



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

MISC. JUDICIAL REVIEW NO: 02 OF 2019

REPUBLIC.....APPLICANT

VERSUS

1. THE COUNTY ASSEMBLY OF NYAMIRA

COMMITTEE OF POWERS & PRIVILEGES.....1ST RESPONDENT

2. THE COUNTY ASSEMBLY SERVICE BOARD

NYAMIRA COUNTY.....2ND RESPONDENT

3. THE NYAMIRA COUNTY ASSEMBLY.....3RD RESPONDENT

4. THE HON. SPEAKER

NYAMIRA COUNTY ASSEMBLY.....4TH RESPONDENT

5. THE CLERK OF COUNTY ASSEMBLY

NYAMIRA COUNTY.....5TH RESPONDENT

EX-PARTE

1. HON. THADDEUS NYABARO.....1ST EX-PARTE APPLICANT

2. HON. VIOLET NYAKORA.....2ND EX-PARTE APPLICANT

JUDGEMENT

The Ex-parte applicants approached this court by way of a Chamber Summons dated 19th September 2019 seeking to bring judicial review proceedings in the nature of certiorari and prohibition against the respondents. The subject matter of the application were the recommendations by the joint committee of the 1st & 2nd respondents dated August 2019 tabled in the house on 8th August 2019 which purported to fine, warn, reprimand and suspend the Ex-parte applicants from the County Assembly of Nyamira and any responsibilities of the committees in which they are members.

On 25th September 2019 this court granted leave to the ex-parte applicants and by a ruling delivered on 14th October 2019 directed that the leave granted would act as a stay.

Pursuant to the leave the Ex-parte applicants filed the substantive motion dated 26th September 2019 filed herein on 27th September 2019 which they amended on 18th October 2019. The amended motion seeks orders as follows: -

“1. THAT the Exparte Applicants be granted an Order of Certiorari to remove into this Court and quash the Recommendations by the Joint Committee of the 1st and 2nd Respondents dated 8th August, 2019, tabled and laid on the table of the house on the 8th August, 2019 purporting to fine, warn, reprimand & suspend and remove the Exparte Applicants from the County Assembly of Nyamira and any responsibilities of the Committees in which they are Members.

2. **THAT** the Exparte Applicants be granted an Order of Prohibition directed at the Respondents in particular the 2nd, 3rd, 4th & 5th Respondents prohibiting and restraining them from implementing, debating, Approving & making Resolutions on the Joint Report of the 1st and 2nd Respondents dated 8th August, 2019 and tabled and laid on the Table of House on 8th August 2019 purporting to fine, warn and reprimand and suspend and remove the Exparte Applicants from the County Assembly of Nyamira and any Responsibilities of the Committees in which they are Members, including any other proceedings and resolutions adopted thereafter.

3. **THAT** leave granted herein do operate as a stay of the implementation, proceedings of and/or debating on the Joint Report of the 1st and 2nd Respondents dated 8th August, 2019.

4. **THAT** in the alternative, the Honourable Court do grant a Conservatory Order restraining and/or prohibiting the Respondents from implementing, debating and making resolutions on the impugned Report of Joint Committee of the 1st & 2nd Respondents.

4A. **THAT** the Honourable Court be pleased to issue an order for compensation for Responsibility, sitting, per diem, and transport allowances denied to the Exparte Applicants by the implementation of the impugned Report by the 4th & 5th Respondents with effect from 8th August, 2019 to 14th October, 2019 under Articles 22 (1) & 23 (3) of the Constitution, 2010.

5. **THAT** the Honourable Court be pleased to grant such other or further relief as it may deem fit in the circumstances.

6. **THAT** the costs of these proceedings be borne by the 5th Respondent.”

The grounds for the application are: -

“1. **That** the proceedings, findings and recommendations in the Report of Joint Committee of the 1st & 2nd Respondents are a gross travesty of justice as they have offended all possible principles of law, the constitution and County Assembly Standing Orders, usages, forms, precedents, practices, customs, procedures and traditions of the County Assembly of Nyamira and Kenya and other Jurisdictions.

2. **That** the Respondents’ conduct in the process leading to the decision and recommendations of the said Report is manifestly malicious, unlawful, unconstitutional, unprocedural, inconsistent, contradictory and *ultra vires* the provisions and procedure of the law in particular the Constitution of Kenya, 2010, the County Assemblies Powers & Privileges Act No. 6 of 2017 and the County Assembly of Nyamira Standing Orders in particular Standing Orders No. 44, 47, 49 & 50 and the established practices, customs and traditions of the County Assembly of Nyamira & Kenya.

3. **That** Joint Committee Report of the 1st and 2nd Respondents is illegal, unlawful, null and void as the inquiry was not conducted within 14 days from the date the complaint was received as provided by Law in Section 15 (5) of the County Assemblies Powers & Privileges Act, 2017.

4. **That** the Respondents’ decisions are unfair, discriminatory, arbitrary, inconsistent, contradictory, malicious and capricious and offend the presumption of innocence as enshrined in the Constitution.

5. **That** the Respondents’ decisions are irrational, an abuse of power, oppressive, punitive, grossly unlawful, actuated with political malice and vendetta and against the legitimate expectation of the people of Nyamira County and the 1st Exparte Applicant and the Chairman of Sectoral of Environment, Water & Natural Resources.

6. **That** the Respondents’ decisions are made for an illegal, improper motive and/or for selective extraneous purpose failing to take into account relevant factors and provisions of the law on due process on the right to a just and fair hearing.

7. **That** the act of the 4th Respondent in making a communication on 8th August 2019 on the floor of the House immediately the said Report was tabled with words that the said Report was “final, valid and takes effect on communication” was illegal, unlawful, unconstitutional and *ultra vires* as the House had not debated, approved and adopted the said Joint Report of the 1st and 2nd Respondents.

8. **That** the acts of the 4th and 5th Respondents in implementing the Report of the Joint Committee of 1st and 2nd Respondents without approval & adoption by the House under Sections 15 & 17 of the County Assemblies Powers & Privileges Act, thereby removing and/or ordering the Exparte Applicants to leave the debating chamber and/or Plenary on 17th August, 2019 at 2.30p.m. is illegal, unlawful, unconstitutional and *ultra vires* as the body with statutory power to suspend the Exparte Applicants is the House.

9. **That** the acts of the 4th and 5th Respondents’ in implementing the Joint Committee Report of the 1st & 2nd Respondents before the House adopts and approves the same by denying the Exparte Applicants the right to be notified and attend their respective Committee functions of the Assembly where they are Members on 12th – 16th August, 2019, 11th to 12th Sep. 2019 and 29th August, 2019 respectively is illegal, unlawful, unconstitutional and *ultra vires*.

10. **That** at any rate, the 4th and 5th Respondents acts in implementing the Joint Report of the 1st & 2nd Respondents without

the Assembly adopting and making resolution thereon, has denied the Exparte Applicants allowances and other emoluments due to them by being Members of the 3rd Respondent.

11. Consequently, the illegal, unlawful and unconstitutional acts of the 4th and 5th Respondents in implementing the said Report without the 3rd Respondent's adoption and resolution has denied the people the Exparte Applicants represent in the Assembly in the participation and influencing the debates in the Assembly and cannot vote on matters affecting them.

12. Consequently and unless, the instant Application is heard on priority basis, the Exparte Applicants are bound to be denied and/or deprived of their Fundamental Rights, prescribed and/or envisaged in the Constitution of Kenya, 2010.

13. Unless, the orders sought are granted, the Exparte Applicants herein are bound to suffer a Miscarriage of Justice and Prejudice.

14. Conversely, the Respondents herein are unlikely to suffer any Prejudice if the Orders sought herein are granted.

15. In the circumstances, it is in the interest of justice that the orders sought herein be granted."

The Ex-parte applicants also contend that the report: -

“(i) Has infringed the Exparte Applicants’ rights to due allowances and other emoluments derived from attending Plenary & Committee proceedings, therefore subjecting the Exparte Applicants to financial embarrassment & suffering as such, subjects the Exparte Applicants to human indignity and treatment not in accord with their status as Members of the 2nd Respondent.

(ii) Is in contravention of the mandatory provisions of Section 15(5) of the County Assemblies Powers & Privileges Act, 2017, in that the inquiry into the alleged breach of privilege was not conducted within 14days from the date of receipt of such complaint by the Office of the 4th Respondent.

(iii) Contravened the mandatory provisions Section 15(7) of the County Assemblies Powers & Privileges Act, 2017, in that the 3rd Respondent Assembly has not debated approved, adopted and resolved with or without amendments Report dated 8th August 2019. It is the 3rd Respondent that is obligated to penalize any member of the County Assembly for breach of privilege, through a recommendation of the 1st and 2nd Respondents.

(iv) Contravened S. 17(7) & 17(3) of the County Assemblies Powers & Privileges Act, 2017, in that the impugned Report took effect on 8th August 2019, without debate for approval and adoption with or without amendments under Standing Orders No., 44, 47, 49 & 50 and

The act of the 4th Respondent in making communication on 8th August, 2019 on the Floor of the House that the impugned Report was “final, valid & take effect on communication” is bad governance and abuse of power.”

The application which is vehemently opposed was canvassed by way of written submissions. The background of this matter is that on 19th June 2019 the office of the 4th Respondent received a letter of Complaint dated 19th June, 2019 from one DORAH SIRO, a staff of the 3rd Respondent alleging that the 1st Exparte Applicant had assaulted her within the precincts of the house. On 21st June, 2019, the office of the 4th Respondent received a similar letter from one PASTOR ENOCK AMINGA OOGA the husband of Dora Siro. The 4th Respondent referred the complaint to the Committee of Powers and Priviledges which is chaired by himself as the Speaker of the County Assembly. Acting on the powers conferred upon him by the provisions of the County Assemblies Powers and Privileges Act, 2017 and the Standing Orders of the 3rd Respondent Assembly, the 4th Respondent then constituted a Joint Committee of the Powers and Privileges Committee and the County Assembly Service Board, to investigate and Consider the alleged assault, being one that could amount to an abuse of the Privilege of a Member of the County Assembly under Section 16 of the said Act. The Joint Committee was required to table its findings together with such recommendations as it considered appropriate in the house as provided under Section 15 (4) (5) (6) and (7) of the County Assemblies Powers and Privileges Act.

The 1st and 2nd Respondents, as a Joint Committee, commenced the inquiry of the complaint by MS Dora Siro on the 23rd July, 2019 and the 1st Ex-parte Applicant appeared before the committee and denied the alleged assault. The 1st Ex-parte applicant is on record as telling the Joint Committee that the alleged incident was fuelled by some of his colleagues namely; HON. CHARLES KEGANDA HON. RABAN MOSIRA and HON. GEORGE NYACHAE some of who were members of the Joint Committee.

The 2nd Ex-parte Applicant was called as a witness and on the 31st July, 2019 appeared before the said Joint Committee and told the Committee that she was not present at the scene at the time of the alleged assault; that she was in Kisii Town and therefore did not witness the alleged assault. after the hearing the Joint Committee of the 1st and 2nd Respondent retreated to write a Report to be tabled for debate and approval and adoption by the 3rd Respondent Assembly. On the 8th of August 2019, the 1st and 2nd Respondents through the acting Chair of the said Joint Committee, Hon. Fred Omayio tabled and laid on the floor of the Assembly a report dated 8th of August, 2019 with the following recommendations: -

1st Exparte Applicant

- (i) Was fined Kshs 10,000 to be paid within 2 months effective Thursday 8th August, 2019.
- (ii) Was hereby given a warning.
- (iii) Was reprimanded.
- (iv) Was ordered to apologize.
- (v) Was suspended for 3 months from the responsibilities with committees with effect from Thursday 8th August, 2019.
- (vi) Was suspended for 3 months from the Assembly with effect Thursday, 8th August, 2019.

2nd Exparte Applicant

- (i) Was fined Kshs 50,000 to be paid within 2 months effective Thursday 8th August, 2019 for Contravening to Sections 27 (c) and 27 (3) (g) of the County Assemblies Powers & Privileges, Act, 2017.
- (ii) Was hereby given a warning
- (iii) Was reprimanded
- (iv) Was suspended for 2 months from the Assembly with effect from Thursday 8th August, 2019.
- (v) Was removed from any responsibilities of the Committees pursuant to S. 17 (3) (e) with effect from 8th August, 2019 for unknown period.

On the same day the Ex-parte applicants were served with letters dated 8th August 2019 signed by the 4th Respondent communicating the said recommendations. Later at 2.30p.m. the same day the 4th Respondent, while chairing the afternoon session of the house and as the Speaker, made a Communication from the Chair to the effect that the impugned Report was **"final valid and takes effect on communication."** The Ex-parte applicants contend that this was before the report was debated and that they realized that the implementation of the impugned report was in place in the following manner;

“1st Exparte Applicant

- (a) being a Member of the County Budget & Appropriations committee he was not given a Notice to attend a committee meeting in Kisumu on 19th - 22nd August, 2019.
- (b) being a Member of County Budget & Appropriation Committee, he was again not given a Notice to attend the said Committee meeting at Itibo Resort, Kisii County between the dates of 26th - 29th August, 2019.
- (c) being a Member of Agriculture Committee, he was not given Notice to attend the said Committee in Kisumu between dates of 12th - 16th August, 2019.
- (d) being a Member of Liaison Committee, he was not given a Notice to attend the said Committee meeting in Kisumu between the dates of 11th - 12th September, 2019.

2nd Exparte Applicant

- (a) being a Member of the County Budget & Appropriations committee she was not given a Notice to attend the said committee meeting in Kisumu on the dates of 19th - 22nd August, 2019.
- (b) being a Member of County Budget & Appropriation Committee, she was again not given a Notice to attend the said Committee meeting at Itibo Resort, Kisii County between the dates of 26th - 29th August, 2019.”

It was however on 17th August 2019 when they were ejected from an afternoon session chaired by the Deputy Speaker that they realized that the committee was serious in implementing the report and recommendations of the Joint Committee.

Counsel for the Ex-parte applicants submitted that the complaint giving rise to the inquiry and report having been received on 19th and 21st June 2019 and the inquiry having commenced on 23rd July 2019 well over 19 days after receipt of the complaint, it was unprocedural as Section 16 of the County Assemblies Powers & Privileges Act required the inquiry to be commenced within 14 days. Counsel submitted that the joint committee and the 4th respondent had no discretion under **Section 15 (5)** to commence the inquiry after the expiry of the fourteen days and in any event that no reasons were communicated to the Ex-parte Applicants for doing so. Counsel contended that for the above stated reasons the report was unprocedural and unlawful and hence tainted with illegality, irrationality and procedural impropriety. Counsel contended the conduct of the respondents in not giving the applicants reason for convening the inquiry out of time violated **Section 4 of the Fair Administrative Action Act and Articles 47 (1) and (2) of the Constitution** and hence is unconstitutional. Counsel also submitted

that it was unprocedural, unlawful, illegal, unconstitutional and ultra vires the powers of the Joint Committee to adopt the report and to implement the recommendations therein without first bringing it to the house for debate as provided in **Section 15 (6) and (7) of the County Assemblies Powers & Privileges Act** and **Standing Orders 44, 47, 49 and 50** of the **Standing Orders of the County Assembly of Nyamira**. Counsel also alleged that the report was arrived at without according the Ex-parte Applicants an opportunity to be heard and that its implementation thereof was in violation of the applicants' rights under **Articles 47, 48 and 50 (1) of the Constitution** and further violated their rights under **Article 10** of the **Constitution** which enjoins state organs, state officers and public officers/bodies to uphold the national values and principles of governance. Counsel therefore urged this court to quash the recommendations of the joint committee and to prohibit the 2nd, 3rd, 4th and 5th respondents from implementing, debating, approving and making resolutions on the Joint Report and further to make an order pursuant to **Articles 22 (1) & 23 (3) of the Constitution** for compensation for responsibility, sitting, per diem and transport allowances denied to the Exparte Applicants by implementation of the report with effect from 8th August 2019 to 14th October 2019. Counsel also urged the court to condemn the 5th respondent to the costs of these proceedings.

In response, Counsel for the respondents begun by submitting that the actions giving rise to the impugned report were not privileged as they were unrelated to the functions of the applicants in the house, and that the privileges and immunities of Members of the County Assemblies is limited to words spoken before or written in a report to the Assembly or a committee thereof. In so saying, Counsel relied on the cases of **Francis Matheka & 10 others v Director of Public Prosecutions & another [2015] eKLR**, **Hon. Elizabeth Manyala and 12 others v AG (citation not provided)** and **Republic v Ethics and Anti-Corruption Commission Ex parte Nairobi City Assembly & 13 others [2019] eKLR**. Counsel submitted that Judicial Review is the review by a Judge of the High Court of a decision; proposed decision; or refusal to exercise a power or decision to determine whether that decision or action is unauthorized or invalid and that as long as the processes followed by the decision maker are proper and the decision is within the confines of the law, a court will not interfere. Counsel argued that the 1st respondent has power pursuant to **Section 15 of the County Assembly Powers & Privileges Act, 2017** to inquire into the conduct of a member either on its own motion or as a result of a complaint made by a person. Counsel stated that such conduct is set out under **Section 16 (5) of the Act** and that the impugned inquiry was solely informed by the powers of the committee. Counsel further argued that it has not been shown that the decision or recommendations of the assembly against the applicants was arrived at without jurisdiction or in excess of that jurisdiction or that the decision was so perverse or unreasonable that it would be against the sense of justice to allow it to stand. Counsel submitted that neither was abuse of power demonstrated and that therefore the decision falls into the category of areas which are not disturbed by the courts unless the decision under challenge is illegal, irrational or unprocedural.

On implementation of the report before its debate by the house, Counsel submitted that the 1st respondent was legally entitled under Section 15 (6) of the Act to table the report together with its recommendations and it therefore exercised its powers within the law.

As regards time for the inquiry, Counsel quoted Section 15 (3) verbatim and submitted that the Exparte Applicants argument was without merit as the fourteen days' requirement applies from the time the complaint is referred to the joint committee of the 1st and 2nd respondent and not from the time the 4th respondent receives the complaint. Counsel contended that the Ex-parte Applicants did not tender any evidence whatsoever of the time the 4th respondent submitted the complaint to the joint committee. Counsel reminded this court of its cardinal duty to uphold the constitution and urged that this court will act unconstitutionally if it accepts the invitation to grant orders that will fly in the face of the constitutional provisions that call upon state officers to behave in a manner that avoids demeaning the office whether in public or in private life or in association with other persons. Counsel submitted that the constitution must be read holistically so as to achieve its purposes, values and principles and that the decision of this court must not only arise from an interpretation of the various Articles of the Constitution cited but also from the fact that this court is inclined to respect the constitutional role of County Assembly of Nyamira and the action of the Committee of Powers & Privileges. Counsel argued that judicial review remedies are meant to afford the prejudiced party administrative justice, to advance efficient and effective public administration compelled by constitutional precepts and at a broader level to entrench the Rule of Law and that the task of the court in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision maker. He stated that in so doing the enforces the Rule of Law by requiring public bodies to act within the **"four corners"** of their powers or duties. Further, that the courts have a duty to ensure citizens respect and observe the constitution and that failure or refusal to exercise this duty would be treason to the constitution. Counsel submitted that the applicants are not disputing the conduct they are accused of but instead are using privilege as a shield against criminal culpability and that there is no procedural impropriety in reprimanding them nor has any been alleged. Counsel further submitted that as the illegality of the report has not been established the orders sought cannot be granted and that the Ex-parte applicants ought to have allowed the Assembly to debate the report and challenge the outcome if aggrieved. He urged this court to dismiss the application for lack of merit.

If I understood the case for the Ex-parte applicants well, it is not that the conduct they were accused of was privileged but rather that the respondents acted unprocedurally for holding an inquiry out of the time limited in the law and also for acting unfairly for not giving them an opportunity to be heard and further for implementing the recommendations arising from that inquiry without first tabling the report in the house as provided in the Act. As is with all public officers a Member of the County Assembly is bound by the principles of Leadership and Integrity set out in Chapter Six of the Constitution and indeed one of the reasons for disqualification for election to that office is contravention of **Chapter Six (see Article 193 (2) of the Constitution)**. One of the key responsibilities of public officers in Chapter Six is respect for the people (**Article 73 (1) (a) (ii)**) and it is this principle that it is alleged the Ex-parte applicants breached through an assault against one Dorah Siro allegedly committed within the precincts of the house and which is said to have been reported to the police and also to the County Assembly by way of a letter. To give effect to **Article 196 (3) of the Constitution** parliament enacted the **County Assemblies Powers & Privileges Act, 2017** which inter alia makes provision for **"the powers and privileges of county assemblies and for conduct within the precincts of county assemblies."** The Act defines the precincts of a County Assembly and creates various committees and sets out their purposes and the procedure to be followed by the said committees. It also sets out the punishment to be meted to members who breach the privileges afforded to them under the Act. As was stated by Mativo J in **Republic v Ethics and Anti-Corruption Commission Ex-parte Nairobi County Assembly & 13 others [2019] eKLR** cited by Counsel for the respondents: -

"74. Judicial Review remedies are meant to afford the prejudiced party administrative justice, to advance efficient and effective public administration compelled by constitutional precepts and at a broader level, to entrench the Rule of Law. The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The instrument will normally be the Contribution, a statute or delegated legislation. The courts when exercising this power of construction are enforcing the Rule of Law, by requiring public bodies to act within the "four corners" of their powers or duties. They are also acting as guardians of

Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments. The Courts have a duty to ensure citizens respect and observe the Constitution. In my view, failure or refusal by the court to exercise this duty would be treason to the Constitution."

Public bodies must at all times act within the "four corners" of their powers and duties. In this case **Section 16** of the **Act** provides for conduct constituting breach of privilege and under **Section 15 (4) (a) of the Act** the committee of Powers and Privileges is given power to inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege in terms of **Section 16**. **Section 16 (5)** states that the committee of Powers and Privileges may act either on its own motion or as a result of a complaint made by any person. In this case the 1st respondent is said to have been acting upon a complaint by Dorah Siro one of the members of staff. **Section 15 (5)** then states that **the committee shall inquire into the conduct within fourteen days of receipt of a complaint**. In these proceedings the Ex-parte applicants accuse the 1st respondent of breaching this rule of procedure by inquiring into the conduct outside of the time limited thereat and it is their contention that the inquiry was conducted after 19 days from the date of receipt of the complaint. From the material placed before me the complaints by the subjects were received by the Speaker on 19th June 2019 and 21st June 2019 and on the same dates the Speaker noted the contents and referred the complaint to the Joint Committee of Powers & Privileges and County Assembly Service Board for consideration. However, it was not until 23rd July 2019 that the committees chaired by the Speaker started inquiring into the conduct the subject of the complaint (**see annexure "VN1" to the Notice of Motion**). This was 24 days after receipt of the complaint. Clearly the committee did not have jurisdiction to do so when the Act states it should have done so within fourteen days of receipt of the complaint. While it is evident from the proceedings that the Ex-parte applicants were indeed given an opportunity to defend themselves and therefore their contention that their right to natural justice was breached is not valid the proceedings were nevertheless conducted out of the time limited by the Act. Further, the 1st and 2nd respondents were obligated by law (**see Section 15 (6) of the Act**) to table their recommendations to the County Assembly within 14 days of the conclusion of the inquiry and whereas this they did within time on 8th August 2019, they nevertheless acted unprocedurally by implementing the recommendations immediately without the same being considered by the County Assembly as provided in **Section 15 (7)** which states: -

"Each County Assembly shall in accordance with its standing orders, consider the report and the recommendations thereon and may take such action against the Member concerned as may be appropriate."

Annexure VN2 is a letter dated 8th August 2019 addressed to the 2nd E-xparte Applicant. The same is referenced: - **"RE: BREACH OF COUNTY ASSEMBLY POWERS AND PRIVILEGES IN THE MATTER BETWEEN MS DORAH SIRO AND HON THADDEUS NYABARO"** and is signed by Hon. Moffat Teya, the Speaker/Chairperson Powers and Privileges Committee and CASB. It spells out the punishment meted out to her in the matter. A similar letter to the 1st Ex-parte Applicant is marked as annexure "ZN2". My understanding of the words **"shall consider"** in **Section 15 (7) of the County Assembly Powers & Privileges Act** is that once tabled the County Assembly shall debate the motion regarding the recommendations. Annexure "VT3" indicates that the sitting of the County Assembly on Thursday 8th August 2019 was held at 2.30pm and that the report was tabled. However, there is nothing to show that the report was debated. Moreover, the letters are also dated 8th August 2019 without any indication of the time they were written or delivered to the applicants and my finding is that it could not have been earlier. The Nyamira County Assembly Standing Orders No. 50 provides for the manner of debating motions but in this case the report does not seem to have been debated and indeed in his submissions, Counsel for the respondents seems to concede that that was not done. The implementation of the recommendations before they were considered by the County Assembly reeks not just of procedural impropriety but it was also unfair, unreasonable and irrational as to warrant this court to interfere. Accordingly, the Notice of Motion as amended on 18th October 2019 is granted in terms of prayers 1, 2, and also in terms of prayer 4A. As for the costs of the proceedings, I shall, given the circumstances of the case, order that each party shall bear their own. It is so ordered.

Dated, signed and delivered in Nyamira this 30th day of January 2020.

E. N. MAINA

JUDGE