



DPP'S PRESS STATEMENT ON THE SUPREME COURT OF KENYA JUDGEMENT IN THE MATTER OF THE EXTRADITION CHRYSANTHUS BARNABAS OKEMO AND SAMUEL KIMUNCHU GICHURU

Today, the 5th of November 2021, the Supreme Court in Nairobi delivered a landmark ruling on the extradition to Jersey Island of **Chrysanthus Barnabas Okemo (Okemo)** who was the Minister for Energy in the Kenya Government between 1999 and 2001 and **Samuel Kimunchu Gichuru (Gichuru)** who was the Managing Director of Kenya Power & Lighting Company.

Chief Justice Martha Koome, M. K. Ibrahim, S.C Wanjala and Njoki Ndungu determined that extradition is criminal in nature and falls within the mandate of the ODPP, while the Attorney General only retains the executive role of receiving requests.

The orders of the Supreme Court were as follows:

- (i) The Appeal dated 10th August, 2020 is hereby allowed;**
- (ii) The Judgement of the Court of Appeal dated 2nd March, 2018 is hereby overturned;**
- (iii) The Proceedings before the Magistrates Court which had been triggered by the Authority to Proceed issued on 6th July 2011 by the Director of Public Prosecutions are to continue forthwith on a priority basis either in the same court or court of competent jurisdiction**
- (iv) For the avoidance of doubt the word “continue” in 3 above includes “commencing afresh” which course of action is to be**

determined by the Director of Public Prosecutions, should it be necessary.

The following is a chronology of relevant events and previous court history in respect to the request for the extradition;

1. It is alleged that both Okemo and Gichuru accepted bribes from foreign businesses that contracted with KPLC and hid the money in Jersey by causing the foreign contractors to make payments into the bank accounts of a Jersey company called Windward Trading Limited. It is also alleged that Gichuru was the beneficial owner of the Jersey company which he controlled by using agents and that the money paid to the bank account of the company was distributed according to the instructions given by Gichuru's agents including to personal accounts of Okemo and Gichuru in Jersey.
2. Okemo is charged in the Royal Court of Jersey with thirteen counts relating to the transactions in the accounts committed in the Island of Jersey under Jersey law between 1st July, 1999 and 2001. On the other hand, Gichuru is charged in the same court with forty counts for offences allegedly committed under Jersey law in the Island of Jersey between 1991 and 28th June, 2002.
3. On 26th May 2011, the Attorney General of the Island of Jersey wrote a letter requesting Kenya's then Attorney General, Amos Wako, to commence extradition proceedings against the two Applicants herein. While the letter was addressed to the Attorney General of Kenya, the authority to commence the extradition proceedings was in fact given by the Director of Public Prosecution (DPP) and **Miscellaneous Application No.9 of 2011** filed in the Chief Magistrates' Court at Nairobi to commence the said proceedings. The previously mentioned letter was received on 6th June 2011 and constituted a request for the extradition of **CHRYSANTHUS BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU** from the Attorney-General of Jersey vide Verbal note number 452/11 through the British High Commission in Nairobi.
4. The request for extradition previously mentioned was transmitted pursuant to the provisions of section 7 of the Extradition (Commonwealth Countries) Act Cap 77 of the Laws of Kenya (Hereinafter, "Extradition Act").

5. Subsequently, the Attorney-General forwarded the extradition request to the Director of Public prosecutions for his consideration and action in terms of the Extradition Act Cap 77 and other relevant statutes including the Constitution.

INSTITUTION OF EXTRADITION PROCEEDINGS ISSUANCE OF “AUTHORITY TO PROCEED”

6. Upon receipt of the request, and having studied the same and ascertained that the request complied with the Extradition Act and all other relevant legislation in Kenya, the Director of Public Prosecutions (hereinafter “DPP”) issued an “Authority to Proceed” to the Chief Magistrate pursuant to the provisions of section 7(1) of the Extradition Act, read together with section 7 of the Sixth Schedule of the Constitution of Kenya dated and filed in court on 6th July 2011.
7. The extradition Cause was allocated **Nairobi Chief Magistrate’s Court Miscellaneous Application No. 9 of 2011.**
8. Subsequently, the applicants appeared in court and the extradition proceedings were ready to commence.

OBJECTIONS TO THE EXTRADITION PROCEEDINGS

9. Before the extradition proceedings could commence, **CHRYSANTHUS BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU** filed a Notice of Preliminary Objection/Grounds of Objection dated 7th July 2011 and filed in court on 8th July 2011.
10. In addition to the Notice of preliminary Objection referred to hereinabove, **CHRYSANTHUS BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU** filed Constitutional Petitions in the High Court being Petition numbers 90 and 91 both of 2011 which were subsequently renumbered Petition numbers 320/2011 and 321/2011 respectively.
11. The Preliminary Objection filed in the Subordinate Court was dismissed by the extradition magistrate in a Ruling delivered on 5th February 2013.
12. Following the above-mentioned ruling of Honorable T. Murigi (Ms.), Senior Principal Magistrate on 5th February 2013 **CHRYSANTHUS**

BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU filed a Constitutional application by way of an Originating Notice of Motion being Application number 111 of 2013 Samuel Kimunchu Gichuru and Chrysanthus Barnabas Okemo versus the Director of Public Prosecutions and the Chief Magistrate's Court. The application was indicated as brought pursuant to Article 165(6) & (7) together with section 19 of the sixth Schedule of the Constitution of Kenya 2010 as well as Rule 2 of the Chief Justice Rules 2006.

13. The High Court Constitutional Application No. 111 of 2013 was consolidated with High Court Petition numbers 320/2012 and 321/2012 respectively and heard by the Honourable Justice Isaac Lenaola who delivered a Judgement dismissing the same on 18th December 2015.
14. In his Judgement, Honourable Justice Isaac Lenaola affirmed the ruling of the Subordinate Court and ordered that the extradition proceedings do advance to hearing in a timeous manner.

APPEAL TO THE COURT OF APPEAL

15. Aggrieved by the decision, **CHRYSANTHUS BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU** filed Court of Appeal Civil Appeals Nos. 5 of 2016 and 23 of 2016 respectively which were heard together.
16. In a Judgement dated and delivered in Nairobi on 2nd March 2018, the Court of Appeal (Hon. E.M. Githinji, H.M. Okwengu and J. Mohammed, JJA.) made the following orders:
 - (i) *The appeal succeeds in part and is allowed on the ground that; the Authority to Proceed” dated 6th July 2011 issued by the DPP is a nullity together with the committal proceedings in Misc. Application No. 9 of 2011 instituted against the appellants pursuant to such authority and to any act done by the magistrate in pursuance of the proceedings.*
 - (ii) *For the avoidance of doubt the burden remains with the Attorney-General to deal with the Request for extradition in accordance with the law.*

- (iii) The order of the High Court dated 18th December 2015 declaring the committal proceedings to be valid and the order of the extradition magistrate dated 5th February 2013 requiring the committal proceedings to commence are set aside and in lieu thereof the committal proceedings are declared invalid and are hereby struck out.*
- (iv) The other substantive grounds of appeal are dismissed.*
- (v) There shall be no orders in this appeal.*

17. However, the DPP lodged his appeal against this decision with the Supreme Court of Kenya and argued as summarized hereinbelow:

SUMMARY OF THE GROUNDS FOR APPEAL & THE PETITION TO THE SUPREME COURT OF KENYA

- a. The Learned Judges erred in law in holding that Extradition is not part of Kenya's criminal justice system and the process of extradition is not part of the system of the administration of criminal justice.
- b. The learned judges erred in law in holding that extradition proceedings and or proceedings for committal as described in extradition act are not criminal proceedings.
- c. The Learned judges erred in law in holding that the DPP does not have the responsibility to conduct extradition in Kenya.
- d. The learned judges erred in law in holding that the DPP does not have the mandate to issue 'authority to proceed" and that the extradition proceedings instituted in the Magistrates court were invalid.
- e. The Learned judges erred in law in holding that in terms of section 7(1) of the Extradition Act and the Constitutional structure, and the other related laws, the AG expressly has the sole responsibility to issue the "Authority to Proceed."
- f. The Learned Judges erred in law in holding that the extradition proceedings instituted against the first and the second respondents without written authority to proceed issued by the AG are a nullity in law including any act done by the magistrate against the appellant in pursuant of such proceedings.

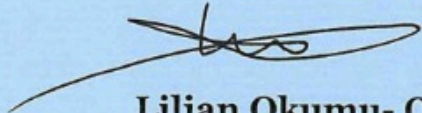
Pursuant to this ruling, the ODPP shall take steps to expedite the extradition proceedings before the sub-ordinate court as directed by the Supreme Court.

For over 10 years, **CHRYSANTHUS BARNABAS OKEMO** and **SAMUEL KIMUNCHU GICHURU** have been able to exploit the opportunities available to them through the Kenyan legal system and due process, to delay the hearing and conclusion of their extradition proceedings. Upon assuming office in 2018, the DPP reviewed the file and revived the same by injecting new energy into the pursuit of the extradition proceedings against the appellants herein.

In this regard, the DPP was convinced of the fairness of the cause and as to the validity of its interpretation of the law, to wit, that the DPP is the correct person bestowed with the authority in law to commence and undertake Extradition Proceedings. As a result, the DPP once again revived the matter and filed an Appeal before the Supreme Court of Kenya, against the decision and the Judgement of the Court of Appeal (E.M. Githinji, H.M Okwengu and J. Mohammed, JJA) delivered at Nairobi dated the 2nd day of March 2018 in Civil Appeal No. 5 of 2016 consolidated with 23 of 2016 and by which **CHRYSANTHUS BARNABAS OKEMO and SAMUEL KIMUNCHU GICHURU** had secured reprieve and relief from the ongoing Extradition Proceedings.

Today's ruling is therefore a big win for the ODPP and the *Mwananchi* in the war against transnational and organized crime including but not limited to corruption and money laundering.

The ODPP remains committed to executing its constitutional mandate in accordance with the rule of law, due regard to public interest, the administration of justice and avoidance of abuse of the legal process.



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Chief of Staff - ODPP
For: DIRECTOR OF PUBLIC PROSECUTIONS

DATED: 5th November, 2021.