> September, 2016
- xi. Exhibit 319(a) a cheque no. 723 dated 28<sup>th</sup> September, 2015
- xii. Exhibit number 320(a) a cheque no 798 dated 22/1/15
- xiii. Exhibit number 321 a cheque no. 675 dated 13/6/15
- xiv. Exhibit number 322(a) a cheque no.797 dated 22/1/16

- xv. Exhibit number 323(a) a cheque no.673 dated 9/6/15
- xvi. Exhibit 325(a). cheque no. 700 dated 24/7/2015
- xvii. Exhibit number 326(a) a cheque no. 692 dated 11/7/15
- xviii. Exhibit number 327(a) a cheque no. 691 dated 10/7/15
- xix. Exhibit number 328(a) a cheque no. 687 dated 6/7/15
- xx. Exhibit number 329(a) a cheque no. 689 dated 8/7/15
- xxi. Exhibit number 330(a) a voucher transaction dated 13/4/15  
a/c 1124724591 oryx service station
- xxii. Exhibit number 331(a)customer transaction voucher dated  
25/7/15 a/c 1124724591 oryx service station
- xxiii. Exhibit number 333(a) customer transaction voucher dated  
20/12/14 a/c 1124724591
- xxiv. Exhibit number 337(a) cheque no544 dated 9/9/14
- xxv. Exhibit number 338(a) cheque no 541 dated 1/9/14
- xxvi. Exhibit number 340(a) customer transaction voucher dated  
31/7/14 a/c 1103825917
- xxvii. Exhibit number 341(a) cheque no. 473 dated 9/5/14
- xxviii. Exhibit number 342(a) cheque no. 472 dated 6/5/14  
and
- xxix. Exhibit number 343(a) cheque no. 470 dated 28/4/14 which  
are also cheques and customer transaction vouchers.

Third, the 1<sup>st</sup> accused person t/a Oryx Service Station while a sitting Governor was actively trading with Samburu County as shown by the following documents: -

- a. Exhibits 1-231**, the payment Vouchers in favour of Oryx Service Station;
- b. Exhibit 233**, Samburu County List of prequalified suppliers' FY 2014-2015;
- c. Exhibit 234**, Samburu County List of prequalified suppliers' FY 2015-2016 & 2016-2017;
- d. Exhibit 357 (b)**, the IFMIS Supplier details showing that Oryx Service Station was registered as supplier no. 152227.
- e. Exhibits 375a (1) -(209), 375b (1) -(9) and 375 c (1)-50**, Quotation Registers of Samburu County for FY 2012-2013, FY 2015-2016, FY 2016-2017& FY 2018-2019. The bundle of 209 LPO recovered at Oryx Service Station produced as **exhibits 375a (1) -(209), 375b (1) -(9) and 375 c (1)-50**.

The fourth, there exists a close relationship between the 1<sup>st</sup> accused person and the 11<sup>th</sup> accused person as exemplified by the following documents: -

- i. **Exhibit No. 255 (marked A11)**, KRA minutes of Negotiations of Ground Floor Space for Mararal Office at Samburu County Government Chambers dated 28<sup>th</sup> January 2015. The 11<sup>th</sup> accused person was described as the Landlords' Representative. The landlord was the Governor. The minutes were recovered at the Governor's Milimani – Mararal residence.
- ii. **Exhibit 245 (marked A1)**, Lease Agreement between the 1<sup>st</sup> accused as the proprietor of Oryx Service Station Plot No. 5 Mararal and the 11<sup>th</sup> accused as a tenant dated 1<sup>st</sup> May 2013, The lease agreement was recovered at the 11<sup>th</sup> accused person home. Both the 1<sup>st</sup> and 11<sup>th</sup> accused persons signed the documents.
- iii. **Exhibit 246 (marked A2)**, a lease agreement between the 1<sup>st</sup> accused and the 11<sup>th</sup> accused dated 1<sup>st</sup> May 2013. The agreement is signed by the 1<sup>st</sup> and 11<sup>th</sup> accused persons and was recovered at the 11<sup>th</sup> accused person bed room and is similar to exhibit 245. Both the 1<sup>st</sup> and 11<sup>th</sup> accused persons signed the documents.

Fifth, that the County Government of Samburu used two methods of procurement for supply of petroleum products. The investigating officer observations on the matter were as follows: -

- i. Between the period May 2013 to early 2016 the County Government of Samburu used to issue Local Purchase Orders (LPO) directly to the prequalified suppliers amongst them Oryx Service station without subjecting them to any competition.
- ii. After the ***Public Procurement & Assets Disposal Act, 2015 (PPDA 2015)*** came into effect, the Samburu County would issue quotations to the prequalified suppliers under the category of petroleum products. The award to the winning bid would be signed by the Chief Officer also the Accounting Officer of the user Department.

Sixth, the investigating officer contended that on a reconciliation of the Oryx Service Station Account, the IFMIS Data report and the Samburu County Government, Central Bank (recurrent) A/C No.1000170808 the total payments received by Oryx Service Station

on account of fuel supply was Kshs. 84,695,996.55. He placed reliance on the following documents: -

- i. **Exhibits 1-231**, the 231 dully signed and approved payment Vouchers;
- ii. **Exhibit 303**, the bank statement for Oryx Service Station KCB-Mararal A/C No. 11247245912 for the period 9<sup>th</sup> December 2012 to 28<sup>th</sup> February 2019;
- iii. **Exhibit 304**, a summary in excel of the 242 transactions for payments amounting to Kshs. 86,837,894.55/- paid by the Samburu County and received in the Oryx Service Station KCB-Mararal A/C No. 11247245912. I had the benefit to examine the excel summary against the bank statement, **exhibit 303** and find that the excel summary is not accurate.
- iv. **Exhibit 375 (a)-(d)**, IFMIS DATA report for payments made by Samburu County to Oryx Service Station amounting to kshs. 84,695,996.55/-.
- v. **Exhibit 384**, Samburu County Government, Central Bank (recurrent) A/C No.1000170808 for the period 1<sup>st</sup> January, 2013 to 28<sup>th</sup> February, 2019. (22/11/2013 to 13/2/2019).

According to my analysis of all the above bank statements and IFMIS DATA, the correct tabulation of the payments received by Oryx Service Station from the Departments of Samburu County Government on account of fuel supply is as follows;

<b>PAYMENT RECEIVED FROM COUNTY GOVERNMENT OF SAMBURU KCB A/C NO. 1124724591, ACCOUNT NAME ORYX.</b>		
Date	Oryx A/C	Mode of Transfer
11/22/2013	375,000	SWIFT
11/22/2013	62,500	SWIFT
11/22/2013	187,500	SWIFT
11/22/2013	62,500	SWIFT
12/19/2013	312,500	SWIFT
12/24/2013	125,000	SWIFT
12/24/2013	375,000	SWIFT
1/17/2014	187,500	SWIFT
1/21/2014	125,000	SWIFT
1/21/2014	625,000	SWIFT
2/7/2014	62,500	SWIFT
3/3/2014	125,000	SWIFT
3/6/2014	125,000	SWIFT
4/2/2014	250,000	SWIFT
4/2/2014	125,000	SWIFT
4/3/2014	250,000	SWIFT
4/3/2014	125,000	SWIFT
4/3/2014	250,000	SWIFT
4/3/2014	250,000	SWIFT
4/8/2014	250,000	SWIFT
4/30/2014	250,000	SWIFT

5/5/2014	625,000	SWIFT
5/7/2014	125,000	SWIFT
5/7/2014	350,000	SWIFT
5/7/2014	324,000	SWIFT
5/7/2014	87,500	SWIFT
5/15/2014	250,000	SWIFT
5/20/2014	125,000	SWIFT
5/22/2014	125,000	SWIFT
5/26/2014	125,000	SWIFT
5/26/2014	173,500	SWIFT
5/26/2014	187,500	SWIFT
5/28/2014	125,000	SWIFT
6/9/2014	500,000	SWIFT
6/10/2014	250,000	SWIFT
6/16/2014	125,000	SWIFT
6/16/2014	125,000	SWIFT
6/20/2014	375,000	SWIFT
6/20/2014	125,000	SWIFT
6/20/2014	375,000	SWIFT
6/25/2014	748,000	SWIFT
6/26/2014	500,000	SWIFT
6/30/2014	375,000	SWIFT
7/2/2014	40,000	SWIFT
7/2/2014	350,000	SWIFT
7/2/2014	270,000	SWIFT
8/25/2014	180,250	SWIFT
8/25/2014	1,875,000	SWIFT
9/8/2014	375,000	SWIFT
9/9/2014	500,000	SWIFT
9/24/2014	125,000	SWIFT
9/24/2014	40,000	SWIFT
9/26/2014	250,000	SWIFT
9/26/2014	500,000	SWIFT
9/26/2014	250,000	SWIFT
10/3/2014	375,000	SWIFT
10/3/2014	250,000	SWIFT
10/3/2014	500,000	SWIFT
10/9/2014	43,750	SWIFT



10/9/2014	125,000	SWIFT
10/10/2014	125,000	SWIFT
10/24/2014	125,000	SWIFT
11/10/2014	250,000	SWIFT
11/10/2014	125,000	SWIFT
11/11/2014	250,000	SWIFT
11/11/2014	125,000	SWIFT
11/13/2014	250,000	SWIFT
12/8/2014	437,500	SWIFT
12/16/2014	182,250	SWIFT
12/22/2014	500,000	SWIFT
2/12/2015	360,000	SWIFT
2/12/2015	372,500	SWIFT
2/12/2015	687,500	SWIFT
2/13/2015	120,000	SWIFT
2/13/2015	500,000	SWIFT
2/13/2015	125,000	SWIFT
2/13/2015	115,000	SWIFT
2/18/2015	125,000	SWIFT
3/2/2015	200,000	SWIFT
3/12/2015	400,000	SWIFT
3/17/2015	250,000	SWIFT
3/20/2015	732,500	SWIFT
3/20/2015	252,000	SWIFT
3/20/2015	575,000	SWIFT
4/14/2015	300,000	SWIFT
4/17/2015	295,000	SWIFT
4/21/2015	170,000	SWIFT
4/23/2015	180,000	SWIFT
4/23/2015	500,000	SWIFT
4/23/2015	450,000	SWIFT
4/30/2015	100,000	SWIFT
5/25/2015	475,000	SWIFT
6/8/2015	720,000	SWIFT
7/1/2015	345,000	SWIFT
7/1/2015	245,000	SWIFT
7/3/2015	800,009	SWIFT
7/3/2015	450,000	SWIFT

7/3/2015	1,200,002	SWIFT
7/6/2015	425,000	SWIFT
9/14/2015	408,000	SWIFT
9/16/2015	408,000	SWIFT
9/16/2015	816,000	SWIFT
9/17/2015	190,000	SWIFT
9/17/2015	204,000	SWIFT
9/17/2015	142,500	SWIFT
9/17/2015	190,000	SWIFT
9/18/2015	816,000	SWIFT
9/18/2015	664,000	SWIFT
9/28/2015	816,000	SWIFT
11/2/2015	204,000	SWIFT
11/3/2015	750,006	SWIFT
11/3/2015	204,000	SWIFT
11/3/2015	500,000	SWIFT
11/4/2015	612,000	SWIFT
11/9/2015	206,000	SWIFT
11/30/2015	206,000	SWIFT
11/30/2015	420,000	SWIFT
11/30/2015	408,000	SWIFT
12/3/2015	204,000	SWIFT
12/21/2015	510,000	SWIFT
12/24/2015	206,000	SWIFT
1/21/2016	206,000	SWIFT
1/21/2016	309,000	SWIFT
1/22/2016	618,000	SWIFT
10/25/2016	309,000	SWIFT
1/26/2016	190,550	SWIFT
1/27/2016	306,000	SWIFT
1/29/2016	210,000	SWIFT
2/29/2016	200,100	SWIFT
2/29/2016	300,039	SWIFT
2/29/2016	599,925	SWIFT
2/29/2016	412,000	SWIFT
2/29/2016	309,000	SWIFT
2/29/2016	608,730	SWIFT
3/10/2016	380,000	SWIFT

4/4/2016	352,000	SWIFT
4/7/2016	103,000	SWIFT
4/25/2016	412,000	SWIFT
5/10/2016	800,000	SWIFT
5/10/2016	880,000	SWIFT
5/11/2016	264,000	SWIFT
5/13/2016	270,000	SWIFT
5/27/2016	528,000	SWIFT
5/27/2016	361,328	SWIFT
6/3/2016	440,000	SWIFT
6/24/2016	880,000	SWIFT
8/8/2016	273,000	SWIFT
8/12/2016	372,000	SWIFT
8/16/2016	622,728	SWIFT
8/16/2016	352,000	SWIFT
8/17/2016	95,000	SWIFT
8/26/2016	309,000	SWIFT
8/26/2016	572,000	SWIFT
8/31/2016	450,000	SWIFT
9/21/2016	418,000	SWIFT
9/23/2016	262,500	SWIFT
9/30/2016	210,000	SWIFT
4/30/2016	465,000	SWIFT
10/26/2016	315,000	SWIFT
10/28/2016	573,500	SWIFT
11/22/2016	525,000	SWIFT
11/25/2016	210,000	SWIFT
11/25/2016	315,000	SWIFT
12/2/2016	525,000	SWIFT
12/16/2016	315,000	SWIFT
12/16/2016	52,500	SWIFT
12/16/2016	315,000	SWIFT
12/16/2016	787,500	SWIFT
1/19/2017	420,000	SWIFT
1/20/2017	525,000	SWIFT
1/20/2017	315,000	SWIFT
12/19/2016	525,000	SWIFT
12/22/2018	456,000	SWIFT

12/23/2016	157,500	SWIFT
2/13/2017	525,000	SWIFT
2/13/2017	220,000	SWIFT
2/10/2017	315,000	SWIFT
4/20/2017	220,000	SWIFT
5/10/2017	224,000	SWIFT
5/10/2017	420,879	SWIFT
3/7/2017	220,000	SWIFT
3/7/2017	363,000	SWIFT
4/4/2017	330,000	SWIFT
4/4/2017	160,500	SWIFT
4/5/2017	749,000	SWIFT
4/5/2017	267,500	SWIFT
4/12/2017	672,000	SWIFT
4/13/2017	224,000	SWIFT
4/13/2017	565,000	SWIFT
5/19/2017	448,000	SWIFT
6/16/2017	565,000	SWIFT
6/16/2017	169,500	SWIFT
6/16/2017	481,000	SWIFT
6/8/2017	224,000	SWIFT
6/8/2017	700,600	SWIFT
6/22/2017	452,000	SWIFT
6/29/2017	565,000	SWIFT
7/4/2017	1,130,000	SWIFT
7/5/2017	418,100	SWIFT
7/5/2017	339,000	SWIFT
9/18/2017	169,500	SWIFT
11/1/2017	565,000	SWIFT
11/2/2017	565,000	SWIFT
11/2/2017	1,412,500	SWIFT
11/2/2017	228,000	SWIFT
12/1/2017	74,900	SWIFT
12/1/2017	589,050	SWIFT
12/1/2017	180,800	SWIFT
2/27/2018	580,000	SWIFT
3/13/2018	311,190	SWIFT
3/13/2018	228,000	SWIFT

3/13/2018	331,180	SWIFT
4/4/2018	309,000	SWIFT
4/4/2018	429,200	SWIFT
4/25/2018	162,750	SWIFT
6/11/2018	90,066	SWIFT
6/11/2018	212,240	SWIFT
6/11/2018	438,000	SWIFT
6/12/2018	424,480	SWIFT
6/28/2018	530,600	SWIFT
7/4/2018	324,780	SWIFT
7/4/2018	530,600	SWIFT
7/4/2018	273,750	SWIFT
10/2/2018	427,500	SWIFT
10/2/2018	985,500	SWIFT
10/4/2018	112,000	SWIFT
8/27/2018	586,920	SWIFT
12/14/2018	275,940	SWIFT
12/19/2018	197,100	SWIFT
2/13/2019	361,230	SWIFT
2/13/2019	17,972	SWIFT
<b>TOTAL</b>	<b>83,467,995</b>	

The total sum of **Kshs. 83, 467, 995/-** does not include the 9 cheque for a total sum of **Kshs. 2, 142,760/-** which the Investigating officer could not tell the purpose of the payments. The following is a tabulation of the 9 cheques.

<b>PAYMENT RECEIVED FROM COUNTY GOVERNMENT OF SAMBURU KCB A/C NO. 1124724591, ACCOUNT NAME ORYX.</b>		
Date	Oryx A/C	Cheque no.
5/9/2013	375,470	13
6/5/2013	249,250	61
7/18/2013	255,200	384
8/23/2013	123,000	427
9/17/2013	375,000	529
10/5/2013	250,000	569
10/17/2013	137,500	639
10/18/2013	125,000	645
10/30/2013	249,340	676
<b>TOTAL KSHS. 2,142,760/=</b>		

PW-11 while continuing with the investigations recovered the letter by the 1<sup>st</sup> accused person dated 5<sup>th</sup> April 2013, **exhibit 238** declaring a conflict of interest and the Samburu County Conflict of Interest Register, **exhibit 387**. However, the letter **exhibit 238** is indicated to have been received a day before it was written i.e 4<sup>th</sup> April 2013. The investigating officer faulted the omnibus declaration of conflict of interest and maintained that the actions of the 1<sup>st</sup> accused were against the ***Public Procurement & Disposal Act no. 3 of 2005 (repealed)*** and the ***Public Procurement & Assets Disposal Act, 2015***.

Pw-11 blamed the 2<sup>nd</sup> - 9<sup>th</sup> accused persons who are the Accounting Officers and AIE holders of Departments for facilitating the Governor to trade with the Samburu County. He led evidence that the 2<sup>nd</sup> - 9<sup>th</sup> accused persons signed the Local Purchase Orders and approved the Payment Vouchers. Pw-11 sought to rely on the summary analysis exhibit 388 to show the specific payments approved by each of the accounting officers amongst the 2<sup>nd</sup> to 9<sup>th</sup> accused persons. However, on careful analysis of the summary, I noted errors and shall rely on the summary set out at pages 14 -27 of this judgment arrived at after a thorough scrutiny and analysis of the payment vouchers and the document examiners report.

The Investigating Officer testified that the 2<sup>nd</sup> - 9<sup>th</sup> accused persons were authorized signatories and approvers in the Samburu County Central Bank Recurrent Account No. 1000170808 where funds were drawn to pay Oryx Service Station through the IFMIS System. In that regard, PW-11 relied on the account statement, the list of signatories and the signatures mandate cards produced in evidence as **exhibits 385, 385(a) and (b)**.

In the end, Pw-11 produced in evidence; the applications and orders for search warrants, the inventories for documents and items recovered during searches at the residential homes of the 1<sup>st</sup> and 11<sup>th</sup> accused persons and Oryx Service Station, documents recovered, exhibit memo forms for documents sent to the document examiners for analysis, the specimen signatures of the accused persons, correspondence between EACC and other Government Institutions as more particularly stated on the court record.

On cross-examination, the investigating officer testified that the supply of the fuel was not a matter in contention but maintained that the procurement process was tainted by conflict of interest and the supply of fuel was irregular. He admitted that the 2<sup>nd</sup> – 9<sup>th</sup> accused persons did not receive any money from Oryx Service Station.

Pw-11 on the Cross-examination and Re-examination took the position that the letter by the 1<sup>st</sup> accused person dated 5<sup>th</sup> April 2013 (**exhibit 238**) purporting to declare a conflict of interest was inconsequential.



## **The defence case**

The 1<sup>st</sup> accused, Moses Kasaine Lenolkulal in defence chose to give sworn testimony and did not call witnesses. He testified that he was elected as the 1<sup>st</sup> Governor Samburu County for two terms. He conceded the sole ownership of Oryx Service Station a business based at Mararal dealing with petroleum products. According to the 1<sup>st</sup> accused person, he wrote the letter dated 5<sup>th</sup> April 2013 (**exhibit 238**) to the County Secretary as an initiative to declare interest in Oryx Service Station. He asserted that the letter was copied to all Accounting Officers and Procurement Officers. However, on cross-examination by Mr. Omoke Advocate on behalf of the 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons and Re- examination, it became apparent that the letter could not have been served on them because it was written before they were employed. Although the 1<sup>st</sup> accused person in the letter, **exhibit 238** expressed that he intended to transfer ownership of Oryx Service Station, he claimed in defence that he leased the business to the 11<sup>th</sup> accused person vide the Lease Agreement dated 1<sup>st</sup> May 2013, **exhibit 245**. He added that at the initial stages he retained 'some ownership' of the Petrol Station and was a joint signatory to the business account at KCB Mararal. He explained that

since the business was a going concern, the delay of 21/2 years in effecting the letter dated 1<sup>st</sup> May 2013, exhibit 302 was as a result of the need to secure the capital in the stock and recovery of finances before ceding full control of the business to the 11<sup>th</sup> accused person. He then produced in evidence the form of pending stock and outstanding money owed to debtors as exhibit D1-1. He admitted that Oryx Service Station traded with the County Government of Samburu but claimed that he never benefitted from the funds paid. Lastly, the Governor faulted the prosecution for not taking time to study this case and for mounting a wrong prosecution.

On cross- examination the Governor confirmed that Oryx Service Station traded with the County Government of Samburu and received payments. The Governor denied that he conferred to himself a benefit of kshs. 84,695,996.55/- or unlawfully acquired public funds. He maintained that the County Government got value for its money and the audit reports by the Auditor General produced as exhibits **D1-2(a)(b)(c)(d)** and **(e)** gave the County a clean bill of health. A reading of the Auditors General reports shows that queries were raised regarding the procurement of fuel and records maintenance.

The 2<sup>nd</sup> accused Person, Stephen Siringa Letinina led evidence that he was the County Secretary of Samburu County and the Head of the County Service Board for the period 2<sup>nd</sup> February, 2013 up to 15<sup>th</sup> April, 2019 when he was suspended. The accused admitted that he was the designated Accounting Officer and responsible for raising requisitions for the Executive and signing and approving payment vouchers. In cross examination, he further admitted that he issued Local Purchase Orders to Oryx Service Station He conceded that all payment vouchers in favour of Oryx Service Station bearing his signature were properly prepared and signed. He testified that the County got value for its money and explained his role in the declaration of conflict of interest as follows: -

**“My role in the declaration of conflict of interest was to receive. In the County Government of Samburu there was only 2 state officers who are the Governor and the Deputy Governor. Yes, I received a declaration of conflict of interest from the Governor.**

**Exhibit no 238 is a declaration of conflict of interest from Moses Lenolkulal which I received on the 9th April 2013. The letter exhibit no. 238 is duly stamped and received by myself. The 1st accused declared a conflict of interest in respect of Oryx service station. I wish to read the letter to the court. The witness reads the letter. When I received the declaration of conflict of interest, I entered it in the Declaration of Conflict of Interest Register which is before the court and is produced as Exhibit No 387. The declaration is recorded in the register. Yes, it was recorded on 9th April 2013. Yes, PW-1 testified about the conflict of interest. He stated that he was aware of the declaration of conflict of Interest.”**

In ending the 2<sup>nd</sup> accused denied that he conferred a benefit to the Governor.

The 3<sup>rd</sup> accused person, Daniel Nakuo Lenolkirina testified that he was employed by the Samburu County Government and designated

as the Chief Officer Finance Department. He was also the Accounting Officer for the Department. His appointment is dated 15<sup>th</sup> June 2014. He admitted that his role included signing of award letters, signing of LPOs, signing and approval of payment vouchers. The chief Officer admitted that he signed the payment vouchers produced in evidence as exhibits 16-87. He claimed that fuel was supplied and consumed therefore no money was lost. Lastly he denied conferring a benefit to the 1<sup>st</sup> accused person. The letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238** was shown to the 3<sup>rd</sup> accused in re- examination but he denied knowledge of the document.

The 4<sup>th</sup> accused, Josephine Naamo Lenasalia, testified that she was appointed as the Chief Officer in charge of Environment & Natural Resources, Samburu County Government on 15<sup>th</sup> June 2014 and exited in April 2018. She denied knowledge of the letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238**. The Chief Officer conceded that she signed Local Purchase Orders and that no favourable consideration was accorded to Oryx Service Station in fuel supply.

The 5<sup>th</sup> accused person, Reuben Maruben Lemunyete was appointed the Chief Officer – Department of Agriculture, Livestock and Fisheries Development on 14<sup>th</sup> June 2014. He denied that there was any wrong doing by himself and referred to the letter dated 13<sup>th</sup> October 2022, **Exhibit D5-1** requesting the DPP to review the decision to charge. He denied knowledge of the letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238**.

The 6<sup>th</sup> accused, Linus Milton Lenolnganje testified that he joined the Samuru County Government on 15<sup>th</sup> June 2014 to 15<sup>th</sup> June 2018 as the Chief Officer Education Youth Affairs and Sport. He denied knowledge of the letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238**. He also stated that Oryx Service Station was not accorded any favourable treatment in the supply of fuel. On cross examination, the 5<sup>th</sup> accused admitted that he approved payments for Oryx Service Station. He however denied that no favourable treatment was accorded to the business. On cross examination he admitted approving the payments vouchers **exhibits 97- 123**.

The 8<sup>th</sup> accused, Benard Ltarasi Lesurmat testified that he joined the County Government of Samburu as the Chief Officer Land Housing and Urban Development on 23<sup>rd</sup> March 2015. He admitted the responsibility to authorize payments for fuel supply to Oryx Service Station and denied knowledge of the letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238**.

The 7<sup>th</sup> accused, Paul Lolmingani was appointed the Chief Officer Department of Transport & Public Works on 13<sup>th</sup> November, 2013. He was the Accounting officer and a signatory to the Local Purchase orders at the Department. He admitted signing the payment vouchers **exhibits 138- 154** on the AIE Holder certificate. According to the accused person, the County Government got value for its money. He denied any wrong doing and pleaded with the court to acquit him. On cross-examination he denied knowledge of the letter by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013, **exhibit 238**.

The 9<sup>th</sup> accused, Lilian Balanga testified that she was appointed the Chief Officer Gender Culture and Social Services at the Samburu County Government on 15<sup>th</sup> June ,2014 and exited service in April

2018. She denied knowledge of the letter exhibit 238 by the 1<sup>st</sup> accused dated 5<sup>th</sup> April 2013. She admitted authorizing the payment Voucher exhibit 175 (a)-(c) for kshs. 250,000/-) and disputed authorizing the sum of kshs. 548,870/- stated in **Count XII**.

It was a common position in the defence by all the accused persons that the supporting affidavit sworn by Learned Senior Prosecution Counsel, Wesley Nyamache supporting the Notice of Motion seeking a withdrawal of this case but later abandoned by the prosecution had absolved the accused persons from blame and ought to be considered. The 2<sup>nd</sup> -9<sup>th</sup> accused persons also took a common defence that the prequalification of Oryx Service Station and other fuel suppliers was an obligation by the Head of Procurement and therefore they did not have knowledge on the ownership of Oryx Service Station.

The 11<sup>th</sup> accused, Hesbon J.W. Ndathi gave evidence that he went to do business at Samburu in 1997. His businesses are Spear Hotel, Samburu Furnitures, Barley Farming, Red Rock Hotel and Oryx Service Station. He identified the 1<sup>st</sup> accused as the landlord and on



cross examination stated as follows: -

**“I acquired Oryx Service Station on 1<sup>st</sup> May 2013. The 1<sup>st</sup> accused was inaugurated as a governor around March ,2013. I was rented the business by Moses the 1<sup>st</sup> accused person on 1<sup>st</sup> May 2013. I did not purchase the business. I rented the business. I have not produced a renewable agreement for the lease. Exhibit 246 page 2 at Paragraph 1 states that the lease agreement is to be renewed after 3 years. I was to renew after 3 years. I was to renew the lease agreement in the year 2016. Oryx Service Station was a business name. Today Oryx Service Station is a business name. The proprietor of Oryx Service Station is Moses the 1<sup>st</sup> accused person. The business was registered as a business name because the name and the owner are one and the same.”**

Hesbon Ndathi gave evidence that he approached the 1<sup>st</sup> accused person after he became a Governor and entered into the Lease Agreement dated 1<sup>st</sup> May 2013 (**exhibit 245**) to run Oryx Service Station. From the lease Agreement he was to pay to the Governor a

monthly rent of kshs. 70,000/- payable quarterly in advance. He relied on the bundle of invoices, **exhibit D11-2(I)-(X)**. He claimed that the rent was paid via mpesa or any other mode demanded by the 1<sup>st</sup> accused person. He stated that he took over the running of Oryx Service Station immediately after signing the Lease Agreement but did not open a bank account. The accused justified why he continued to operate the Oryx Service Station KCB A/C 1124724591 and stated that he was introduced as a signatory to the account via the letter dated 1<sup>st</sup> May 2013 (**exhibit 302**) and that the business was a going concern with obligations to supply fuel to NGO(s) who had made payments in advance. He also alleged that the landlord was owed money by 3<sup>rd</sup> parties and the debts were being settled through the account. He was also supposed to refund monies in the bank account and fuel stock. He acknowledged the agreement **Exhibit D1-1** entered into with the 1<sup>st</sup> accused person when he took over the business. The accused contended that he ploughed in capital to Oryx Service station through loans and proceeds from sale of land. These transactions are reflected in the Oryx Service Station KCB Account and not a matter in contention. He lamented that no public money was lost. That, he suffered a huge loss and lost his family after he

was unable to provide. He regretted being involved in the running of Oryx Service Station and trading with the County Government of Samburu.

Evana Wangari Waithaka (Dw-12), testified in support of the 11<sup>th</sup> accused defence. Evana said she was a former employee of Oryx Service Station and worked for Hesbon Ndathi from June 2014 to March 2019. Dw-12 stated that she was engaged on a verbal agreement. Her duties included records keeping and banking. She produced in evidence 42 bank deposit slips (Exhibits D11-10) for transactions at the 11<sup>th</sup> accused's other bank accounts. It is my humble view that these deposit slips produced as Exhibits D11-10 are not relevant to the present case.

### **Submissions**

The parties filed written submissions and made oral highlights.

## **The Prosecution submissions**

The prosecution filed final written submissions dated the 19<sup>th</sup> April ,2024. It was submitted that the accused persons in their defence did not rebut the prosecution evidence.

The prosecution submitted that Oryx Service Station was pre-qualified to supply automotive fuel and oil lubricants to the County Government of Samburu as confirmed by **Exhibits 233,234, 235 (a)-(d), 236(a)-(f) and 237 (a)-(r)**. This fact is not contested in the defence.

The prosecution relied on the payment vouchers and attached supporting documents, **exhibits 1 (a)-(c) to 231 (a) – (b)(y)** and the Oryx Service Station KCB A/C No. 1124724591 bank statements, **Exhibit 303** and IFMIS data, **Exhibit 357 (b)-(d)** in support of submissions that Samburu County Government made payments amounting to kshs. 84, 695,996.55 to Oryx Service Station for the

supply of automotive fuel and oil lubricants when the 1<sup>st</sup> accused person was a sitting Governor.

The prosecution relied on the bank transaction documents **exhibits 256, 257,259-268** and **311-345** to support the contention that the 1<sup>st</sup> accused was accessing Oryx Service Station KCB A/C No. 1124724591 and benefitting from the payments made by the Samburu County Government.

Mr. Akula, learned prosecution counsel submitted that the 1<sup>st</sup> accused person was the elected Governor of Samburu County and served a two term period between 2013 and 2022. That, while the 1<sup>st</sup> accused person served as a Governor he was the sole proprietor of the business name Oryx Service Station and actively traded with the County Government of Samburu by supplying petroleum products. The prosecution discounted the 1<sup>st</sup> and 11<sup>th</sup> accused persons common defence that Oryx Service Station was leased to the latter and asserted that it was only a matter in paper. The prosecution faulted the lease agreement dated 1<sup>st</sup> May 2013, exhibit 245 for being

unregistered and for lack of proof on extension after its initial term. The prosecution cited the decision ***Ethics & Anti-Corruption Commission v Moses Kasaine Lenolkulal t/a Oryx Service Station (Civil Suit 21 of 2019) [2024] KEHC 2936 (KLR) (Anti-Corruption and Economic Crimes)*** where E.N Maina, J held: -

***“To my mind, the Defendant did not transfer the business of Oryx Service Station as it continued to do business with the County, it was he who was doing business with the County. The purported lease agreement was but a decoy intended to hoodwink the public and the County and to disguise the source of funds that eventually ended up in the Defendant’s pockets.”***

The High Court went on to observe that: -

***“The business continued to be his, both in fact and in law. This is borne by the fact that the defendant continued to be a signatory of Oryx Service Station’s bank account at the local Kenya Commercial Bank***

***until 22<sup>nd</sup> September 2015 a fact which he himself admitted. This in effect meant that he remained in control not only of the money but by extension of its business.”***

According to the prosecution, the 11<sup>th</sup> accused person was merely a proxy intended to conceal the 1<sup>st</sup> accused person’s direct interest in Oryx Service Station as it continued to trade with the Samburu County Government.

In reply to the 1<sup>st</sup> accused defence that he declared a conflict of interest vide the letter, **exhibit 238**, it was submitted that the declaration was inconsequential.

As regards the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons’ roles in making the payments to Oryx Service Station, it was submitted that they approved and signed payment vouchers while aware that the 1<sup>st</sup> accused person was the owner of the business

name. The prosecution sought to argue that the declaration of conflict of interest by the 1<sup>st</sup> accused person, **exhibit 238** preceded their employment and was copied to all County Departments. It was therefore the prosecution opinion that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons facilitated the payments to Oryx Service Station and improperly conferred a benefit to the 1<sup>st</sup> accused person.

The prosecution submitted that the payments amounting to kshs. 84, 695,996.55 to Oryx Service Station for the supply of automotive fuel and oil lubricants were public funds unlawfully acquired by the Governor and the 11<sup>th</sup> accused person through an illegality and in contravention of s. 42(3) of **ACECA**.

### **The 1<sup>st</sup> and 2<sup>nd</sup> accused persons' submissions**

The firm of V.A Nyamondi & Co. on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons filed written submissions dated 30<sup>th</sup> April, 2024. It was submitted that all payments made to Oryx Service Station were



justified and no loss of funds was incurred by the County Government of Samburu.

According to Learned Counsel, the law envisaged a declaration of conflict of interest. In that regard, it's the 1<sup>st</sup> accused contention that the letter dated 5<sup>th</sup> April ,2013 (**exhibit 238**) declaring a conflict of interest in Oryx Service Station received by the 2<sup>nd</sup> accused person and entered in the Conflict of Interest Register produced as **exhibit 387** was lawful and sufficient. To support this contention, Mr. Nyamondi placed reliance on Article 73 (2)(c) of the **Constitution of Kenya 2010** on the guiding principle on Leadership and Integrity. He further relied on section 42(1) of **ACECA** and section 16 of the **Leadership and Integrity Act**. In the context of the present case, these submissions are misleading and subverts the already established guiding principles on Leadership and Integrity as prescribed in Article 73 of the **Constitution**. I will later revert to address the matter exhaustively.

Additionally, it was submitted that the 1<sup>st</sup> accused person leased Oryx Service Station to the 11<sup>th</sup> accused person on 1<sup>st</sup> May, 2013 after he was elected the Governor of County Government of Samburu. The 1<sup>st</sup> accused sought to rely on the agreement, **exhibit 245** and submitted that all transactions for Oryx Service Station were done by the 11<sup>th</sup> accused person pursuant to the lease agreement. That, the 1<sup>st</sup> accused person did not acquire a direct interest in the contracts between Oryx Service Station and Samburu County Government.

With regard to the accusation that the 1<sup>st</sup> accused person conferred upon himself a benefit of kshs 84,695,996.55/- counsel submitted that the sums paid from the 231 payment vouchers was for fuel supplied to Samburu County Government at market rates but not an improper benefit. He cited the case ***Erick Otieno Oyare v Republic [2022] eKLR.***

Concerning the accusation on conflict of interest, it was submitted that the 1<sup>st</sup> accused declared a conflict of interest in the fuel supply procurement as shown by the letter exhibit no 238 dated 5<sup>th</sup> April 2013. Counsel maintained that the declaration of conflict of interest

by the 1<sup>st</sup> accused person was contemplated by Article 73(2) of the **Constitution**, section 43 of the **Public Procurement AND Disposal Act No.2 of 2005 (PPDA 2005)** (repealed) and section 59(3) of the **Public Procurement & Asset Disposal Act, 2015 (PPADA 2015)**.

The second line of argument adopted by learned counsel was that there cannot be conflict of interest for the payments for fuel supplied by Oryx Service Station to Samburu County Government being valuable consideration for goods ordered and delivered. Counsel urged the court to reject the evidence of Pw-10 aimed at establishing the nexus between the Governor and the 11<sup>th</sup> accused persons.

Learned counsel faulted the variance of amounts in the charge sheet and the payment vouchers in respect of the payments made by the Samburu County Government to Oryx Service Station. At paragraph 47 of the submissions, counsel presented a table comparing the amounts confirmed by the payment vouchers and the amounts stated in the charges of abuse of office against the 2<sup>nd</sup> -9<sup>th</sup> accused persons. He further submitted that the contradictions on amounts

stated in the charge sheet compared against the amounts extracted from the IFMIS platform points to a case which was not properly investigated. Lastly, counsel urged the court to acquit the 1<sup>st</sup> accused person on all the remaining charges.

### **The 5<sup>th</sup> accused person submissions**

The firm of Okello Opolo & Co. Advocates on behalf of the 5<sup>th</sup> accused filed final submissions dated 30<sup>th</sup> April, 2024. The accused maintained that he was not aware of the connection between the governor and the business name Oryx Service Station. Additionally, he was not made aware of the conflict of the letter by the 1<sup>st</sup> accused person declaring a conflict of interest dated 5<sup>th</sup> April 2013 and produced as exhibit 238.

Admittedly, at paragraph 5 of the submissions the 5<sup>th</sup> accused person agreed that he approved the payments and stated: -

**“While the 5<sup>th</sup> accused person categorically denies having notice of exhibit 238 as alleged by the**

**prosecution or at all, the 5<sup>th</sup> accused nevertheless admits approval of payments to the alleged extent and reiterates that every such approval and subsequent payment to Oryx Service Station was regular, procedural, legal and legitimately executed in the ordinary course of his employment and duty as Chief Officer, Agriculture Livestock and Fisheries of Samburu County Government in respect of fuel supplied by Oryx Service Station to the County Government of Samburu.”**

It was contended that the 5<sup>th</sup> accused person was not involved in the prequalification process of Oryx Service Station or any other entity. In the end counsel urged the court to acquit him.

### **The 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> accused persons' submissions**

Mr. Morara Omoke advocate on behalf of the 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons filed final submissions dated 3<sup>rd</sup> April, 2024.

Similarly, it was submitted that the accused persons who served as Chief Officers were not aware of the 1<sup>st</sup> accused person's involvement with Oryx Service Station and neither made aware of the letter by the 1<sup>st</sup> accused person declaring a conflict of interest dated 5<sup>th</sup> April 2013 and produced as **exhibit 238**. It was submitted that the accused persons were not involved in the prequalification process so as to be able to know the owner of Oryx Service Station. It was argued that no payment was made irregularly and that the accused persons did not use their office improperly. The accused persons insisted that they signed payment vouchers and Local Purchase Orders in the ordinary course of duty and for payment of fuel which had been supplied and was legally due and payable. It was submitted that there was no loss of funds and the County got value for its money. In closing, counsel urged the court to acquit the accused persons.

### **The 7<sup>th</sup> and 11<sup>th</sup> accused persons' submissions**

G & A Advocates LLP on behalf of the 7<sup>th</sup> and 11<sup>th</sup> accused persons filed final submissions dated 20<sup>th</sup> April 2024. At the onset it was submitted that based on the withdrawn application by the

prosecution dated 13<sup>th</sup> October 2022 the decision to charge the accused persons was improper and an abuse of the court process.

With regard to the 7<sup>th</sup> accused who was also in the category of a Chief Officer, it was submitted that he not aware of the 1<sup>st</sup> accused person involvement with Oryx Service Station and also not made aware of the conflict of the letter by the 1<sup>st</sup> accused person declaring a conflict of interest dated 5<sup>th</sup> April 2013 and produced as exhibit 238. It was further submitted that the accused person was not involved in the prequalification process so as to be able to know the owner of Oryx Service Station. It was admitted that the 7<sup>th</sup> accused signed 16 payment vouchers in performance of his duties which cannot be construed to mean he improperly used his office. In that respect, the case of ***Justus Mwenda Kathenge v Director of Public Prosecutions & 2 others [2014] eKLR*** where it was held that one cannot be punished for acting within the law. See Article 260 of the **Constitution**. As it will turn out in the determination, the decision is not relevant to the facts of the present case. Nonetheless, each case must rest on its own circumstances.

In respect of the charges against the 11<sup>th</sup> accused person, it was submitted that he took over and became the proprietor of Oryx Service Station on 1<sup>st</sup> May 2013 vide the agreement dated 1<sup>st</sup> May 2013. He sought to rely on **Exhibit 207 (r)**, which is the proprietor details during tender submission. He also relied on the Lease Agreement with the 1<sup>st</sup> accused to run Oryx Service Station for a monthly rent of kshs. 70,000/- paid quarterly. It is conceded that the 11<sup>th</sup> accused person took over the signing mandate of Oryx Service Station bank A/C No. 1124724591 domiciled at KCB –Mararal and referred to the letter dated 1<sup>st</sup> May, 2013 produced as **exhibit 302** and disputed the prosecution version that the letter was acknowledged by the bank on 22<sup>nd</sup> October 2015. It was stated that the 11<sup>th</sup> accused person deployed his resources to run Oryx Service Station. Counsel submitted that the 11<sup>th</sup> accused person was the proprietor of Oryx Service Station after taking over the business from the 1<sup>st</sup> accused person on 1<sup>st</sup> May 2013. It was also submitted that the 11<sup>th</sup> accused person took over the signing mandate of Oryx Service Station bank account held at KCB Maralal and was the sole



proprietor of the petrol station. He submitted that the proceeds from fuel supplied by Oryx Service Station to the departments of Samburu County Government, the subject of the payment vouchers **exhibit no. 1-231** were lawful. Counsel referred to the case ***Erick Otieno Oyare v Republic*** (supra) where it was held that a charge of unlawful acquisition of public property is proved when it is demonstrated through evidence that a person received payments from a government agency which they were not otherwise entitled to receive. Lastly, counsel urged the court to find that the prosecution failed to proof the charges against the 7<sup>th</sup> and 11<sup>th</sup> accused persons.

### **Issues for determination**

The issues for consideration arising from the evidence on record and the submissions are: -

1. Whether the 1<sup>st</sup> accused person t/a Oryx Srvce Station acted in conflict of interest by supplying fuel to the County Government of Samburu.
2. What was the relationship between the 1<sup>st</sup> accused and the 11<sup>th</sup> accused person?

3. What was the total sum of public funds paid by Samburu County Government to Oryx Service Station and who were the beneficiaries of the funds?
4. Whether the 1<sup>st</sup> and 11<sup>th</sup> accused persons unlawfully acquired any public funds from the County Government of Samburu and if so how much?
5. Whether the 2<sup>nd</sup> -9<sup>th</sup> accused persons acted in improperly and or abused their office so as to confer any benefit to the 1<sup>st</sup> accused persons and if so how much was the benefit
6. Whether the prosecution has discharged the burden of proof in the remaining counts.

### **Analysis and Determination**

#### **The burden of proof**

This being a criminal trial, it is now settled law that the prosecution bears the legal burden to prove every element in all the charges beyond reasonable doubt. That, the accused person does not have a burden to prove his innocence no matter the charge. This principle

is well established in the often cited decision **Woolmington v DPP [1935] A.C. 462.**

It is also trite law that proof beyond reasonable doubt does not necessarily mean proof with certainty. In **Miller v Minister of Pensions (1947) 2 ALL ER 372-373**, Lord Denning considered the meaning of the phrase ‘proof beyond reasonable doubt’ and aptly held that: -

***“It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadows of doubt. The law would fail to protect the community if it admitted forceful possibilities to deflect the course of justice. If the evidence is so forceful against a man to leave only a remote possibility in his favour which can be dismissed with the sentence, of course it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice.”*** (emphasis added)

This is the standard of proof to apply in the evaluation of the evidence presented in this case. The onus to discharge the burden of proof rests on the prosecution. See Section 107 (1) of the **Evidence Act, Cap 80** that: -

***“whoever desires any court to give judgement as to any legal right or liability, dependent on the existence of facts, which one asserts must prove those facts exist.”***

### **Ownership and legal status of Oryx Service Station**

The materials before me are crystal clear that Oryx Service Station is a business name registered by the 1<sup>st</sup> accused person before he was elected the inaugural Governor of the County Government of Samburu. This position is admitted in the 1<sup>st</sup> accused person’s defence. It is not in dispute that the 1<sup>st</sup> accused person t/a Oryx Service Station was the holder of bank A/C No. 1124724591

domiciled at KCB –Mararal. The prosecution evidence that Oryx Service Station was prequalified and supplied fuel and lubricants to departments of Samburu County Government was not rebutted and is admitted in defence by all the accused persons. The 231 payment Vouchers and the attachments, **exhibits 1(a)-(c) to 231(a) –(by)** and the bundles of Local Purchase Orders, **exhibits 375 (a)(i)-(c)(i)** establish that Oryx Service Station was indeed trading with the Samburu County Government.

The main contention by the parties is on the ownership of Oryx Service Station after the 1<sup>st</sup> accused person was elected the Governor of Samburu County Government.

It is the common defence by the Governor and Hesbon Ndathi (11<sup>th</sup> accused person) that they signed the Lease Agreement dated 1<sup>st</sup> May 2013 produced as **exhibit 245**. That, by the agreement the Governor leased Oryx Service Station to Hesbon Ndathi (the 11<sup>th</sup> accused person). In defence the 11<sup>th</sup> accused person contented that he became

the proprietor of Oryx Service Station and operated the business name account.

However, on a careful evaluation of the evidence, it is not in doubt that at all material times relevant to this case, the Governor remained the registered owner and the sole proprietor of Oryx Service Station. He is also the account holder of KCB – Mararal A/C No. 1124724591. There was no formal change of ownership of Oryx Service Station or its bank account. Although, the 11<sup>th</sup> accused person by an unusual arrangement was introduced as a signatory of Oryx Service Station bank A/C No. 1124724591, the Governor in law retained full control of his sole registered business name. The claim by Hesbon Ndathi (11<sup>th</sup> accused person) that he became the proprietor of Oryx Service Station is unfounded notwithstanding the deposits he made to the account from his personal sources. Thus, it remains evident that Oryx Service Station is a business name registered by the Governor with no limited liability. This reasoning is in agreement with the holding by E. N Maina, J in ***Ethics & Anti-Corruption Commission v Moses Kasaine Lenolkulal t/a Oryx Service Station***. (supra)

## **The relationship between Moses Kasaine Lenalkulal and Hesbon**

### **Wachira Ndathi**

The relationship between the Governor and Hesbon Wachira Ndathi (the 11<sup>th</sup> accused person) cannot be defined in isolation of the events after 13<sup>th</sup> March, 2013. This is when the 1<sup>st</sup> accused person became the Governor of Samburu, a high ranking State Officer. However, the Governor desired to engage in the business of supplying fuel and lubricants to the County Government of Samburu under the business name Oryx Service Station. The lack of a registered instrument of transfer to divest the Governor from the control and ownership of Oryx Service Station after the successful election leads to the only logical inference that, the 11<sup>th</sup> accused person was a proxy. He was disguised as the proprietor of Oryx Service Station to conceal the identity of the Governor while trading with his County Government. The purported landlord and tenant relationship sought to be explained by the unregistered lease agreement dated 1<sup>st</sup> May 2013, exhibit 245 lacks credibility and can only be construed as a

means to conceal the identity of the Governor as he traded with the County Government of Samburu.

**The business transactions between Moses Kasaine Lenolkulal t/a Oryx Service Station and the County Government of Samburu**

In my considered view, it was not by chance neither a sheer coincidence that the name of the Governor never featured in all documents for the transactions with the Samburu County Government. There was clear intention that the Governor was not to be visible while trading with his County Government. The payment vouchers and local purchase orders produced in evidence manifests a large proportion of the transactions. The actual account of the public funds received by Oryx Service Station from the Samburu County Government is evidenced by the bank account statements produced in evidence and analyzed at pages 64 -68 above.



## **The question of conflict of interest**

The gravamen of this case is the allegations on conflict of interest.

At the inception of the new constitutional order paving way to devolution and the establishment of the 47 County Governments, conflict of interest was recognized as a challenge in good governance.

The **Constitution of Kenya 2010** in **Chapter Six – Leadership and Integrity** has in no uncertain terms addressed the thorn of conflict of interest in the following provisions: -

**“Article 73 (1).....**

**(2) The guiding principles of leadership**

**and integrity include-**

(a).....

(b).....

**(c ) Selfless service based solely on**

**the public interest demonstrated**

**by-**

-

(i).....

(ii) **the declaration of any personal interest that may conflict with public duties;”**

The EACC investigators recovered from the County Government of Samburu the letter dated 5<sup>th</sup> April, 2013 produced as **exhibit 238**. Admittedly, the Governor wrote the letter to declare a conflict of interest in Oryx Service Station. It is critical to observe, the Governor indicated that he intended to transfer the proprietorship of Oryx Service Station. The County Secretary, the 2<sup>nd</sup> accused person herein acknowledged that he received the letter, **exhibit 238** and the declared conflict of interest was entered in the Counter book produced as **exhibit 387**.

The ***Leadership and Integrity Act ,2012*** and the ***Leadership and Integrity Regulations, 2015*** mandates every public entity to open and maintain a Register of conflict of interest in which all State

Officers and Public Officers are to register the particulars of their registrable interests. **Form E** of the schedule of the regulations provides for the following details to be adopted in a Register of Conflict of Interest: -

1. Name and address of the state officer or public officer.
2. Registrable interest.
3. Nature of the conflict of interest.
4. Date the conflict of interest is declared.
5. Directions given by EACC or public entity of the state officer or public officer making the declaration
6. Date of entry in the register
7. Signature of the officer giving directions on behalf of the commission or the public entity.

On a careful examination of the Register of Conflict of Interest, **exhibit No. 387** relied upon by the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, the document falls short of a proper Register of Conflict of Interest as contemplated by the law. It omits mandatory details, thus making a mockery of the law.

What followed the irregular declaration of conflict of interest were acts by the 1<sup>st</sup> accused person that ran a foul to the intended conduct of a State Officer as per the Constitution. The Governor covertly and in cahoots with the Hesbon Ndathi continued to trade with his County Government under the business name Oryx Service Station.

In the submission urged on behalf of the Governor, which I have declared misleading, it was contended that the law envisages a declaration of conflict of interest. That, it was sufficient for the Governor to declare the conflict of interest by the letter, **exhibit 238**. I have no doubt to say, the submissions were a subversion of the Constitution only intended to serve the selfish conduct of the 1<sup>st</sup> accused person. The **Constitution of Kenya ,2010** was way ahead of time and placed a divide-line for the Governor to choose between the public trust and a sole proprietor t/a Oryx Service Station interested in supplying fuel to the County Government Departments. The moment of this choice was at the inauguration while taking the Oath of office as a Governor. Unfortunately, for Moses Kasine

Lenalkulal, he failed twice in his oath of office and throughout his two terms continued to trade with his County Government until he was stopped by the charges herein.

The 1<sup>st</sup> and the 2<sup>nd</sup> accused persons contended that Oryx Service Station was not given any preferential treatment and was only paid for the fuel supplied and consumed by the Samburu County Government Departments. It was asserted that there was no loss of money and that the County got value for its money. In my respectful opinion, this argument is irrelevant. How will a Governor superintend upon the public officers at the county and champion for competitive and quality supply of fuel and lubricants when he sits amongst the prequalified business men trading for profit?

**The charges of abuse of office contrary to section 46 as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act, 2003* in COUNTS II, V, VI, VII, VIII, IX, X, XI and XII.**

The parties cited the following authorities where the elements for the offence of abuse of office enacted in section 46 of the ***Anti-Corruption and Economic Crimes Act, 2003*** were considered: -

1. ***Rebecca Mwikali Nabutola & 2 others v Republic [2016] eKLR.***
2. ***Eric Otieno Oyare v Republic [2022] eKLR.***
3. ***Ann Wangechi Mugo & 6 others v Republic [2022] eKLR.***
4. ***Republic v Moses Ngatia & another [2020] eKLR.***

In my opinion, the elements for the corruption offence of abuse of office established from the judicial interpretation in the above cases are: -

1. A public officer improperly used his / her public office to confer a benefit to himself or someone else.
2. The benefit was not legally due or payable

Additionally, the following definitions are crucial and have been considered in the interpretation for the offence of abuse of office.

Firstly, the definition of the legal term ‘benefit’ under section 2 of ACECA is defined as: -

**“.... any gift, loan, fees, reward, appointment, service, favour, forbearance, promise or other consideration or advantage”**

Secondly, the definition of ‘a public officer’. In the decision ***Fredrick Otieno Outa v Jared Odoyo Okello Supreme Court of Kenya, Petition No. 6 of 2014 [2014] eKLR***, the Supreme Court upon considering the statutory definitions of ‘public officer’ under ACECA amongst other statutes concluded as follows: -

***“Strictly speaking, the proper meaning of „public officer” ... is that embodied in Article 260 of the Constitution... The different definitions in other statutory provisions, such as those enumerated***

***earlier on, ought not to take precedence over the said constitutional provisions. And thus the proper meaning of “public officer”- currently is; (i) the person concerned is a state officer; or (ii) any other person who holds “public office” – an office within the National Government, County Government or Public Service; (iii) a person holding such an office, being sustained in terms of remuneration and benefits from the public exchequer.”***

In applying this definition to the present case, it encompasses the Governor, the County Secretary and the Chief officers who draw remuneration and benefits from the public exchequer. Therefore, the accused persons were for all intend and meaning public officers.

In the case of the 1<sup>st</sup> accused, Moses Kasaine Lenalkulal, he was the Governor of the County Government of Samburu and the sole proprietor of Oryx Service Station. He steered away from the paper trail involved in the prequalification, award of Local Purchase Orders



and payment. Instead, the 11<sup>th</sup> accused person was the one actively involved in the paper work. On the materials presented before me, no act of violation or none adherence to the prescribed procedure of prequalification, award of contract or the payment can be attributed to the 1<sup>st</sup> accused person. To that extent, the prosecution did not proof the element of improper use of office, the mens rea for the charge of abuse of office against the 1<sup>st</sup> accused person in **Count II**. See ***Erick Otieno Oyare v Republic*** (supra). On this account the charge in Count II must fail.

The 2<sup>nd</sup> accused, Stephen Siringa Letinina was the County Secretary of Samburu County. He received the letter dated 1<sup>st</sup> May 2013, **exhibit 238** written by the 1<sup>st</sup> accused person declaring a conflict of interest in Oryx Service Station. He was also aware of the entry of the declared conflict of interest in the Conflict of Interest Register produced as **exhibit 387**. In the circumstances, the 2<sup>nd</sup> accused person proceeded to sign and approve payments to Oryx Service Station while aware that the Governor was the sole proprietor of the business name.

The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons served as County Chief Officers and Accounting Officers of the Departments of the County Government of Samburu. The Chief Officers mounted a spirited defence that they were neither aware of the letter dated 1<sup>st</sup> May 2013, **exhibit 238** nor the entry in the conflict of interest register, **exhibit 387**. It was a common defence that the Chief Officers were not involved in the prequalification of Oryx Service Station so as to be able to know the ownership of Oryx Service Station. The Chief Officers flatly lied on oath that they never knew the Governor was the owner of the business name Oryx Service Station. However, this version of the defence lacks truth considering the number of documentation and length of time the accused persons handled procurement and payment documents in favour of Oryx Service Station. In applying the objective test, any vigilant Accounting Officer would not award Local Purchase Orders and approve payment Vouchers for over 5 years to Oryx Service Station without knowing the ownership of the business name. It is apparent that the accused persons, acted under a secretive silent code not to expose the

Governor as he continued to trade with the County Government of Samburu.

In my view, there is overwhelming evidence that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons improperly used their office by awarding contracts and approving payments to the 1<sup>st</sup> accused person t/a Oryx Service Station in conflict of interest hence the *mens rea* and the first element for the offence of abuse of office. The second element to complete the offence is the *actus reus* evident in the forbearance to allow the Governor to trade with the County Government of Samburu and to receive the payments as analyzed in the table at pages 64 - 68 of above.

In the final analysis, the prosecution has sufficiently proved the charges of abuse of office against the County Secretary and the Chief Officers.

The variances in the amounts stated in the charge sheet and the amounts analyzed in the table at page 64-68 of this judgment in respect of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> accused persons do not absolve them from blame. I will later revert to this issue in a separate sub-topic.

**Count III; the charge of conflict of interest contrary to section 42(3) as read with section 48 (1) of the *Anti-Corruption and Economic Crime Act, 2003***

The corruption offence of conflict of interest is governed by section 42 (3) of **ACECA** which enacts: -

**“42. Conflict of interest**

**(3) An agent of a public body who knowingly acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the public body is guilty of an offence.”**

Section 48(1) of **ACECA** is the penal section providing for the punishment upon conviction.

The definition of the legal terms “**Public Officer**” and “**agent**” are essential in the interpretation of the elements for the offence of conflict of interest. The meaning of “agent” under **Section 38** of **ACECA** is as follows;

**“agent- means a person who, in any capacity and whether in the public or private sector is employed by or acts for or on behalf of another person...”**

In the absence of a statutory definition of the phrase Conflict of interest, the courts have resorted to the definitions provided in legal dictionaries and judicial interpretation.

In the **Blacks' Law Dictionary, 10<sup>th</sup> Edition**, "Conflict of interest" is defined in the following terms: -

**"a real or seemingly incompatibility between one's private interest and one's public or fiduciary duties"**

In the decision *Belvin Wanjiru Namu v National Police Service Commission & another [2019] eKLR* cited by the prosecution, Mwita, J on a judicial interpretation of the conflict of interest held: -

***"Conflict of interest is a situation where an individual has interest or loyalties competing against each other. It involves dual relationships where a person in one relationship is in another competing relationship in another position such that the person has conflicting responsibilities."***

Similarly, in *John Faustin Kinyua v Republic* [2020] eKLR, Onyiego, J held as follows: -

***“94. There is no dispute that the property in question was public property as defined under Section 45(3) of the ACECA. There is no dispute either that the Appellant was an employee to Kenya Re which is a public body hence an agent to the said corporation. Did his role in the acquisition of the property by Rockhound amount into conflict of interest? From the analysis of evidence regarding the role the Appellant played in facilitating transfer of the property to Rockhound Properties Limited, it leaves no doubt as correctly held by the trial court that, by the Appellant hiding behind Rockhound Company, he caused the said property to have it registered in its name. As an agent of the corporation, he caused and facilitated the purchase of the property to Rockhound knowing very well that he was***

*in the end result going to benefit and have personal interest or private interest over the property.*

*95. The application or use of the word private interest does not in any way derogate from the word personal benefit or interest. In my view, the action taken by the Appellant was purely in conflict of personal interest. He owed a duty of care in respect of the property to the employer to the best of his ability. In the circumstances of this case, he took private interest at heart to the prejudice of his employer's interest in the property.”*

From the definition obtaining in case law and the **Blacks' Law Dictionary, 10<sup>th</sup> Edition**, the phrase conflict of Interest in the context of the present case would mean, a conflict between public officer's public duty and private interests.



To apply the foregoing interpretations, the elements for the offence under section 42(3) of ***Anti-Corruption and Economic Crimes Act, 2003 (ACECA)*** relevant to the case at hand are: -

1. The accused is an agent or public officer of a public body.
  2. The accused while an agent or a state officer acquires a direct private interest in conflict of his official duty in the contract from the public body.
  3. The accused while an agent knowingly so acquires the direct private interest in the contract from the public body.
- This forms the mens rea.

Drawing from the proviso of Section 42 (3) of the ***Anti- Corruption and Economic Crimes Act*** and the particulars of the offence in **Count III**, for a conflict-of-interest charge to succeed it has to be proved that the public officer knowingly acquired or held, directly a private interest in contracts from the County Government of Samburu. In applying the elements of conflict of interest to the instant case, it is necessary to prove beyond reasonable doubt that

the Governor knowingly influenced the award of the contracts for the supply of fuel to his business name Oryx Service Station and derived benefits from the contracts. This is so because in the first instance the law under Section 42 (3) of the **Anti-Corruption Crimes Act No. 3 of 2003** by its purposive interpretation prohibits a governor from holding interests in contracts with his County Government. The rationale for the law to bar a governor from engaging in contracts with his County Government is that, when a state officer is influenced in his official duties by any private interest, he is no longer serving the public which is the primary duty. It is the intention of the law that the private interest prevents the public officer from giving to the public impartial and faithful service which he is duty bound to render and nothing less. A public officer must take keen interest in the affairs of his office. The **Constitution of Kenya 2010** envisages a government based on national values and principles of governance as articulated under **Article 10**. Under the Constitution, public officers are required to adhere to national values and principles of governance which includes good governance, integrity, transparency, and accountability.

Contrary to the position by the defence, if the court is to attach significance to the words used in Section 42 (3) of the **Anti-Corruption Crimes Act** the consideration of the fuel supplied to the County Government by the governor is immaterial. Moreover, the question of loss is irrelevant and not part of the elements for the offence. In the strict sense not even the ‘best bargain’ or ‘charity’ whatsoever is expected from the Governor. Simply put, in law a Governor stands prohibited from trading with his County Government.

Guided by the definitions under Section 38 of **ACECA**, the 1<sup>st</sup> accused person an elected Governor was an ‘**agent**’ of the County Government of Samburu, a public body. The gazette notices on the election of the 1<sup>st</sup> accused and Certificates of Inauguration as a Governor produced in evidence attests to this fact.

The 1<sup>st</sup> accused Person while serving as the Governor County Government of Samburu was actively trading with the County in the business name Oryx Service Station. The 231 payment Vouchers, the Local Purchase Orders are evidence of the 1<sup>st</sup> accused direct private interest in the contracts for the supply of fuel and lubricants. He had pecuniary interest in the contracts for the supply of fuel manifested in the control and the transactions at the Oryx Service Station KCB A/C No. 1124724591. In effect, the integrity of the Governor in discharge of his official duties was compromised by his private interest.

The Governor's corrupt intent can be imputed from his letter dated 1<sup>st</sup> May 2013 and the pecuniary benefit from the transactions on the Oryx Service Station KCB A/C No. 1124724591. In addition, the corrupt intent is seen in the concealment of the Governor's identity in the paper work. The unregistered lease Agreement between the Governor and 11<sup>th</sup> accused person was merely a sham meant to conceal the Governor's private interest in the contracts for the supply

of fuel. In the present case the conflict of interest was committed with the full knowledge of the 1<sup>st</sup> accused person.

The foregoing evaluation of the evidence leads to the inevitable conclusion, that there is overwhelming and direct evidence that the Governor acted in conflict of interest and acquired a direct personal benefit in the contracts for supply of fuel. He actively traded with the County Government of Samburu during his tenure of two terms until he was charged before this court. Thus, this is a classic example of conflict of interest.

**Count IV; the offence of unlawful acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.**

The offence of fraudulent acquisition of public property is created by section 45(1) (a) as read with section 48(1) of the **Anti-Corruption and Economic Crimes Act**. The law provides that in protection of public property and revenue, etc.

**“ (1) A person is guilty of an offence if the person fraudulently or otherwise unlawfully –**

**(a) Acquires public property or a public service or benefit; while a “public officer” means an officer, employee or member of a public body, including one that is unpaid, part time or temporary.”**

In so far as the evidence on record and the defence raised by the accused persons is concerned, it is established that Oryx Service Station was receiving payments from the County Government of Samburu on account of the contracts for supply of fuel and lubricants. The payments made to Oryx Service Station are traced to the business name bank A/C No. 1124724591 at KCB - Mararal. The payments are supported by the Payment Vouchers produced in evidence as exhibit 1(a)(c) -231(a)-(by), the Local Purchase Orders recovered at Oryx Service Station exhibits 375 (a)(i) –(c) (i) and the County Government of Samburu recurrent account at Central Bank. It must be appreciated that the 231 payment vouchers tendered in

evidence does not reflect all the payments received by Oryx Service Station from the County Government of Samburu. The correct amount received by Oryx Service Station can only be ascertained from the above bank accounts which I have analyzed and arrive at a sum of **kshs. Eighty-Three Million Three Hundred and Forty-Five Thousand Two Hundred and Fifty-Five. (Kshs. 83,467,995/-)**. This amount is slightly below the amount stated in the charge sheet.

It is not in doubt that the Governor and the 11<sup>th</sup> accused person were both actively operating the Oryx Service Station Bank A/C No. 1124724591 and were therefore the ultimate beneficiaries of the sum of **kshs. Eighty-Three Million Three Hundred and Forty-Five Thousand Two Hundred and Fifty-Five. (Kshs. 83,467,995/-)**.

Hence, the reason I hold the accused persons to account to the extent of only the money received in the Oryx Service Station Bank A/C No. 1124724591. I shall rely on the reasons advanced for the finding in **Count III**, that the Governor trading as Oryx Service Station procured the contracts for supply of fuel and received the total payment of **kshs. Eighty-Three Million Three Hundred and Forty-**

**Five Thousand Two Hundred and Fifty-Five. (Kshs. 83,467,995/)**

under a conflict of interest. To prevent unjust enrichment, the law under section 42 (3) of **ACECA** affirms that such contracts are illegal, null and void.

The 11<sup>th</sup> accused person was a proxy through which the Governor gained advantage of his position to trade with his County Government Departments. From the evidence analyzed above, there is sufficient evidence that the Governor and the 11<sup>th</sup> accused person jointly and unlawfully acquired public property in this case, **kshs. Eighty-Three Million Three Hundred and Forty-Five Thousand Two Hundred and Fifty-Five. (Kshs. 83,467,995/-)** paid into Oryx Service Station A/C No.112472459 at KCB- Mararal Branch.

Accordingly, it is my finding that there is sufficient evidence to support the charge of unlawful acquisition of public property against the Governor and Hesbon Wachira Ndathi.



**The variance between the amounts stated in the charge sheet and the prosecution evidence**

The accused persons raised issues with the variances on the amounts stated in the charge sheet and the prosecution evidence regarding the charges of unlawful acquisition of public property and abuse of office. This observation is true.

However, the approach adopted by the courts on the effect of inconsistencies and contradictions in a case is that not every inconsistency will lead to a rejection of evidence.

The Court of Appeal in ***Erick Onyango Ondeng' v Republic [2014] eKLR*** rendered thus:

***“As noted by the Uganda Court of Appeal in TWEHANGANE ALFRED VS UGANDA, Crim. App. No 139 of 2001, [2003] UGCA, 6 it is not very contradiction that warrants rejection of evidence. As the court put it:***

***“With regard to contradictions in the prosecution’s case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution’s case.*”**

On a similar issue, In ***Philip Nzaka Watu v Republic [2016] eKLR***, the Court of Appeal held: -

***“However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minute detail. Some discrepancies must be expected because human recollection is not infallible and no two people*”**

***perceive the same phenomenon exactly the same way. Indeed, as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question.*” (emphasis added)**

Turning to the present case, the variances in the amounts stated in the charge sheet and the prosecution evidence have been subjected to the independent examination by the court. I was able to consider the actual amounts as per the payment vouchers on the charges of abuse of office and the total amount received in Oryx Service Station Bank account in respect of the charge of unlawful acquisition of public property. The court’s findings are informed by the pragmatic realities of this case which involves multiple transactions and a huge

pile of documents. The parties had all the materials and were at liberty to ascertain the correct amounts. As such, I hold that the variances in the amounts does not affect the substance of this case or prejudice the accused persons.

**The affidavit sworn by Wesley Namache Senior Prosecution Counsel**

Before concluding, it is important to address the concerns raised by the affidavit sworn by Learned Senior Prosecution Counsel, Wesley Namache. The affidavit was relied upon by the accused persons in their defence and submissions. Indeed, it is a matter the defence has made heavy weather of. The defence sought to contend that the Learned Prosecutor absolved them from blame. The affidavit is reproduced below.

**“SUPPORTING AFFIDAVIT**

*(In support of the Applicant’s Notice of Motion dated 12<sup>th</sup> October, 2022)*

**I, WESLY NYAMACHE, a Principal Prosecution Counsel in the Office of the Director of Public Prosecutions having conduct of this matter do solemnly make oath and swear as follows;**

- 1. THAT I am a Principal Prosecution Counsel and one of the prosecutors in this matter duly authorized to swear this affidavit on behalf of the Applicant.**
  
- 2. THAT I swear this affidavit in support of the instant application wherein the Applicant has moved this Honourable Court under Article 157 of the Constitution of Kenya, Section 25 of the Office of the Director of Public Prosecutions Act and Section 87 (a) of the Criminal Procedure Code to withdraw charges against all the accused persons herein.**
  
- 3. THAT the accused persons herein are facing several counts emanating from the offence of**

**Conflict of Interest, whereby the 1<sup>st</sup> accused person traded with the County Government of Samburu by use of Oryx Service Station, an entity he had registered as a sole proprietorship, in respect of a tender for supply of fuel.**

**4. THAT the 2<sup>nd</sup> and 10<sup>th</sup> accused persons at the material time were departmental Chief Officers and/or designated accounting officers with the said County Government and played a role in award of various contracts by way of signing their departmental Local Purchase Orders as well as authorizing payments in favour of Oryx Service Station.**

**5. THAT the matter has proceeded before this Honourable Court and so far Ten (10) witnesses have testified with the Investigating Officer (PW11) partly heard.**

**6. THAT in the course of this trial, the Director of Public Prosecution received information regarding this matter to the effect that;**

**a. The 1<sup>st</sup> accused person vide the letter dated 5<sup>th</sup> April, 2013 addressed to the County Secretary,**

**County Government of Samburu declared and disclosed his interest in Oryx Service Station (*Annexed herewith and marked as WN1 is a copy of the said letter*).**

**b. That the declaration of conflict of interest was subsequently entered and registered in the Conflict of Interest Register (*Annexed herewith and marked as WN2 is an extract of the register's entry*).**

**c. The County Government of Samburu has confirmed that no money was lost with respect to the impugned tender awarded to Oryx Service Station for supply of fuel to the said County (*Annexed herewith and marked as WN3 is a copy of the letter dated 22<sup>nd</sup> September 2022*).**

**d. The County Government of Samburu has equally confirmed that they got value for money following their request for supply of fuel from Oryx Service Station in accordance with the impugned tender.**

**7. THAT upon review of the supplied information and the entire evidence, The Director of Public**

**Prosecution found and deemed it necessary to review the decision to charge. This occasioned the oral application made by the Applicant on 12<sup>th</sup> October, 2022.**

**8. THAT pursuant to the directions given by this honourable court, the Director of Public prosecutions has given Consent for this case to be withdrawn.**

**9. THAT the decision of the Applicant in making this application is based on public interest, interest of administration of justice and the need to prevent abuse of the legal process.**

**10. THAT what is deponed to herein is true and within my own knowledge save for information whose sources has been disclosed.”**

I have reproduced verbatim, the Leaned Prosecution Counsel own words for reasons that will shortly become obvious. Surprisingly, the averments of the Learned Principal Prosecution Counsel strays to contested matters of law and facts.



In *Regina Waithira Mwangi Gitau vs Boniface Nthenge [2015]*

*eKLR* it was held: -

***“... the established principle of law is that advocates should not enter into the arena of the dispute by swearing affidavit on contentious matters of fact. By swearing an affidavit on contentious issues, an advocate thus makes himself a viable witness for cross examination on the case which he is handling merely as an agent which practice is irregular”.***

The same reasoning would apply to a State Prosecutor under the Director of Public Prosecutions (DPP). No matter the application, it is not competent for a state prosecutor to depose to contested facts of the case. The aftermath, where a State Prosecutor swears an affidavit on contested facts are that he risks being invited to the witness box and subjected to cross- examination. He then ends up losing the privileged position of a State Prosecutor.

In my considered humble view, this trend must be discouraged so as not to embarrass the Office of the Director of Public Prosecutions (DPP) when the full facts of the case are brought bare before the court as it has happened in the present case. In that regard, the averments by Learned Prosecution Counsel Mr. Nyamache on the question of conflict of interest, abuse of office and whether the County Government of Samburu suffered loss are misguided and incompetent. It will be a travesty of justice for the court to assign any benefit to the accused persons from the assailed averments. Moreover, the Director of Public Prosecution (DPP), moving on the right direction withdrew the application dated 13<sup>th</sup> October 2022 sought to be supported by the affidavit and vigorously prosecuted this case to its logical conclusion.

### **Disposition**

Having conscientiously evaluated the entire evidence presented in this case by the prosecution and the defence, and on a diligent consideration of the submissions by all the parties, I arrive at the

inevitable conclusion that the prosecution has proved the case against the accused persons beyond reasonable doubt on the following charges: -

**Count III;** I find the 1<sup>st</sup> accused person, Moses Kasaine Lenolkulal guilty and convict him for conflict of interest contrary to section 42(3) as read with section 48(1) of the ***Anti- Corruption and Economic Crimes Act No.3 of 2003.***

**Count IV;** I find the 1<sup>st</sup> accused person, Moses Kasaine Lenolkulal and the 11<sup>th</sup> accused person, Hesbon Jack Wachira Ndathi jointly guilty and convict each one of them for unlawful acquisition of public property contrary to section 45(1) (a) as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

**Count V;** I find the 2<sup>nd</sup> accused person, Stephen Siringa Letinina guilty and convict him for abuse of office contrary

to section 46 as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003***.

**Count VI;** I find the 3<sup>rd</sup> accused person, Daniel Nakuo Lenolkirina guilty and convict him for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti- Corruption and Economic Crimes Act No.3 of 2003***.

**Count VII;** I find the 4<sup>th</sup> accused person, Josephine Naamo Lenasalia guilty and convict her for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003***.

**Count VIII;** I find the 5<sup>th</sup> accused person, Reuben Marumben Lemunyete guilty and convict him for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti- Corruption and Economic Crimes Act No.3 of 2003***.

**Count IX;** I find the 6<sup>th</sup> accused person, Linus Milton Lenolngenje guilty and convict him for abuse of office contrary to section 46 as read with section 48(1) of the

***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

**Count X;** I find the 7<sup>th</sup> accused person, Paul Lolmingani guilty and convict him for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

**Count XI;** I find the 8<sup>th</sup> accused person, Benard Ltarasi Lesurmat guilty and convict him for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

**Count XII;** I find the 9<sup>th</sup> accused person, Lilian Balanga guilty and convict her for abuse of office contrary to section 46 as read with section 48(1) of the ***Anti-Corruption and Economic Crimes Act No.3 of 2003.***

With regard to **Count II** and based on the reasons prior stated, I find the 1<sup>st</sup> accused person, Moses Kasaine Lenolkulal not guilty for abuse of office contrary to section 46 as read with section 48(1) of the **Anti-Corruption and Economic Crimes Act No.3 of 2003**.

Orders accordingly.

**Dated, signed and delivered this 28<sup>th</sup> day of August, 2024**

  
**THOMAS T. NZYOKI**

**CHIEF MAGISTRATE**



**In the presence of:**

Court Assistants: Brigid, Fardosa & Maritim

Prosecution Counsel: Mr. Akula, Mr. Nyamache & Mr. Mwasaru

Advocate watching briefly for EACC – Ms. Kiigi

1<sup>st</sup> accused: present

2<sup>nd</sup> accused: present

3<sup>rd</sup> accused: present

4<sup>th</sup> accused: present

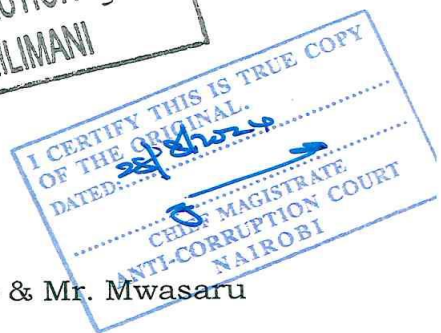
5<sup>th</sup> accused: present

6<sup>th</sup> accused: present

7<sup>th</sup> accused: present

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8<sup>th</sup> accused: present

9<sup>th</sup> accused: present

11<sup>th</sup> accused: present

Advocates for the accused persons:

Mr. Nyamondi (SC) & Mr. Baraza for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons

Mr. Morara Omoke for the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> & 9<sup>th</sup> accused persons

Mr. Opolo for the 5<sup>th</sup> accused and holding brief for Mr. Kyalo for the 7<sup>th</sup> & 11<sup>th</sup> accused persons.

CHIEF MAGISTRATE  
ANTICORRUPTION COURT  
THOMAS T. NZYOKI  
MUMANI  
CHIEF MAGISTRATE

28/8/2024

I CERTIFY THIS IS TRUE COPY  
OF THE ORIGINAL.  
DATED: 28/8/2024  
CHIEF MAGISTRATE  
ANTI-CORRUPTION COURT  
NAIROBI